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THE
STATUTES
RELATING TO THE
ECCLESIASTICAL AND ELEEMOSYNARY
INSTITUTIONS
OF
ENGLAND, WALES, IRELAND, INDIA, AND
THE COLONIES;

WITH THE DECISIONS THE

BY ARCHIBALD JOHN STEPHENS,
BARRISTER AT LAW.

IN TWO VOLUMES.

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A.D. 1820—1830.

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I. STAT. 1 GEORGH 4, cap. ii. (1). A.D. 1820.

STAT. 1 GEO.
4, cap. ii.

"An Act for inclosing Lands within the Parish of Blo' Norton, in the County of Norfolk."

[Rector, with consent of bishop of the diocese and patron of the living, may lease allotments for twenty-one years, upon certain conditions. s. 31. Commissioners to set tithes for the first three years. s. 33.]

(1) The following is a list of Private Statutes, from the octavo edition of the Statutes, which were passed in the reign of George the Fourth, for inclosing lands, and in such statutes allotments were made to the improvers in lieu of tithes, rights of leasing reserved to the clerical incumbents, and other powers or advantages given, according to the circumstances of each case, so as to protect the rights of the church to its property, in the most ample manner.

Stat. 1 Geo. 4, c. 5,
for inclosing lands in the parish of Smisby,
in the county of Derby.

Stat. 1 Geo. 4, c. 6,
for inclosing lands within the parishes of
Tibenham and Meulton, in the county of
Norfolk.

Stat. 1 Geo. 4, c. 7,
for inclosing lands in the parish of Darton,
in the west riding of the county of York.

Stat. 1 Geo. 4, c. 9,
for inclosing a certain common or waste
ground, called Skelding Moor, situate in
the parishes of Urswick and Aldingham,
in the county palatine of Lancaster.

Stat. 1 Geo. 4, c. 10,
for inclosing lands in the parish of Great
Barford, in the county of Bedford.

Stat. 1 Geo. 4, c. 11,
for inclosing lands within the manor of Wen-
ham, in the parish of Rogate, in the county
of Sussex.

Stat. 1 Geo. 4, c. 12,
for inclosing lands in the tithings of Wood-
shaw, Greenhill, and Nore Marsh, in the
parish of Wootton Bassett, in the county
of Wilts.

Stat. 1 Geo. 4, c. 16,
for inclosing lands within the parish of Eye,
in the county of Northampton, and for
exonerating the same from tithes.

Stat. 1 Geo. 4, c. 17,
for inclosing lands within the several parishes
and manors of Preston Candover and Nut-
ley, in the county of Southampton.

Stat. 1 Geo. 4, c. 18,
for inclosing lands in the parish of Princes
Risborough, in the county of Buckingham.

Stat. 1 Geo. 4, c. 21,
for inclosing lands within the parish of Drigg,
in the county of Cumberland.

Stat. 1 Geo. 4, c. 23,
for inclosing lands in the parish of Chilfrome,
in the county of Dorset.

Stat. 1 Geo. 4, c. 24,
for inclosing, and exonerating from tithes,
lands in the parish of Naseby, in the county
of Northampton.

Stat. 1 Geo. 4, c. 25,
for inclosing, and exonerating from tithes,
lands within the parish of Oakham, in the
county of Rutland.

Stat. 1 Geo. 4, c. 26,
for inclosing lands in the township of South
Duffield, in the parish of Hemingbrough, in
the east riding of the county of York.

Stat. 1 Geo. 4, c. 29,
for inclosing lands within the parishes of
Blakeney, Wiveton, and Glandford, in the
county of Norfolk.

Stat. 1 Geo. 4, c. 31,
for inclosing, and exonerating from tithes,
lands in the parish of Benefield, in the
county of Northampton.

Stat. 1 & 2 Geo. 4, c. 1,
for inclosing lands within the parish of Iving-
hoe, in the county of Buckingham.

Stat. 1 & 2 Geo. 4, c. 4,
for dividing lands in the hamlet of Higham,
in the county of Suffolk.

Stat. 1 & 2 Geo. 4, c. 6,
for inclosing lands in the parish of Taynton,
in the county of Oxford.

Stat. 1 & 2 Geo. 4, c. 7,
to alter and amend an act, passed in the
fifty-sixth year of the reign of his late
majesty, King George the Third, intituled,
"An Act for inclosing Lands in the Manor
and Parish of Londesborough, in the East
Riding of the County of York."

Stat. 1 & 2 Geo. 4, c. 8,
for inclosing lands in the several parishes of
Walesby, Kirton, and Egmont, in the
county of Nottingham, and for exonerating
the same, and also the old inclosed lands
and grounds within the said several pa-
rishes, from the payment of tithes.

Stat. 1 & 2 Geo. 4, c. 10,
for inclosing lands in the townships or divi-
sions of Kirkby Ireleth, and of Lindale
and Marton, in the parish of Dalton, in
the county palatine of Lancaster.

Stat. 1 & 2 Geo. 4, c. 12,
for inclosing the commons and waste lands in
the manor and township of Alsager, in the
parish of Barthomley, in the county of
Chester.

Stat. 1 & 2 Geo. 4, c. 13,
for dividing and allotting lands in the parish
of Worstead, in the county of Norfolk.

Stat. 1 & 2 Geo. 4, c. 18,
for dividing, allotting, and inclosing lands
in the parish and manor of Kenn, in the
county of Devon.

Stat. 1 & 2 Geo. 4, c. 20,
for inclosing lands within the manor of Mill-
bourne, otherwise Waterville Escher, in the

STAT. 1 GEO.
4, cap. ii.

several parishes of Esher and Cobham, or one of them, in the county of Surrey.

Stat. 1 & 2 Geo. 4, c. 24,
for inclosing and exonerating from tithes, lands in the parish or parishes of Bourton on the Hill, and Moreton in Marsh, in the county of Gloucester.

Stat. 1 & 2 Geo. 4, c. 25,
for repealing certain parts of an act of his present majesty, intituled, "An Act for inclosing Lands in the Township of South Duffield, in the Parish of Hemingbrough, in the East Riding of the County of York," and for amending and explaining the said act.

Stat. 1 & 2 Geo. 4, c. 32,
for inclosing lands within the manor and parish of Easthampstead, in the county of Berks.

Stat. 1 & 2 Geo. 4, c. 34,
for dividing, allotting, and inclosing a certain piece of land called King's Heath, or Malmesbury Common, situate near the borough of Malmesbury, in the county of Wilts.

Stat. 1 & 2 Geo. 4, c. 36,
for inclosing lands in the parish of Farnham Royal, in the county of Buckingham.

Stat. 1 & 2 Geo. 4, c. 37,
for inclosing lands in the parish of Whittington, in the county of Derby.

Stat. 3 Geo. 4, c. 5,
for inclosing lands in the manor and parish of Bobbington, in the several counties of Stafford and Salop.

Stat. 3 Geo. 4, c. 6,
for inclosing, and exonerating from tithes, lands in the parish of Clifton Reynes, in the county of Buckingham.

Stat. 3 Geo. 4, c. 8,
for inclosing lands in the parish of Sturton, otherwise Sturton in the Clay, otherwise Sturton in the Steeple, and in the parish or chapelry of Littleborough, otherwise Littlebrough, in the county of Nottingham.

Stat. 3 Geo. 4, c. 9,
for inclosing lands in the parish of Wingfield, in the county of Wilts.

Stat. 3 Geo. 4, c. 13,
for inclosing lands in the township of South Dalton, in the parish of South Dalton, in the east riding of the county of York.

Stat. 3 Geo. 4, c. 14,
for inclosing lands in the parish of Towersey, in the county of Buckingham.

Stat. 3 Geo. 4, c. 28,
for inclosing a certain common, or tract of waste land, called Buriish Common, in the manor and chapelry of Lower Mitton, in the parish of Kidderminster, in the county of Worcester.

Stat. 3 Geo. 4, c. 30,
for dividing, allotting, and inclosing lands in the parish of Dinton, in the county of Wilts.

Stat. 4 Geo. 4, c. 3,
for inclosing lands in the township or quarter of Oulton, in the parish of Wigton, in the county of Cumberland.

Stat. 4 Geo. 4, c. 6,
for inclosing lands in the parish of North

Burton, otherwise Cherry Burton, in the east riding of the county of York.

Stat. 4 Geo. 4, c. 7,
for inclosing lands in the parish of Ryton, in the county of Durham.

Stat. 4 Geo. 4, c. 8,
for inclosing lands in the parishes of Thame and Sydenham, in the county of Oxford.

Stat. 4 Geo. 4, c. 9,
for inclosing lands within the townships or divisions of Whitwell and Selside, Skelsmergh and Crook, in the parish of Kirkby in Kendal, in the county of Westmorland.

Stat. 4 Geo. 4, c. 23,
for inclosing lands within the manor of Congerston, otherwise Congeston, in the county of Leicester.

Stat. 5 Geo. 4, c. 1,
for inclosing lands in the parish of Snelston, in the county of Derby.

Stat. 5 Geo. 4, c. 3,
for inclosing lands in the parishes of Wenden Lofes and Elmdon, in the county of Essex, and for extinguishing the tithes in the said parishes.

Stat. 5 Geo. 4, c. 6,
for inclosing lands in the parish of Long Crendon, in the county of Buckingham.

Stat. 5 Geo. 4, c. 9,
for inclosing, draining, and exonerating from tithes, lands in the parish of Ulceby, in the wapentake of Yarborough, in the county of Lincoln.

Stat. 5 Geo. 4, c. 10,
for inclosing lands in the manor and parish of Alveston, otherwise Alton, and the parish of Bradley in the Moors, in the county of Stafford.

Stat. 5 Geo. 4, c. 12,
for dividing, allotting, and inclosing certain lands within the parish of Bincombe in the county of Dorset.

Stat. 5 Geo. 4, c. 13,
for inclosing lands in the townships of Ferriby, Swanland, Kirk Ella, West Ella, and Willerby, in the parishes of Ferriby and Kirk Ella, in the county of the town of Kingston-upon-Hall.

Stat. 5 Geo. 4, c. 14,
for inclosing lands within the royal town, manor, and lordship of Sutton Coldfield, and the parish of Sutton Coldfield, in the county of Warwick.

Stat. 6 Geo. 4, c. 6,
for inclosing lands in the parishes of Hockering and Morton, in the county of Norfolk.

Stat. 6 Geo. 4, c. 7,
for inclosing lands within the manor and parish of Dearham, in the county of Cumberland.

Stat. 6 Geo. 4, c. 8,
for dividing, allotting, and inclosing a certain stinted pasture called Carrington Hill, in the parish of Carrington, in the county of Derby.

Stat. 6 Geo. 4, c. 9,
for inclosing certain lands in the parish of

Frampton Cotterell, in the county of Gloucester.

Stat. 6 Geo. 4, c. 12,
for inclosing, and exonerating from tithes,
lands in the parishes of Gloseston and
Crance, in the county of Leicester.

Stat. 6 Geo. 4, c. 21,
for dividing, slotting, and inclosing lands,
in the parishes of Wilton, Burcomb, Ne-
therhampton, and Fugglestone Saint Pe-
ter, in the county of Wilts.

Stat. 6 Geo. 4, c. 22,
to commute for a corn rent the tithes and
dues payable to the vicar of the parish and
parish church of Cockerham, in the county
of Lancaster.

Stat. 6 Geo. 4, c. 23,
for dividing, allotting, and laying in severalty
lands, in the parish of West Ilale, in the
county of Berks.

Stat. 6 Geo. 4, c. 26,
for inclosing, and exonerating from tithes,
lands in the hamlet of East Santon, other-
wise Upper Santon, in the parish of Ap-
pleby, in the county of Lincoln.

Stat. 6 Geo. 4, c. 59,
for inclosing lands in the parish of Northolt,
otherwise Northall, otherwise Northaw,
in the county of Middlesex.

Stat. 7 Geo. 4, c. 1,
for dividing, allotting, and inclosing lands in
the township of Netherthong, in the parish
of Almondbury, in the west riding of the
county of York.

Stat. 7 Geo. 4, c. 2,
for inclosing, and exonerating from tithes,
lands in the parish of West Lydford, in the
county of Somerset.

Stat. 7 Geo. 4, c. 3,
for inclosing lands within the township, divi-
sion, or quarter, of Anthorn, in the parish
of Bowness, in the county of Cumberland.

Stat. 7 Geo. 4, c. 4,
for dividing, allotting, and inclosing the
commons or waste lands in the hamlet of
Whitle, in the parish of Glossop, in the
county of Derby.

Stat. 7 Geo. 4, c. 5,
for inclosing lands in the parish of Dilham,
in the county of Norfolk.

Stat. 7 Geo. 4, c. 6,
for inclosing lands in the parish of Farles-
thorpe, in the county of Lincoln.

Stat. 7 Geo. 4, c. 7,
for inclosing lands in the parish of Hopton,
within the liberty of Bury St. Edmunds, in
the county of Suffolk.

Stat. 7 Geo. 4, c. 11,
for inclosing lands in the manor and parish
of Wolverton, in the county of Warwick.

Stat. 7 Geo. 4, c. 12,
for inclosing lands in the parish of Anstey,
in the county of Hertford.

Stat. 7 Geo. 4, c. 13,
for inclosing lands in the parish of Kent-
ford, in the county of Suffolk.

Stat. 7 Geo. 4, c. 14,
for inclosing, and exonerating from tithes,
lands in the parishes of West Ardaley,

otherwise Woodchurch, and East Ardaley, Stat. 1 Geo.
in the west riding of the county of York. 4, cap. ii.

Stat. 7 Geo. 4, c. 15,
for inclosing, and exonerating from tithes,
lands in the parish of Norwell, in the
county of Nottingham.

Stat. 7 Geo. 4, c. 16,
for subdividing, allotting, and inclosing the
allotment directed to be set out by an act
of the last session of parliament, for in-
closing the forest of Salcey, in the coun-
ties of Northampton and Buckingham, to
the several owners and proprietors of lands
claiming rights of common in and over
the said forest.

Stat. 7 Geo. 4, c. 17,
for inclosing lands in the township of Sough-
ton, in the parish of Northup, in the
county of Flint.

Stat. 7 Geo. 4, c. 43,
for dividing, allotting, and otherwise im-
proving lands in the parish of Felpham, in
the county of Sussex.

Stat. 7 Geo. 4, c. 44,
for inclosing lands in the parish of Foxton,
in the county of Cambridge.

Stat. 7 Geo. 4, c. 45,
for dividing, allotting, and inclosing, and ex-
onerating from average rents, and enfran-
chising, certain copyhold and leasehold
lands within the township and parish of
Ripon, in the county of York.

Stat. 7 & 8 Geo. 4, c. 2,
for inclosing lands in the parish of Ham, in
the county of Wilts.

Stat. 7 & 8 Geo. 4, c. 3,
for dividing, allotting, and inclosing the se-
veral commons and waste grounds within
the manor of Stainsby and Heath, in the
parishes of Ault Hucknall and Heath, in
the county of Derby.

Stat. 7 & 8 Geo. 4, c. 7,
for dividing, allotting, and inclosing lands
within the parishes of Thursford and Ket-
tlestone, in the county of Norfolk.

Stat. 7 & 8 Geo. 4, c. 13,
for inclosing, dividing, and allotting lands
within the township of Westkirby, in the
parish of Westkirby, in the county pala-
tine of Chester.

Stat. 7 & 8 Geo. 4, c. 14,
for inclosing lands in the township of Shep-
ley, in the parish of Kirkburton, in the
west riding of the county of York.

Stat. 7 & 8 Geo. 4, c. 15,
for inclosing lands in the parish of Beckley,
in the county of Oxford.

Stat. 7 & 8 Geo. 4, c. 16,
for dividing, allotting, and inclosing, and for
exonerating from tithes, lands within the
townships of Bentley and Arksey, in the
parish of Arksey, in the west riding of the
county of York.

Stat. 7 & 8 Geo. 4, c. 18,
for dividing, inclosing, and exonerating from
tithes, lands in the parish of Great Grims-
by, in the county of Lincoln.

Stat. 7 & 8 Geo. 4, c. 19,
for inclosing lands in the parish of Rus-
combe, in the county of Berks.

STAT. 1 GEO.
4, cap. ii.

Stat. 7 & 8 Geo. 4, c. 20,
for inclosing, dividing, and allotting lands in
the township of Burwardesley, otherwise
Burwardesley, in the parish of Bunbury, in
the county palatine of Chester.

Stat. 7 & 8 Geo. 4, c. 21,
to commute for a corn rent the tithes and
dues payable to the rector of the parish
and parish church of Grappenhall, in the
county palatine of Chester.

Stat. 7 & 8 Geo. 4, c. 34,
for inclosing lands in the several parishes of
Little Houghton, Brafield-on-the-Green,
and Cooknoe, otherwise Cogenhoe, in the
county of Northampton.

Stat. 7 & 8 Geo. 4, c. 35,
for dividing, allotting, inclosing, and exoner-
ating from tithes, lands in the hamlet of
Penge, in the parish of Battersea, in the
county of Surrey.

Stat. 7 & 8 Geo. 4, c. 36,
for inclosing, and exonerating from tithes,
lands in the parish of Langford, in the
county of Bedford.

Stat. 7 & 8 Geo. 4, c. 37,
for inclosing lands in the parish of Nowton,
in the county of Suffolk.

Stat. 7 & 8 Geo. 4, c. 40,
for abolishing the great and small tithes be-
longing to the rectory of the united pa-
rishes of Beaumont and Kirkandrews-
upon-Eden, in the county of Cumberland
and diocese of Carlisle, and for making
compensation in lieu thereof.

Stat. 9 Geo. 4, c. 3,
for inclosing, dividing, and allotting, and for
exonerating from tithes, lands within the
township or territories of Hessay, in the
parish of Moor Monkton, in the county of
the city of York.

Stat. 9 Geo. 4, c. 4,
for inclosing lands in the parish of Litling-
ton, in the county of Cambridge.

Stat. 9 Geo. 4, c. 5,
for inclosing lands within the manor and
township of Broughton, in the parish of
Kirkby Ireleth, in the county palatine of
Lancaster.

Stat. 9 Geo. 4, c. 8,
for inclosing lands in the parishes of Be-
laugh, Scottow, Little Hautbois, and
Hoveton Saint Peter, in the county of
Norfolk.

Stat. 9 Geo. 4, c. 10,
for inclosing lands within the graveship of
Holme, in the several parishes of Kirk-
burton and Almondbury, in the west
riding of the county of York.

Stat. 9 Geo. 4, c. 12,
for dividing, allotting, and inclosing the se-
veral moors or commons called Scriven
Moor and Scotton Moor, in the townships
of Scriven, with Tentergate and Scotton,
and the open fields within the said town-
ship of Scotton; and for exonerating from
tithes the lands and grounds in the said
township of Scotton, within the honor of
Knaresborough, and in the several pa-
rishes of Knaresborough and Farham, in
the county of York.

Stat. 9 Geo. 4, c. 15,
for inclosing lands in the township of Ouse-
fleet, in the parish of Whitgift, in the
county of York.

Stat. 9 Geo. 4, c. 17,
for dividing, allotting, and laying in seve-
rally, lands in the parish of Appleton, in
the county of Berks.

Stat. 10 Geo. 4, c. 1,
for dividing, allotting, and inclosing lands
in the parish of Southorpe, in the county
of Norfolk.

Stat. 10 Geo. 4, c. 4,
for inclosing lands in the manors and pa-
rishes of Didmerton and Oldbury-on-the-
Hill, in the county of Gloucester.

Stat. 10 Geo. 4, c. 5,
for inclosing lands in the parish of North
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Stat. 10 Geo. 4, c. 11,
for inclosing lands in the parishes of Saint
Peter and Saint James Brackley in the
county of Northampton.

Stat. 10 Geo. 4, c. 13,
for inclosing lands in the parish of Monk-
sherbome, in the county of Southampton.

Stat. 10 Geo. 4, c. 14,
for inclosing certain commonable and waste
lands in the parish of St. Lawrence
Wootton, in the county of Southampton.

Stat. 10 Geo. 4, c. 15,
for dividing, allotting, and laying in seve-
rally, lands in the parish of Saint Giles, in
the suburbs of the city of Oxford, in the
county of Oxford.

Stat. 10 Geo. 4, c. 17,
for inclosing lands in the manor and town-
ship of Headingley cum Burley, in the
parish of Leeds, in the west riding of the
county of York.

Stat. 10 Geo. 4, c. 19,
for inclosing lands within the parish of Gun-
thorpe in the county of Norfolk.

Stat. 10 Geo. 4, c. 21,
for inclosing, and discharging from tithes,
lands in the parish of Corby, in the county
of Northampton.

Stat. 10 Geo. 4, c. 24,
for inclosing lands within the parish of
Wentworth, in the Isle of Ely, in the
county of Cambridge.

Stat. 10 Geo. 4, c. 27,
for inclosing lands in the parishes of Callan,
Coolagh, and Knocktopher, in the county
of Kilkenny.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 1,
for inclosing lands in the parishes of King-
ston, near Lewes, and Iford, in the county
of Sussex.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 2,
for inclosing the forest of Roach, otherwise
Roche, otherwise Neroach, otherwise Ne-
roche, in the parishes of Broadway, Bick-
enhall, Beerrocombe, Ilton, Barrington,
Ashill, Ilminster, Whitelackington, Car-
land, Donyatt, Isle-Abbotts, Hatch-Beau-
champ, and the tithing of Domett, in the
parish of Beckland St. Mary, or some or
one of them, in the county of Somerset.

II. STAT. 1 GEORGII 4, c. 6 (1). A.D. 1820.

STAT. 1 GEO.
4, c. 6.

"An Act to amend and render more effectual an Act passed in the fifty-fifth year of His late Majesty's Reign, for enabling Spiritual Persons to exchange their Parsonage Houses or Glebe Lands, and for other Purposes therein mentioned."

"Whereas an act was passed in the fifty-fifth year of the reign of his late majesty King George the Third, intituled, 'An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands belonging to their Benefices for others of greater value, or more conveniently situated for their Residence and Occupation; and for annexing such Houses and Lands so taken in Exchange to such Benefices as Parsonage or Glebe Houses and Glebe Lands, and for purchasing and annexing Lands to become Glebe in certain cases, and for other Purposes:' and whereas it is by the said recited act enacted, that the bishop shall, in cases of exchange and purchase under the said act, issue a commission of inquiry for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years' standing at the least, to be named by the senior judge of Nisi Prius for the county in which the benefice, perpetual curacy, or parochial chapelry whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act, shall be situate; but inasmuch as the nomination of such barrister by a judge of Nisi Prius is not applicable to the county of Middlesex; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where any exchange or purchase shall be made or be proposed to be made under the authority of the said act in any benefice, perpetual curacy, or parochial chapelry, situate within the said county of Middlesex, such barrister shall be named by the chief justice of the court of King's Bench for the time being,

55 Geo. 3,
c. 147.

Barristers named in commissions for exchanges, &c. in Middlesex, to be named by the chief justice of the King's Bench or Common Pleas.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 4,
for inclosing lands and extinguishing tithes
in the parish of Haddenham, in the county
of Buckingham.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 5,
for inclosing lands in the parish of Wistow,
in the county of Huntingdon, and for
extinguishing the tithes in the said parish.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 6,
for inclosing lands in the tithings of Arle
and Arlestone, otherwise Allstone, in the
parish of Cheltenham, in the county of
Gloucester, and for discharging from tithes,
lands in the said tithings.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 7,
for inclosing lands in the parishes of Stanley
St. Leonard's, otherwise Leonard Stanley,
and Eastington, or one of them, in the
county of Gloucester, and for discharging
from tithes lands in the said parish of
Stanley St. Leonard's, otherwise Leonard
Stanley.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 8,
for inclosing, and exonerating from tithes,
lands in the parish of Caxton, in the county
of Cambridge.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 9,
for dividing and allotting lands within the
parishes of Weston Zoyland and Middle-
soy, in the county of Somerset.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 10,
for inclosing, and exonerating from tithes,
lands in the parish of Whaddon, including
the hamlet of Nash, in the county of Buck-
ingham.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 11,
for dividing, allotting, and inclosing, and for

exonerating from tithes, lands within the
township or hamlet of Deddithorpe, other-
wise Derrythorpe, in the parish of Althorpe,
in the isle of Axholme, in the county of
Lincoln.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 12,
for inclosing certain lands in the parish of
Hagley, in the county of Worcester.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 13
for inclosing lands in the townships of Black-
toft, Gilberdike, and Faxfleet, in the parish
or parochial chapelry of Blacktoft, and
in the parishes of Eastington and South
Cave, in the east riding of the county of
York.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 14,
for inclosing lands in the townships of Great
Strickland and Thrimby, in the parish of
Morland, in the county of Westmorland.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 15,
for inclosing lands in the parish of Standon,
in the county of Hertford.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 16,
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of Kidwelly, Saint Mary in Kidwelly, Saint
Ishmael, and Pembrey, in the county of
Carmarthen.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 17,
for inclosing lands in the parish of Monks
Risborough, in the county of Buckingham.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 19,
for inclosing lands in the parish of Little
Addington, in the county of Northampton.

(1) Vide Stat. 6 Geo. 4, c. 8, and Stat. 7
Geo. 4, c. 66.

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A.D. 1820—1830.

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STAT. 1 GEO.
4, c. 106.

XIII. STAT. 1 GEORGH 4, c. 106(1). A.D. 1820.

"An Act to enable Chaplains in the Navy presented to either of the Livings of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, or Greystead, in the County of Northumberland, to receive their Half Pay; and for other Purposes relating to the said Livings."

51 Geo. 3,
c. cxiv.

"Whereas by an act passed in the fifty-first year of the reign of his late majesty King George the Third, intituled, 'An Act for erecting Five distinct Rectories and Parishes within the Rectory and Parish of Simonburn, in the County of Northumberland, and for separating the same from the Rectory and Parish Church of Simonburn; and for providing Parish Churches, Churchyards, and Parsonage Houses for the same; and for restraining the Commissioners and Governors of the Royal Hospital for Seamen at Greenwich, in the County of Kent, from presenting to the Rectory of Simonburn, or the said new Rectories, any other Persons than Chaplains in the Royal Navy,' it was enacted, that so soon as any chaplain of the royal navy should be presented to either of the rectories in the said act named, such chaplain should no longer receive or be entitled to half-pay, or any other bounty or allowances payable by government to chaplains in the royal navy: and whereas it is expedient to alter and amend the said act in manner hereinafter mentioned; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said act as extends to prevent chaplains of the royal navy, appointed to the said rectories, or either of them, from receiving half-pay or any other bounty or allowance payable by government to chaplains in the royal navy, be and the same is hereby repealed.

So much of
recited act as
excludes from
half-pay,
repealed.

Chaplains of
the royal navy
presented to
Simonburn,
&c. entitled to
receive half-
pay, &c.

"II. And be it further enacted, that from and after the passing of this act, it shall and may be lawful to and for any chaplain in the royal navy, who shall be presented to either of the rectories of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, or Greystead, in the said county of Northumberland, or to the chapelry of Humshaugh, to receive during the time he shall hold either of the said rectories respectively, such half-pay, or any other bounty or allowances payable by government to chaplains in the royal navy, to which he may be entitled by virtue of his services performed in his majesty's navy, as the lord high admiral or the commissioners for executing the office of lord high admiral of the United Kingdom of Great Britain and Ireland for the time being may direct.

Land tax
chargeable on
the rectories
may be re-
deemed.

"III. And be it further enacted, that it shall and may be lawful for the commissioners and governors of the Royal Hospital for Seamen at Greenwich, in the county of Kent, to apply so much of the general funds of the said Royal Hospital as may be necessary for the purpose in the redemption of the land tax chargeable upon all or any of the said rectories of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, or Greystead, and upon the chapelries to either of the said rectories belonging.

First-fruits,
&c. to be ap-
portioned by
the Bishop of
Durham.

"IV. And whereas the amount of the first fruits, tenths, and other ecclesiastical dues chargeable upon the ancient undivided living of Simonburn has not been divided and apportioned upon the said several rectories, but is wholly charged upon the rector of Simonburn for the time being; be it enacted, that it shall and may be lawful for the Lord Bishop of Durham for the time being, by writing under his hand and seal, to declare what proportion of the said first-fruits, tenths, and other ecclesiastical dues now charged or chargeable upon the said living or rectory of Simonburn, shall hereafter be paid and payable by the respective rectors of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone and Greystead, which said several sums so apportioned upon the said several rectors shall henceforth be paid by them respectively; and the said Lord Bishop of Durham shall in manner aforesaid, and he is hereby authorized to divide and apportion the sum heretofore payable as first-fruits upon the said living of Simonburn, amongst the said several

rectories aforesaid, and the same shall hereafter be so set, divided, and apportioned in the proper books or records of the said first-fruits, and payable accordingly.

“V. And be it further enacted, that from and after the passing of this act, it shall not be lawful for the rector for the time being of the parish of Simonburn, to nominate or present to the Lord Bishop of Durham for the time being any person to be licensed to the perpetual curacy of the chapel of Humshaugh, but the right of nomination shall henceforth be vested in the commissioners and governors of the Royal Hospital for Seamen at Greenwich, in the county of Kent, and the said commissioners and governors shall in such nomination be subject to the same restrictions, and have the same powers, as the rector of Simonburn would have had or been subject to in case this act had not been made.

STAT. 1 GEO. 4, c. 106.

Right of nomination to the chapel of Humshaugh vested in Greenwich Hospital.

“VI. And be it further enacted, that in case the presentation to the said rectories of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, or Greystead, shall lapse either to the Lord Bishop of Durham for the time being, or to the metropolitan, or to the crown, no spiritual person or persons whomsoever shall be capable of being presented, instituted, and inducted to the said rectories of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, or Greystead, save and except only such clerk or clerks, (being in priest's orders, who shall have taken a degree in one of the universities of Oxford, Cambridge, or Dublin,) as shall have been rated and served as chaplains of the said royal navy for seven years at the least, on board any of his majesty's ships actually employed in the service at sea, and who shall be on the list of chaplains of the royal navy; and in case no such sufficient clerk who shall have served as aforesaid shall be found, then a sufficient clerk, who shall have been rated and shall have served for ten years on board any ship or ships in his majesty's navy, and who shall be on the list of chaplains of the royal navy; and in case no clerk having so served shall be found, then, and in that case only, any other sufficient clerk who shall have been rated and served as aforesaid for any shorter period, provided he be on the list of chaplains of the royal navy: provided always, that nothing herein contained shall exclude from the benefit of this act any sufficient clerk, who in the discharge of his duty as chaplain in his majesty's navy shall have lost a limb, or suffered any wound or other injury equally prejudicial to the habit of body to the loss of a limb, provided he shall be on the list of chaplains of the royal navy.

Presentation to the rectories regulated in case of lapse either to the Bishop of Durham, the metropolitan, or the crown.

“VII. And be it further enacted, that in case the nomination to the said chapelry of Humshaugh shall lapse either to the Lord Bishop of Durham for the time being, or to the metropolitan, or to the crown, no spiritual person shall be capable of being licensed to the said chapelry, save and except a clerk being in priest's orders, who shall have taken a degree in one of the three universities of Oxford, Cambridge, or Dublin, and who shall have been rated and served as a chaplain in the navy during three years at the least on board any of his majesty's ships actually employed in service at sea, and who shall be on the list of chaplains of the royal navy; and if no such can be found, any other sufficient clerk who shall have been rated and served for six years on board any of his majesty's ships, and who shall be on the list of chaplains of the royal navy; and if no such can be found, then, and then only, any other sufficient clerk, who shall have been rated and served as aforesaid for any shorter period, provided he shall be on the list of chaplains of the royal navy; provided always, that in case no clerk or spiritual person who shall have served in the royal navy, and shall be on the list of chaplains as aforesaid, shall be found sufficient, proper, and willing to accept any of the said rectories, or the said perpetual curacy, then and in that case it shall be lawful for the said commissioners and governors, or in case of lapse, the said Lord Bishop of Durham, or the crown, to nominate a sufficient clerk or spiritual person to such vacant rectory or curacy who has not been a chaplain in the royal navy.”

Nomination to the chapelry of Humshaugh in case of such lapse.

XIV. STAT. 1 GEORGH 4, c. 114. A.D. 1820.

STAT. 1 GEO. 4, c. 114.

“An Act for enabling William Blackall Simonds, Esquire, to sell or mortgage his Estate and Interest in the Improper Rectory of Caversham, in the County of Oxford, free from the Claims of the Crown.”

STAT. 1 & 2
GEO. 4, cap. v.

XV. STAT. 1 & 2 GEORGII 4, cap. v. A.D. 1821.

"An Act to enable the Lord Bishop of Winchester to sell Winchester House in the Parish of Saint Luke, Chelsea, in the County of Middlesex, and for applying the Money to arise by such Sale in the Purchase of another Residence for the Bishops of Winchester, and for the several other Purposes therein mentioned."

[Until sale of lands, &c. bishop to receive rents and profits. s. 8. Lands, &c. directed to be sold, not to be considered as within the diocese of Winchester after such sale. s. 9.]

STAT. 1 & 2
GEO. 4, cap. xv.

XVI. STAT. 1 & 2 GEORGII 4, cap. xv. A.D. 1821.

"An Act to enable the Lord Archbishop of Dublin, and his Successors, to demise the Mansion House of Tallaght, with the Offices, Houses, Gardens, and Demesne, situate at Tallaght, in the County of Dublin, belonging to the Archbishop of Dublin."

[Archbishop of Dublin may demise Tallaght House and demesne. s. 1. The sum, if any, which archbishop is entitled to receive for dilapidations, after deducting expenses of this act, to be expended by present archbishop in altering, &c. Tallaght House and demesne, as herein mentioned. No lease of said mansion house and demesne authorized until such sum is certified, as herein, to have been expended. If present archbishop die or be removed before the whole be expended, the residue to be paid to his successor, and by him applied in like manner. s. 2.]

STAT. 1 & 2
GEO. 4,
CAP. XXI.

XVII. STAT. 1 & 2 GEORGII 4, CAP. XXI. (1). A.D. 1821.

"An Act to enable the Vestrymen of the Parish of Saint Mary-le-Bone, in the County of Middlesex, to effectuate the building of four District Churches in the said Parish, and for other Purposes relating thereto."

STAT. 1 & 2
GEO. 4, c. 23.

XVIII. STAT. 1 & 2 GEORGII 4, c. 23. A.D. 1821.

"An Act to amend the Law respecting the inclosing of open Fields, Pastures, Moors, Commons, and Waste Lands, in England."

Where leases granted under 41 Geo. 3, c. 109, become void before the expiration of their term, incumbents may grant new leases.

"IV. Provided always, and be it further enacted, that whenever any lease or leases to be granted by any rector, vicar, or other incumbent, under the powers or provisions of an act passed in the forty-first year of the reign of his late majesty King George the Third, intituled, 'An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts,' shall by any means become forfeited or void, or be surrendered before the expiration, by effluxion of time, of the term or terms thereby granted, then and in such case, and as often as the same shall so happen, it shall and may be lawful for the rector, vicar, or other incumbent for the time being of the same rectory, vicarage, or parish, by and with the previous consent of the ordinary and patron, to grant a new lease of the lands so demised for such term or terms of years as shall, at the time or times of such avoidance, be then to come and unexpired of the original term or terms granted by such original lease or leases, subject nevertheless to the provisions and conditions contained in such original lease or leases, and then remaining unperformed and capable of having effect."

STAT. 1 & 2
GEO. 4,
CAP. XXIV.

XIX. STAT. 1 & 2 GEORGII 4, CAP. XXIV. (2). A.D. 1821.

"An Act for repealing an Act of the thirty-second year of His late Majesty, for providing an additional Burying Ground for the Parish of Saint Pancras, in the County of Middlesex; and for altering and enlarging the Powers of an Act of the fifty-sixth year of His late Majesty, for building a new Parish Church and Chapel for the said Parish."

(1) Vide Stat. 51 Geo. 3, CAP. CLI.; Stat. Geo. 3, CAP. XXXIX.; Stat. 58 Geo. 3, c. 45; 58 Geo. 3, c. 45; and Stat. 59 Geo. 3, c. 134. and Stat. 59 Geo. 3, c. 134.

(2) Vide Stat. 32 Geo. 3, c. 66; Stat. 56

XX. STAT. 1 & 2 GEORGII 4, cap. xxix. A.D. 1821.

"An Act for effecting an Exchange of part of the Glebe Lands belonging to the Rectory of Hinton Walrish, in the County of Berks, for other Lands in the same Parish, belonging to John Loder Symonds, Esquire."

STAT. 1 & 2
GEO. 4,
cap. xxix.

XXI. STAT. 1 & 2 GEORGII 4, cap. xxxv. A.D. 1821.

"An Act to commute for a Corn Rent the Vicarial Tithes, and Payments in Money thereof, payable to the Vicar of the Parish of Edgbaston, in the County of Warwick."

STAT. 1 & 2
GEO. 4,
cap. xxxv.

XXII. STAT. 1 & 2 GEORGII 4, cap. xli. A.D. 1821.

"An Act to enable the Trustees of an Estate at Rowley Regis, in the County of Stafford, belonging to Deritend Chapel, in the Parish of Aston, near Birmingham, in the County of Warwick, to demise the Mines under the same, and lay out the Money to arise therefrom in Lands, and apply the Rents in manner therein mentioned."

STAT. 1 & 2
GEO. 4,
cap. xli.

XXIII. STAT. 1 & 2 GEORGII 4, cap. xlv. A.D. 1821.

"An Act to enable the Prebendary of the Prebend of Brownswood, in the County of Middlesex, founded in the Cathedral Church of Saint Paul, in London, to grant a Lease of the Manor of Brownswood, in the said County, Parcel of the said Prebend, in manner therein mentioned, and to enable the granting of Sub-Leases for building thereon, and otherwise improving the same, and for other Purposes."

STAT. 1 & 2
GEO. 4,
cap. xlv.

XXIV. STAT. 1 & 2 GEORGII 4, c. 49 (1). A.D. 1821.

"An Act, inter alia, for extending the Provisions of an Act made in the fifty-fifth year of His late Majesty, relating to the Execution of Letters of Attorney and Wills of Petty Officers, Seamen, and Marines, in His Majesty's Navy."

STAT. 1 & 2
GEO. 4, c. 49.

XXV. STAT. 1 & 2 GEORGII 4, c. 50. A.D. 1821.

"An Act to alter and amend an Act made in the fifty-ninth year of the Reign of His late Majesty King George the Third, intituled, An Act to regulate the making and sale of Bread out of the City of London, and the Liberties thereof, and beyond the Weekly Bills of Mortality, and ten miles of the Royal Exchange, where no Assize is set; and for establishing other Provisions and Regulations relative thereto."

STAT. 1 & 2
GEO. 4, c. 50.

"XI. Provided always, and be it further enacted, that no master, mistress, journeyman, or other person respectively exercising or employed in the trade or calling of a baker, out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, shall on the Lord's day, commonly called Sunday, or any part thereof, make or bake any household or other bread, rolls, or cakes of any sort or kind, or shall on any part of the said day sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes of any sort or kind, except to travellers, or in cases of urgent necessity; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, at any time after half-past one of the clock in the afternoon of that day, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except as aforesaid, and also save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and that no meat, pudding, pie, tart, or victuals shall be brought

Regulations as
to baking on
Sundays.

(1) Repealed, and other provisions made, 2 & 3 Gul. 4, c. 40; and Stat 4 & 5 Gul. 4, by Stat. 11 Geo. 4 & 1 Gul. 4, c. 20; Stat. c. 25.

STAT. 1 & 2
GEO. 4, c. 50.

to or taken from any bakehouse during the time of divine service in the church, parish, hamlet, or place where the same is situate, nor within one quarter of an hour of the time of commencement thereof; and every person offending against the foregoing regulations, or any one or more of them, and being thereof convicted before any magistrate or magistrates, justice or justices of the peace of the city, county, or place where the offence shall be committed, within two days from the commission thereof, either upon the view of such magistrate or magistrates, justice or justices of the peace, or on confession by the party, or proof by one or more witnesses or witnesses upon oath or affirmation as aforesaid, shall for every such offence forfeit and pay and undergo the forfeiture, penalty, and punishment herein-after mentioned; (that is to say,) for the first offence the penalty of five shillings, for the second offence the penalty of ten shillings, and for the third and every subsequent offence respectively the penalty of twenty shillings; and shall moreover on every such conviction bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the magistrate or magistrates, justice or justices of the peace convicting; and the amount thereof, together with such part of the penalty as such magistrate or magistrates, justice or justices of the peace shall think proper, to the prosecutor or prosecutors, for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings per diem, and be paid to the prosecutor or prosecutors for his and their own use and benefit; and the residue of such penalty to be paid to such magistrate or magistrates, justice or justices of the peace, and within seven days after his or their receipt thereof to be transmitted by him or them to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expenses as aforesaid, be not paid within three days after the conviction of the offender or offenders, such magistrate or magistrates, justice or justices of the peace, shall and may, by warrant under their respective hands and seals or hand and seal, direct the same to be levied and raised by distress and sale of the goods and chattels of the offender or offenders, rendering the over-plus, if any; or in default or insufficiency of such distress, to commit the offender or offenders to the house of correction, on a first offence, for any time not exceeding fourteen days, and on the second or any subsequent offence for any time not exceeding twenty-one days, unless the whole of the penalty, costs, and expenses be sooner paid and discharged."

STAT. 1 & 2
GEO. 4, c. 57.
[1R.]

XXVI. STAT. 1 & 2 GEORGII 4, c. 57. [IRELAND.] A.D. 1821.

"An Act to amend an Act made in the fiftieth year of the Reign of His late Majesty King George the Third, relating to Prisons in Ireland."

If ministers
are appointed,
those of the
parish where
prison is
situated shall
be preferred.

"XVII. And be it further enacted, that in all future appointments of protestant chaplains to any gaol, the protestant minister or curate of the parish wherein such gaols shall be situated, and in all future appointments of Roman catholic or dissenting chaplains, the clergyman or curate of such persuasion respectively, who shall act within the parish in which such gaols respectively are situate, shall be preferred, if such minister, clergyman, or curate will accept such appointment, and if there does not appear, on examination, to be any just or reasonable objection to such minister, curate, or clergyman as aforesaid."

STAT. 1 & 2
GEO. 4, c. 86.

XXVII. STAT. 1 & 2 GEORGII 4, c. 86. A.D. 1821.

"An Act for amending an Act passed in the first year of His present Majesty, for enabling William Blackall Simonds, Esquire, to sell or mortgage his Estate and Interest in the Improprate Rectory of Caversham, in the County of Oxford, free from the Claims of the Crown."

XXVIII. STAT. 1 & 2 GEORGII 4, C. 92. A.D. 1821.

STAT. 1 & 2
GEO. 4, C. 92.

"An Act to authorize the Exchange of Lands, Tenements, or Hereditaments, subject to Trusts for Charitable Purposes, for other Lands, Tenements, or Hereditaments."

"Whereas lands, tenements, or hereditaments, subjected to trusts for charitable purposes, may be in some cases exchanged for other lands, tenements, or hereditaments, so as to benefit the objects of the charity: may it therefore please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall and may be lawful for any person or persons, body politic or corporate, in whom any lands, tenements, or hereditaments shall be vested, subject to any trust for any charitable purpose, to grant and convey to any person or persons, body politic or corporate, and to his, her, or their heirs, successors, and assigns, or otherwise, as he, she, or they shall direct or appoint, any such lands, tenements, or hereditaments in exchange for any other lands, tenements, or hereditaments, under and according to the several restrictions, declarations, and provisions hereinafter expressed, and not otherwise.

Persons in whom lands, &c. are invested may exchange premises.

"II. And be it further enacted, that whenever it shall be thought advisable by the trustees or trustee of any lands, tenements, or hereditaments, subject to any trust for any charitable purpose, to exchange the same, or any parts or part thereof, for any other lands, tenements, or hereditaments, application shall be made to the bishop of the diocese in which any such lands, tenements, or hereditaments, subject to any trust for charitable purposes, and so proposed to be exchanged, shall be situate, stating the objects of the charity, the manner in which such charity lands, tenements, or hereditaments are become vested in such trustees or trustee, and for what reasons it may be fit and proper that any such exchange should be made, and what benefit will be derived to the objects of the charity by means of such exchange, which statement shall be verified on oath before one of his majesty's justices of the peace for the county, riding, division, or place where such lands shall be situate; and thereupon it shall be lawful for such bishop to direct such inquiries to be made as he may think proper, and to require such information to be given to him as he may think necessary, previous to his issuing such commission, as hereinafter mentioned; and in case such bishop shall be satisfied that reasonable ground has been laid before him to warrant his issuing such commission, then and in such case such bishop shall issue a commission under his episcopal seal, directed to four or more fit and proper persons, two of whom at the least shall be beneficed clergymen, and one of whom shall be a barrister at law of at least five years' standing, and by such commission the commissioners therein named, or any three of them, one of whom shall be a beneficed clergyman and one such barrister as aforesaid, shall be authorized and required to inquire whether such proposed exchange will be beneficial to the objects of the trust, to which the charity lands, tenements, or hereditaments so proposed to be exchanged shall be subject, and for what reason or reasons such exchange will be beneficial to the charity; and for the purpose of such inquiry, such commissioners shall examine upon oath (which oath they are hereby empowered to administer) all persons who may be brought before them for that purpose, and shall require the parties applying for such exchange to bring before them any other persons to be examined upon oath touching any matters which such commissioners may deem necessary for their information; and such commissioners shall also require all deeds, papers, and writings, which they may deem necessary for their information, to be also laid before them, and shall direct such surveys, maps, and plans to be made of the lands proposed to be given and taken in exchange, as they may think proper; and shall cause such lands, tenements, and hereditaments respectively, and the timber and trees on such lands respectively, and rights of common, and all other rights belonging thereto, to be valued, so as clearly to ascertain whether the proposed exchange will be perma-

Application to be made to the bishop of the diocese, who may issue a commission to ascertain whether an exchange will be beneficial to the charity.

Of whom the commission shall consist.

Commissioners to examine on oath, and may require production of deeds, and direct surveys to be made, and certify to the bishop the matters that shall arise.

STAT. 1 & 2
GEO. 4, c. 92.

nently beneficial to the charity or not, and if permanently beneficial, for what reason it will be so beneficial, and whether such exchange is proposed for the convenience of the charity, or for the convenience of any other person or persons, body politic or corporate, and whether the terms upon which the exchange is proposed to be made are the best which can reasonably be obtained for the benefit of the charity; and such commissioners shall also inquire into the title to the lands, tenements, or hereditaments proposed to be given in exchange for the benefit of such charity, so as to enable the bishop, on the return of such commission, to judge of the propriety of allowing such exchange to take place; and such commissioners shall thereupon certify to the bishop the several matters which shall be made to appear to them, together with the surveys and other evidence laid before them, closed up, under their hands and seals, which shall be deposited with the registrar of the diocese.

Commissioners
to take the
following oath.

“III. And be it further enacted, that before such commissioners shall proceed to execute such commission, they shall respectively take the following oath:

“‘I, A. B., one of the commissioners named in a commission [describing the commission], do swear, that I will faithfully do and execute all the matters by the said commission required to be done by me, and a true report make to the best of my ability, as by such commission required. So help me God.’

“Which oath shall be administered by one of the said commissioners, to any other or others of them, and shall be certified to the bishop, together with the other proceedings under such commission.

The bishop
may lay the
proceedings of
the commis-
sioners before
counsel.

“IV. And be it further enacted, that upon the return of such commission it shall be lawful for the bishop to examine the proceedings under the same, and, if he shall see fit, to direct the same to be laid before some counsel learned in the law for his opinion and advice thereupon, and also to direct the title to the lands proposed to be given in exchange to the charity to be examined in such manner as he shall think fit; and if he shall think fit, to cause the same to be laid before counsel learned in the law for his opinion thereon; and in case the said bishop shall not be satisfied with the return made by such commissioners, it shall be lawful for him to issue a new commission or new commissions, directed to the same or other commissioners, to the end that he may be fully satisfied of the propriety of such proposed exchange; and such new commission or commissions shall be executed and returned, and the return or returns thereto deposited with the registrar of the diocese, as before directed with respect to the first commission; and if the said bishop shall be satisfied, upon the return of the commission or commissions so to be issued by him, or by such other and further information as he shall obtain as aforesaid, that such proposed exchange is proper and beneficial to the charity, it shall be thereupon lawful for him to signify his approbation of such exchange, by signing and sealing with his episcopal seal two parts of the deed of bargain and sale hereinafter mentioned; and it shall be lawful for the trustees or trustee of the charity lands, tenements, or hereditaments proposed to be exchanged, by deed of bargain and sale, enrolled in the high court of Chancery within six calendar months after the date thereof, to convey the lands, tenements, or hereditaments to be given by them in exchange, to the person or persons, bodies politic or corporate, to whom the same shall be directed to be conveyed; and by the same deed the lands, tenements, or hereditaments, proposed to be given to the charity in exchange, shall also be conveyed to the uses of such charity, and such deed shall be acknowledged by the person or persons making the conveyance of such lands, tenements, or hereditaments, to the uses of such charity, for the purpose of enrolment; and two parts of such deed shall be prepared and executed, and a memorandum of the enrolment shall be indorsed on each part; and both parts of such deed, after the same shall have been enrolled as aforesaid, shall be produced to the bishop, and a transcript of such deed, and of the memorandum of enrolment, shall be entered in the registry of the diocese; and the bishop shall thereupon, by writing under his hand, indorsed on each part of such deed, authorize the delivery of possession, according to the terms of such deed, of the lands before belonging to the charity, and so conveyed in exchange; and the delivery of possession to the

A new com-
mission may
be issued.

Approbation
to be signified
by signing and
sealing.

Conveyance to
be made in
manner herein
mentioned.

Deeds when
enrolled to be
produced to
the bishop, and
a transcript
thereof en-
tered in the
registry of the
diocese.

trustees or trustee of the charity, of the lands, tenements, or hereditaments so conveyed to them in exchange, and the execution of both parts of such deed by the several parties thereto, and the signing of such authority for delivery of possession, shall be attested by two or more credible witnesses, which attestation or attestations shall be indorsed on both parts of such deed; and the attestation of the execution of such deed by the trustees or trustee of the charity lands, tenements, or hereditaments thereby conveyed, shall express that both parts of such deed were signed by the bishop before the execution thereof by such trustees or trustee; and a transcript of such authority for delivery of possession, and of such several attestations as aforesaid, shall be entered in the registry of the diocese, and one part of such deed shall remain with such trustees or trustee for the benefit of the charity, and the other part shall be delivered to the person or persons, body politic or corporate, to whose use the charity lands, tenements, or hereditaments shall be thereby conveyed in exchange.

STAT. 1 & 2
Geo. 4, c. 92.

“V. Provided also, and be it further enacted, that before any such commission shall issue to make inquiry touching any exchange intended to be made under the provisions of this act, three months’ previous notice shall be given of the intention to propose such exchange, by inserting the particulars, extent, and situation, and the tenure of the lands, tenements, or hereditaments respectively proposed to be given and taken in exchange, for three successive weeks in some one and the same newspaper generally circulating in that part of the country where the lands, tenements, or hereditaments proposed to be exchanged shall be situated; and also by affixing such notice in writing on a conspicuous part of the door of the church or chapel of each parish or chapelry wherein such lands, tenements, or hereditaments, or any part thereof, shall be situated, on three successive Sundays whereon divine service shall be performed, and shortly before the commencement of such service in each church or chapel.

Before issuing commission, three months notice to be given in newspapers, &c. stating particulars, &c.

“VI. And whereas in some cases where there were originally two or more trustees of charity lands, tenements, or hereditaments proposed to be exchanged under the authority of this act, the number of trustees may have been reduced by death or otherwise; be it further enacted, that in such cases the vacancies of trustees shall be filled up in the usual manner, prior to any application for an exchange pursuant to this act, except in such cases in which the number of trustees living and capable of acting shall be six or more, in which cases the majority in number of trustees living and capable of acting shall signify their consent to any proposed exchange in writing, by signing the application to the bishop to authorize such exchange as aforesaid; and when the original trustees shall have been fewer in number than six, and more than three, then the consent of not less than four of such trustees shall be so signified to the bishop; and if the original trustees shall have been only three or two, then the consent of all the trustees shall be signified by all of them; or if there shall have been originally only one trustee, then the consent of the sole trustee for the time being shall be so signified; and if any body politic or corporate shall be a trustee for any such charity lands, tenements, or hereditaments, then such consent shall be signified under the seal of the corporation, whether a corporation aggregate or sole, having a corporate seal, and such signatures, and the affixing of such seals respectively, shall be attested by two or more credible witness or witnesses.

Vacancies of trustees to be filled up prior to any application for an exchange, unless when there are six or more trustees.

Number of trustees necessary to give consent.

“VII. And whereas in some cases it may not appear in whom lands, tenements, or hereditaments subject to charitable purposes may be vested, and there may be therefore no person capable of acting touching any such exchange as aforesaid, on behalf of the charity; be it further enacted, that in all such cases it shall be lawful for the bishop of the diocese in which such lands, tenements, or hereditaments shall be situate, upon sufficient proof of the fact, by instrument in writing under his hand and seal, to nominate proper persons to act as trustees on behalf of the charity, for the purposes of such exchange, before any other proceedings shall be had touching such exchange; which trust the person so nominated shall accept, by executing such instrument, before they shall act in such trust; and thereupon it shall be lawful for such trustees to do all things necessary for the purpose of

In cases where there are no trustees, the bishop may appoint them in cases of exchange.

STAT. 1 & 2
GEO. 4, c. 92.
Confirmation
of conveyance.

such exchange, as if the lands, tenements, and hereditaments subject to such charitable purposes had been duly vested in them for such purposes, and to convey the charity lands proposed to be exchanged under the authority of this act; provided always, that if it shall at any time afterwards appear in whom such lands or hereditaments were actually vested at the time of such exchange, it shall be lawful for the person or persons, body politic or corporate, in whom the same shall be then vested by means of such exchange, to obtain, at his, her, or their own expense, a confirmation thereof by conveyance from the person or persons, or their heirs, in whom it shall appear the same were so vested at the time of such exchange; but the defect of title of the trustees so to be nominated by the bishop as aforesaid, shall not prejudice the title to the lands, tenements, or hereditaments received in exchange in trust for such charitable purposes as aforesaid, but the same shall be held and enjoyed for such charitable purposes, notwithstanding the lands, tenements, or hereditaments originally subject to such charitable purposes, and so given in exchange, were not vested, except by the authority of this act, in the persons who may have conveyed the same in exchange under the authority of this act.

Exchanges
may be effect-
ed though
trustees may
be proprietors
of the lands to
be given in
exchange.

“VIII. And whereas doubts may arise whether under the provisions of this act an exchange might be legally effected where any trustee or trustees of charity lands, proposed to be given in exchange, should also be the proprietor or proprietors of the lands for which such charity lands should be so proposed to be given in exchange; be it therefore enacted, that under and according to the several restrictions, declarations, and provisions hereinbefore expressed, and subject thereto, but not otherwise, it shall and may be lawful for any trustee or trustees of any lands, tenements or hereditaments vested in him, her, or them, either alone or jointly with any other trustee or trustees for any charitable purpose or purposes, to convey or join in conveying, as the case may be, any such trust lands, tenements, or hereditaments, in lieu of and in exchange for any other lands, tenements, or hereditaments of which he, she, or they shall be seised in fee, to and for his, her, or their own use and benefit; provided always, that in every such case the bishop to whom application shall be made for any such exchange, shall, upon such application, and before any other proceedings touching such exchange, nominate and appoint some proper person or persons, having no interest in such exchange, to act as trustee or trustees on the behalf of the said charity, in the matter of such exchange, in the place and stead of the trustee or trustees who by reason of such interest as aforesaid shall be disqualified to act therein; and the concurrence of the person or persons so to be appointed to act as temporary trustee or trustees as aforesaid, shall be necessary in all subsequent proceedings relating to such exchange.

But the bishop,
in such cases,
shall appoint
trustees who
have no inter-
est in the
lands.

Eviction in
case of defect-
ive title.

“IX. Provided always, and be it further enacted, that in case the title of any person or persons, body politic or corporate, by whom any lands, tenements, or hereditaments shall be attempted to be conveyed in exchange for any charity lands, tenements, or hereditaments, shall at any time appear to be in any manner defective, so that such lands, tenements, or hereditaments shall in the whole or in part be recovered from the trustees or trustee, body politic or corporate, in whom the same shall have been vested or attempted to be vested in exchange under the authority of this act, or shall be in any manner charged or incumbered, then and in such case the trustees or trustee, body politic or corporate, in whom such lands, tenements, and hereditaments, or any part thereof, ought to have been vested indefeasibly for charitable purposes as aforesaid, shall enter on the original charity lands, tenements, or hereditaments conveyed in exchange as aforesaid, and hold the same according to the original right before the exchange, for the benefit of the charity, in case the lands, tenements, or hereditaments intended to have been vested by way of exchange for the purposes of the charity shall be wholly evicted, or in case the same shall be partially evicted, or in any manner incumbered, then to hold the same for the purpose of indemnifying the charity against the consequences of any such partial eviction or any such incumbrance, and until full satisfaction shall have been made to the charity for any defect of title in the lands, tenements, or hereditaments conveyed in exchange for the original charity lands, tenements,

or hereditaments as aforesaid, and all costs, charges, and expenses incurred by the charity in consequence thereof.

"X. And be it further enacted, that no part of the expenses attending any exchange to be made in pursuance of this act, shall be borne by or paid out of the funds of any charity, unless it shall be made appear to the bishop of the diocese, upon application for such exchange as aforesaid, that such exchange is solely intended for the benefit of such charity, and not for any other purpose, and is in respect of such convenience advantageous to the charity, notwithstanding any expense which may be incurred in effecting the same; and then so much of such expenses only shall be borne by and discharged out of the funds of such charity as such bishop shall find to be just and reasonable, and shall by instrument under his hand, allow and declare to be, in his opinion, an expense incurred for the benefit of the charity, and such as ought to be discharged out of the funds of such charity.

STAT. 1 & 2
GEO. 4, c. 92.

Expense
attending
exchanges,
how to be paid.

"XI. And whereas charity lands, tenements, or hereditaments may be within some peculiar or exempt jurisdiction; be it further enacted, that in such case the application for an exchange under the authority of this act shall be made to the bishop of the diocese within which the charity lands, tenements, or hereditaments proposed to be exchanged shall be situate, and not to any other authority claiming such peculiar or exempt jurisdiction; and the bishop of such diocese shall proceed in the same manner, in such case, as if such charity lands, tenements, or hereditaments were to all intents and purposes within his jurisdiction as diocesan; and in case any such charity lands, tenements, or hereditaments shall be within two or more dioceses, then and in such case application shall be made to the several bishops of such several dioceses, to direct before which of such bishops the proceedings touching any such exchange shall be had, and such bishops shall accordingly direct before which of such bishops such proceedings shall be had; and thereupon such proceedings shall be had before such bishop in the same manner as such proceedings might have been had if all such charity lands, tenements, or hereditaments had been within the diocese of such bishop."

Exempt juris-
diction not to
affect proceed-
ings of the
diocesan.

XXIX. STAT. 1 & 2 GEORGII 4, CAP. CXIV. A.D. 1821.

"An Act for the Completion of the rebuilding of the Church or Chapel of the Parish of Saint Nicholas in Harwich, in the County of Essex."

STAT. 1 & 2
GEO. 4,
CAP. CXIV.

XXX. STAT. 3 GEORGII 4, cap. xvi. [IRELAND.] A.D. 1822.

"An Act to enable the Lord Bishop of Limerick and his Successors to demise the Office Houses, Gardens, and Demesne, situate at Conigar, in the County of Limerick, belonging to the Lord Bishop of Limerick."

STAT. 3 GEO.
4, cap. xvi.
[IR.]

[Bishop of Limerick to let the office houses and premises on lease. s. 1. Money received from the immediate predecessor for dilapidations to be laid out in improving the lands.]

XXXI. STAT. 3 GEORGII 4, CAP. XIX. A.D. 1822.

"An Act for erecting and endowing a Church in the Town of Liverpool, in the County Palatine of Lancaster, to be called Saint Luke's Church; and for reviving and amending an Act of the twenty-first year of King George the Second, so far as relates to Saint Thomas's Church."

STAT. 3 GEO.
4, CAP. XIX.

XXXII. STAT. 3 GEORGII 4, cap. xix. A.D. 1822.

"An Act to enable the Master or Guardian of the Charity called Plumtre Hospital, in the Town of Nottingham, to sell part of the Estate belonging to the said Charity, and to apply the Money arising therefrom in manner therein mentioned; and to raise Money by Mortgage of the Residue of the said Charity Estate, and to grant Building or Repairing Leases thereof."

STAT. 3 GEO.
4, cap. xix.

STAT. 3 GEO.
4, CAP. XX.

XXXIII. STAT. 3 GEORGII 4, CAP. XX. A.D. 1822.

"An Act for altering and enlarging the Powers of an Act made in the forty-sixth year of King George the Third, for repairing the Parish Church of Great Yarmouth, in the County of Norfolk, and rebuilding the Tower thereof."

STAT. 3 GEO.
4, CAP. XXI.

XXXIV. STAT. 3 GEORGII 4, CAP. XXI. A.D. 1822.

"An Act for restraining the Bishop of Saint David's and his Successors from granting Leases of the Tithes of Llangammarch in the County of Brecknock, Llangevelach in the County of Glamorgan, Llangadock in the County of Carmarthen, and Glascomb in the County of Radnor, beyond the term therein mentioned; and for annexing the Tithes of the consolidated Living of Llanarth and Llanina to the Possessions of the said See, allowing one-third of the Annual Profits thereof to the Vicar."

[The Bishop of Saint David's may grant leases of certain tithes for three years, &c. s. 1. Tithes of Llanarth and Llanina to be annexed to the see of Saint David's, but without power of leasing. s. 2.]

STAT. 3 GEO.
4, CAP. XXVI.

XXXV. STAT. 3 GEORGII 4, CAP. XXVI. (1). A.D. 1822.

"An Act to alter and amend an Act of the forty-first year of the Reign of His late Majesty King George the Third, for the Establishment of Schools for the Education of Poor Children in the County Palatine of Durham."

STAT. 3 GEO.
4, CAP. XXXI.

XXXVI. STAT. 3 GEORGII 4, CAP. XXXI. A.D. 1822.

"An Act for settling upon the President, Fellows, and Scholars of Trinity College, in the University of Oxford, and upon the Rector of the Parish of Dumblaton, in the County of Gloucester, certain Perpetual Rent Charges issuing out of the Estate of the Right Honourable John Sommers, Earl Sommers, in Dumblaton, and for vesting certain Lands there in the said Rector; and for vesting certain Tithes and Lands belonging to the said College and Rector respectively in the Mortgagees of the said Earl, subject to Equity of Redemption."

STAT. 3 GEO.
4, C. 33.

XXXVII. STAT. 3 GEORGII 4, C. 33(2). A.D. 1822.

"An Act for altering and amending several Acts passed in the first and ninth years of the Reign of King George the First, and in the forty-first, fifty-second, fifty-sixth, and fifty-seventh years of the Reign of His late Majesty King George the Third, so far as the same relate to the Recovery of Damages committed by Riotous and Tumultuous Assemblies and Unlawful and Malicious Offenders."

STAT. 3 GEO.
4, C. 57.

XXXVIII. STAT. 3 GEORGII 4, C. 57. A.D. 1822.

"An Act for transferring such of the Duties of the Commissioners or Governors of Kilmainham Hospital, as relate to the Management and Payment of Out-Pensions, to the Commissioners of Chelsea Hospital."

STAT. 3 GEO.
4, C. 63. [IR.]

XXXIX. STAT. 3 GEORGII 4, C. 63. [IRELAND.] A.D. 1822.

"An Act to authorize the Sale of Quit Rents, and other Rents, and the Sale and Demise of Lands, Tithes, Tenements, and Hereditaments, the Property of His Majesty in Right of the Crown in Ireland."

STAT. 3 GEO.
4, C. 64. [IR.]

XL. STAT. 3 GEORGII 4, C. 64. [IRELAND.] A.D. 1822.

"An Act to amend the Laws relating to Prisons in Ireland."

Grand jury to
appoint local
inspectors.

"XXIV. And whereas by the said recited act of the fiftieth year of his late majesty's reign, it is among other things provided, that in every appointment to be

(1) Stat. 41 Geo. 3, CAP. CXX. in part
repealed.

(2) Repealed by Stat. 7 & 8 Geo. 4, c.
27.

made of any local inspector of any gaol, the minister or curate of the parish wherein such gaol shall be situated shall be preferred; be it enacted, that the said recited provision of the said recited act shall be and the same is hereby repealed: and that, from and after the passing of this act, it shall and may be lawful for every grand jury, in the making such appointment, to select any persons to be local inspectors, as to such grand jury shall seem most fit and proper to discharge the duties of the said office; provided always, that it may be lawful for the grand jury to appoint such minister or curate to be such local inspector, if such grand jury shall think such minister or curate to be a fit and proper person for that purpose.

STAT. 3 GEO.
4, c. 64. [18.]

"XXV. And be it further enacted, that in all future appointments of protestant chaplains to any gaol, the protestant minister or curate of the parish wherein such gaols shall be situated, and in all future appointments of Roman catholic or dissenting chaplains, the clergyman or curate of such persuasion respectively, who shall act within the parish in which such gaols respectively are situate, shall be preferred, if such minister, clergyman, or curate will accept such appointment, and if there does not appear on examination to be any just or reasonable objection to such minister, curate, or clergyman as aforesaid."

If ministers
are appointed,
those of the
parish where
prison is situ-
ated shall be
preferred.

XLI. STAT. 3 GEORGII 4, CAP. LXXI. A.D. 1822.

STAT. 3 GEO.
4, CAP. LXXI.

"An Act for erecting a new Church in the Parish of Greenwich, in the County of Kent, and vesting the same and the Site thereof in Trustees, and for making Provisions respecting the same."

XLII. STAT. 3 GEORGII 4, c. 72 (1). A.D. 1822.

STAT. 3 GEO.
4, c. 72.

"An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, for building and promoting the building of additional Churches (2) in Populous Parishes."

"Whereas an act passed in the fifty-eighth year of the reign of his late majesty, intituled, 'An Act for building and promoting the building of additional Churches

58 Geo. 3,
c. 45.

(1) *Vide* Stat. 5 Geo. 4, c. 103; Stat. 1 & 2 Gul. 4, c. 38; Stat. 7 Gul. 4 & 1 Vict. c. 75; Stat. 1 & 2 Vict. c. 107; Stat. 2 & 3 Vict. c. 49; and Stat. 3 & 4 Vict. c. 60.

(2) *Building and promoting the building of additional Churches*.—By the general law and the constitutions of the church of England, no person has a right to erect a new public chapel, forming part of the ecclesiastical establishment of the church of England, whether as a chapel of ease or otherwise, without the concurrent consent of incumbent, patron, and ordinary, and without a provision for the indemnity or compensation of the future incumbent, perhaps in all cases; certainly if his pecuniary rights and interests are to be in any manner affected. The cure of souls of every parish or parochial district belongs to, and all its emoluments are by the original founder and endower set apart for the maintenance of, the incumbent and his successors, and become vested in the existing incumbent by his institution and induction. The principles upon which the consent of all these parties is required, are obvious. The consent of the ordinary is necessary, as the general guardian of the interests and order of the church, and as the conservator of its constituted establishment. The patron is a party, because the rights and value of his patronage may be affected. The incumbent himself is still more immediately affected, both in his pastoral duties and his pecuniary rights, both of which are committed to him when insti-

tuted and inducted. If chapels can be erected and ministers be placed in them at the nomination of others, not only will it deprive the incumbent of the means of directing the spiritual instruction of his parishioners which has been intrusted to him, and which he has solemnly undertaken; not only will it produce schisms and dissensions, and thereby exert an injurious influence upon the religious principles of the parish; but it must also necessarily affect in some degree the emoluments of the benefice, as well as the pastoral duties of the incumbent.

In *Portland (Duke of) v. Bingham*, (1 Consist. 161,) Lord Stowell says, "It is generally true, that the consent of the incumbent to the erection and use of a chapel is requisite." Kennett, in his *Parochial Antiquities*, vol. 2, p. 261, (ed. 1818,) states to this effect: The inhabitants of Piddington, within the parish of Ambrosden, had procured a chapel to be erected within their own village, with a mansion-house allotted for a chapellane to be provided and maintained by the successive vicars: this had occasioned some difference between the inhabitants and vicar, which was now composed by the joint consent of the patron, vicar, and the people, with confirmation of the diocesan, by virtue of an agreement, entitled, "Dotatio capellæ S. Nicholai in villulâ de Piddington," and from this deed, dated the 14th of October, 1428, it appears, that Piddington was divided from Ambrosden, and invested with distinct

STAT. 3 GEO.
4, c. 72.
59 GEO. 3,
c. 134.

Ordnance and other public departments, and all corporations, may give messuages, lands, &c. for sites for churches, &c.

in populous Parishes :’ and whereas another act passed in the fifty-ninth year of the reign of his late majesty, intituled, ‘An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes :’ and whereas it is expedient and necessary that some of the provisions of the said recited acts should be amended, and other provisions thereof explained and enlarged, and that further and additional provisions should be made for rendering the said two recited acts more effectual ; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for the master general and principal officers of his majesty’s ordnance, and also for the comptroller of the barrack department, and also for the principal officers of any other public department, having or holding any messuages or buildings, or any lands, grounds, tenements, or hereditaments, for and on behalf of his majesty, for the public use of any such department, by any grant or conveyance, signed by the master general or any two of the principal officers of the ordnance department ; or by any grant or conveyance signed by the comptroller of the barrack department ; or by any grant or conveyance, signed by any one or more of the principal officers of any such other public department as aforesaid, and countersigned, as to all such last-mentioned grants or conveyances, by any three or more of the commissioners of his majesty’s treasury of the United Kingdom of Great Britain and Ireland ; and it shall also be lawful for any and every body politic, corporate, and collegiate, and corporation aggregate or sole, or for any trustees, guardians, commissioners, or other persons having the control, care, or management of any hospital, schools, charitable foundations, or other public institutions, by any grant or conveyance signed by or under the seal of such body or corporation respectively, to give, grant, and convey any messuages, buildings, lands, grounds, tenements, or hereditaments respectively ; and if any such messuages, buildings, lands, grounds, tenements, or hereditaments respectively, shall be copyhold at the time of any such gift, grant, or conveyance, in any case in

parochial rights ; that the inhabitants were to provide, at their own cost and expense, and to have the nomination of a resident chapellane, who was to receive all and singular the fruits, tithes, mortuaries, and emoluments, within the chapelry, and hitherto paid to the vicar, and to occupy the mansion-house ; he was to pay due obedience to each successive vicar ; and the vicar released all tithes, excepting the reserve of 20*s.* in money, and one quarter of wheat, to be yearly paid to him and his successors : and the repairs of the chapel, chancel, and manse, were for the future to be on the inhabitants, and in no wise on the vicar, patron, or the successors, with a provision, that if the chapel was void for a year, the tithes, &c., should be paid to the vicar. This was not a newly erected chapel ; for Kennett says, pp. 298-9, “I have met with no records nor tradition, that assign the time when this chapel was erected. . . . Whenever it was first built, I believe it was not consecrated till ten years before this composition in 1418 ; . . . which seems to be clearly implied by this expression in the present instrument, ‘in eadem capellâ et ejus cœmeterio jam tandem de novo ritè dedicatis.’”

Remarking on this deed of composition, Kennett, pp. 268-9, says, “Here is the triple league or joint consent of the diocesan, patron, and incumbent, whose suffrages were all required, if the church were full, to authorize an alteration of this kind. In a

synod at London, convened by Anselm, archbishop of Canterbury, in 3 Hen. 1. the 15th Constitution provides, *Ne nova capella fiat sine consensu episcopii*. So when an oratory or chapel was allowed at the grange of the abbey of Waverley, in the parish of Aultun, com. Southampt. A.D. 1250, it was done by the permission and consent of the bishop of Winchester, diocesan, and patron, and the rector of Aultun. So when the chapel of St. James, in the parish of Oakley, was constituted, A.D. 1418, the ordination of it, was by authority of the Bishop of Lincoln, diocesan, *de consensu et assensu prioris et conventus, &c.*, the proprietors and patrons, *cum voluntate et assensu vicarii*. And if the lord of any manor, or inhabitants, presumed to erect a chapel without such due permission and assent, such act was neither just nor valid. Therefore, when a chapel was founded within the parish of Watlington, com. Oxon. by the lord of that manor, for the greater conveniency of his family and tenants, the abbot and canons of Osney, patrons of the parish church, entered a protest against it ; and in 1182, appealed to Richard, archbishop of Canterbury, and from him soon after, to Pope Urban the Third, who sent over a commission to the abbots of Abingdon and Missenden, and the prior of Kenilworth, who, upon inquiry and judicial process, dissolved the said chapel, because illegally built, without consent of the parties concerned.”

which the lord is willing to enfranchise the same; to be used as sites for churches or chapels, or for enlarging sites of churches or chapels; or for church or chapel yards or cemeteries, or for enlarging sites for church or chapel yards or cemeteries; or for parsonages or residences for ecclesiastical persons; and all such gifts, grants, and conveyances shall be made to the commissioners, or such other person or persons as shall be specified by the said commissioners, under the said recited acts and this act, to be used for the purposes thereof; and all such gifts and grants may be made and given without any valuable consideration whatever; and all conveyances and assurances made for carrying any such gifts or grants into effect shall be valid and effectual in the law to all intents and purposes whatsoever, any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding; and all bodies politic, corporate, or collegiate, and all persons whosoever, so giving, granting, and conveying as aforesaid, are hereby indemnified for or in respect of any such gift, grant, conveyance, or enfranchisement which he, she, or they, or any of them, shall respectively make or convey, by virtue of or in pursuance and for the purposes of the said recited acts and this act.

STAT. 3 GEO.
4, c. 72.

"II. And be it further enacted, that all grants, conveyances, and assurances which shall be made under the authority of the said recited acts or this act, or either of them, of any messuages, buildings, lands, grounds, tenements, or hereditaments, whether belonging to his majesty as part of the duchy of Cornwall or of the duchy of Lancaster, or otherwise, or to any body or persons whatever, to the said commissioners, or any other person or persons under their direction, for the purposes of the recited acts and this act, may and shall be made according to the form following, or in such other form as the case may require, or as near thereto as the circumstances of the case will admit; *videlicet*,

Forms of
grant or con-
veyance.

"I [or we, or the corporate title if a corporation], under the authority and for the purposes of an act passed in the fifty-eighth year of the reign of his late majesty, intituled, "An Act for building and promoting the building of additional Churches in populous Parishes," and of another act passed in the fifty-ninth year of the reign of his late majesty, intituled, "An Act to amend and render more effectual an Act passed in the last session of Parliament, for building and promoting the building of additional Churches in populous Parishes;" and of another act passed in the third year of the reign of his present majesty, intituled, "An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, for building and promoting the building of additional Churches in populous Parishes;" do hereby freely and voluntarily give to his majesty's commissioners [or, to _____ as the case may require]; and by these presents freely and voluntarily, and without any valuable consideration; [if the lands, *et cætera*, are conveyed for a valuable consideration, leave out the words in *italics*, and insert, do, for and in consideration of the sum of _____ to me, or us, or the _____ paid, hereby, under the authority of the several recited acts, grant, convey, and release to the said _____] all [describing the premises to be conveyed], and all [my, or our, or the] right, title, and interest, or [if a corporation], to and in the same and every part thereof; to hold to the said _____ and their successors, for the purposes of the said several acts, and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the said several recited acts. In witness whereof, *et cætera*."

"And all such conveyances and assurances shall be valid and effectual in the law to all intents and purposes, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, and interests and incumbrances whatsoever.

"III. And be it further enacted, that it shall be lawful for the said commissioners under the said recited acts and this act to procure and obtain, or require parishes, chapelries, townships, and places to provide and furnish, by all or any of such ways and means as are specified in the said recited acts or either of them, or this act, in relation to sites for additional churches, or for church or chapel yards or cemeteries, or to accept and receive as gifts and grants under and for the purposes of the said recited acts and this act, and to take grants of to themselves, or

Commissioners
may obtain or
receive lands
or grounds
required for
enlarging or
rebuilding any
church or

STAT. 3 GEO.
4, c. 72.

chapel, whether contiguous to old site or not.

Fines for renewals at the time of lands, &c. taken, shall be paid to the person entitled to renew.

Commissioners may lend money for purpose of acts at such interest, not exceeding the legal interest, or without interest, as they shall deem fit.

Loans to be charged on the church rates.

direct grants of to be made to any other persons specified by them for that purpose, any such land or ground, or additional land or ground, as may in the judgment of the said commissioners be required for the enlarging or improving any church or chapel, and also any land or ground which may be required or be convenient for the rebuilding of any church or chapel, whether contiguous or not to the present site thereof; and all the powers, authorities, clauses, and provisions in the said recited acts or either of them, or in this act contained, in relation to the obtaining or procuring any lands or grounds, or requiring any lands or grounds to be provided or furnished by any parishes or places for any sites for additional churches, or any other purpose of the said recited acts, shall extend and be construed to extend to the obtaining, procuring, requiring, accepting, or receiving, under the authority of the said recited acts or this act, or either of them, any lands or grounds for the purposes aforesaid, as fully and effectually to all intents and purposes as if all such powers and authorities had been given, and all such clauses and provisions had been repeated and re-enacted in this act, as to such lands and grounds.

“IV. And be it further enacted, that in every case in which any lands, tenements, hereditaments, or any interest in or arising out of any lands, tenements, or hereditaments, shall be given up, sold, or surrendered by, or taken, under the provisions of the said act or this act, from any body politic or corporate or person, and which any such body politic, corporate, or person shall be entitled to take any fine or fines upon the renewal of any life or lives, or of any lease or leases upon or of any such lands, tenements, or hereditaments, the amount of the value of the interest of such body politic or corporate or person which would arise out of the renewal of such life or lives or lease or leases, if the same were renewed at the time of such lands, tenements, or hereditaments being so given up, sold, surrendered, or taken, shall be paid to the body politic, corporate, or person entitled thereto, out of the principal sum ascertained under the provisions of the said recited acts as the value of such lands, tenements, or hereditaments; and the remainder of such principal sum shall be applied under the provisions of the said recited acts or this act.

“V. And be it further enacted, that it shall be lawful for the commissioners under the said recited acts and this act to lend and advance to any parish or place any such sum as to the said commissioners may appear to be required and expedient to lend and advance, for building of any additional church or chapel or churches or chapels, or rebuilding or in aid of building or rebuilding any church or chapel, or for or towards completion of the building or rebuilding of any church or chapel already commenced or in part built or rebuilt, or for the payment or part payment of any expenses, or sums due or to become due upon any contract heretofore made, or which may hereafter be made, for any such building or rebuilding, or for the completion of any such building or rebuilding, or for enlarging or in aid of the enlarging or improving any church or chapel in any parish or place, or for the purchase or in aid of the purchasing of any land or ground for any site for any church or chapel, or church or chapel yard or cemetery, or enlarging any site of church or chapel yard or cemetery, or for carrying into execution any other purposes of the said recited acts or this act, for any such period or term as the commissioners shall think fit, upon payment for any such loan or advance of such annual interest, not exceeding five pounds per centum per annum, or without any interest, if under special circumstances they shall think it expedient and fit, either for any part or for the whole of the term or period for which such loan or advance shall be made, as the said commissioners shall, under all the circumstances, judge proper; and such loans and advances shall be repaid at such times and in such manner and by such instalments as shall be settled by the commissioners in that behalf, and shall be charged and chargeable upon the church rates of the parishes or places, or upon rates to be made for that purpose, as is provided in the said recited acts in relation to advances authorized by the said recited acts; and the amount of all such advances, when repaid, and of all interest paid upon any such advances to the said commissioners, shall be applied to the purposes of the said

recited acts and this act, anything in the said recited acts or either of them to the contrary notwithstanding; and it shall be lawful for the church or chapel wardens of any such parish or place, and they and each of them are hereby empowered, authorized, and required, to declare any such loan or advance, and also every other loan or advance made under the authority of the said recited acts and this act, to be applied to any of the purposes thereof, to be chargeable and charged upon the church rates of such parish or place, by any instrument in the form hereinafter mentioned, or in such other form, being as near thereto as the nature of the case will admit or the circumstance of the case shall require:

STAT. 3 GEO.
4, c. 72.

“Whereas his majesty’s commissioners for building new churches, acting under the authority of and in pursuance of the provisions contained in the several acts passed for the building and promoting the building of churches in populous parishes, or *A. B.* of and *C. D.* of have [recite shortly the loan and circumstance, and terms, *et cætera*]; we therefore, or I, *A. B.*, being of the church [or chapel] wardens of [describe them] do, by these presents, charge the said [describe the parish or place] with the said sum of and with the repayment thereof, according to the terms and conditions above stated; and do hereby, in pursuance of the provisions of the said acts, or some or one of them, declare that the said sum of is and shall continue to be chargeable and charged upon the church [or chapel] rates now raised or hereafter to be raised in the said [parish, *et cætera*,] until the said sum of, together with the interest, is fully repaid, according to the terms and conditions above set forth. Witness, *et cætera*.”

Form of charge upon rates.

“VI. And be it further enacted, that it shall be lawful for the church or chapelwardens of any parish or place, in which any sum or sums of money is or are authorized or required to be raised for any of the purposes of the said recited acts or this act, to raise any such sum or sums of money, or any part or proportion thereof, by the grant or grants of any annuity or annuities: provided always, that no larger or greater rate of annuity shall be granted or given upon any life or lives for any money advanced than is specified in the tables annexed to an act passed in the thirty-sixth year of the reign of his late majesty King George the Third, intituled, ‘An Act for repealing certain Duties on Legacies and Shares of Personal Estates, and for granting other Duties thereon in certain Cases.’

Money may be raised by annuities.

36 Geo. 3, c. 52.

“VII. And be it further enacted, that it shall be lawful for the said commissioners, and also for any parish or place for which any act or acts of parliament shall have been passed in relation to the building or rebuilding or enlarging any church or chapel, or enlarging or procuring any church or chapel yard or cemetery, to make any grants or loans, or give or grant any other aid or assistance in procuring sites for churches or chapels, or land or ground for such church or chapel yards or cemetery, or any addition thereto, and to use, enforce, and apply all the powers, authorities, claims, regulations, and provisions in the said several acts and this act contained, for carrying into execution any of the purposes thereof; anything in any act or acts relating to any such parish or place to the contrary notwithstanding.

Commissioners, &c. to make grants or loans for procuring land, &c. and apply the powers of any local or other acts for the purposes thereof.

“VIII. And be it further enacted, that in every case in which any parish or place shall not have been able or shall not hereafter be able to procure any land or ground for the building or rebuilding any church or chapel, or enlarging any existing church or chapel, or for the making of any yard to any church or chapel, or for any cemetery, or for enlarging any yard to any church or chapel, or any cemetery, by reason of the inability of any person or persons, body or bodies, interested in such land or ground or any part thereof, to convey or make a good title to the same, freed and discharged from all incumbrances; or that any such person or persons, or body or bodies, shall be unwilling to treat for the sale thereof, or cannot agree for such sale and purchase; then and in every such case it shall be lawful for the said commissioners, and they are hereby authorized and empowered, if upon consideration of all the circumstances of the case they shall think proper, to take such land or ground for any such purpose as aforesaid, for any such parish or place; and it shall be lawful for the said commissioners in every such case to

Commissioners empowered to take land for parishes on paying the value assessed.

STAT. 3 GEO.
4, c. 72.

use, apply, and put in force all such of the powers and authorities of the said recited acts or this act respectively as may be necessary for the assessing, ascertaining, and paying the value, and taking and giving possession of any such land or ground; and all the powers and authorities in the said recited acts and this act contained, in relation to the assessing or ascertaining and to the paying the sums assessed on the value of, and to the taking and giving possession of sites for churches to be built under the said recited acts and this act, shall extend and apply to the assessing and ascertaining, and to the paying the sums assessed as the value, and to the taking and giving possession of such land or ground, as fully and effectually to all intents and purposes as if the same were severally and separately repeated and re-enacted for the purposes aforesaid; anything in the said recited acts, or either of them, or this act, to the contrary notwithstanding.

Apportioning
of quit or
other reserved
rents.

“IX. And be it further enacted, that whenever any quit, chief, or other rent or rent-charge, either for term of years, or for life or lives, or in fee, shall be reserved upon or payable out of any lands, tenements, or hereditaments, part of which may be given, sold, or taken, under the provisions of the said recited acts or this act, for the purposes thereof respectively, and difficulties may arise as to the apportioning such rents, and enonerating the portions of any such lands, tenements, or hereditaments so given, sold, or taken for any claim in respect of such rents, and as to the effectually charging the remainder of such lands, tenements, or hereditaments, with the remainder of such rent, it shall be lawful for the public or corporate body or trustees, or other persons giving or selling any such portion of any such lands, tenements, or hereditaments, or from whom the same may be taken under the provisions of the said recited acts or this act, to apportion any such rent, with the consent and concurrence of the said commissioners; and the lands, tenements, and hereditaments, used and applied for the purposes of the said acts or this act shall in every such case be wholly exonerated from any such rents or any part thereof, but the remaining part of such lands, tenements, or hereditaments, shall not be thereby discharged from the remaining part of the rent fixed by any such apportionment, and the rent so apportioned shall in every such case be deemed the entire rent upon the remaining part of such lands, tenements, and hereditaments; and all remedies by distress, entry, action, or otherwise, which might have been used and applied for the recovery of the original entire rent, shall be used, enforced, and applied for the recovery of the rent fixed by such apportionment.

In cases of
division of
parish, vestry-
men being
resident in the
district left to
the original
parish church
shall continue
to act as ves-
trymen of such
district for
ecclesiastical
purposes.
Vestrymen to
act only in the
division of their
residence.

“X. And be it further enacted, that in every case in which any parish or place shall be divided into separate parishes for ecclesiastical purposes, or into separate districts or chapelries, in which select vestries shall be appointed by the commissioners for such parishes under the provisions of the said recited acts, all the members of or persons belonging to the select vestry of the original parish, who shall reside in or belong to the district or division of the original church or chapel of the parish or place, shall continue to act as the vestry of such district or division, and of the church or chapel thereof, in all matters relating to such church or chapel and the repairs thereof, (or to any other ecclesiastical matters or things, or in the distribution of any proportion of any bequests, gifts, or charities, which may under the provisions of this act be assigned to any such district or division,) anything in the said recited acts or this act to the contrary notwithstanding: provided always, that no member of any select vestry of any such parish or place shall, after any such division as aforesaid, act in relation to any matters or things relating to any church or chapel, or churches or chapels, or any repairs thereof, or any matters or things relating thereto, or any other ecclesiastical matters or things, except such as are within or belonging or relate to the division in which he shall reside; and if by reason of any such division as aforesaid a sufficient number of such members of select vestry shall not remain resident in the division of the parish or place within which the original church or chapel of the parish or place shall be situate, according to such proportion as shall be affixed by the commissioners on that behalf, regard being had to the population of such division, and the relative proportion thereof to the population of the whole parish or place, all such deficiencies shall be filled up as deficiencies or vacancies in such parish or place have been heretofore filled up in

How defi-
ciency of
vestrymen is to
be supplied.

such parish or place : provided always, that no member of any such select vestry or inhabitant of any such parish or place shall vote in the supplying such deficiencies, unless resident within the division of the parish or place for which the member or members to supply deficiencies are to be chosen ; provided also, such persons so chosen shall not by reason thereof be deemed members of the vestry of any such parish or place for any other purposes than such as relate to the church or churches, or chapel or chapels, or the ecclesiastical affairs of the division of the parish or place for which they shall be so chosen, or for the distribution of any charitable gifts or bequests therein : provided also that all the members of the select vestry of any such parish or place, resident in any other divisions of any such parish or place, shall in every case be members of such vestry or vestries as shall be appointed under the provisions of the said recited acts or this act for the respective divisions of the parish or place in which they shall respectively reside.

STAT. 3 GEO.
4, c. 72.

“XI. And be it further enacted, that it shall be lawful for the said commissioners in every case in which they shall be of opinion that it will be expedient to divide, or in which the said commissioners shall have divided any parish or place into two or more distinct and separate parishes, district parishes or chapelries, for ecclesiastical purposes, under the provisions of the said recited acts, to apportion, if the commissioners shall in their discretion think it expedient, among such separate divisions of any such parish or place so made separate or district parishes or chapelries, for ecclesiastical purposes, any charitable bequests or gifts which shall have been made or given to any such parish or place, or the produce thereof ; and in any such case to direct that the distribution of the proportions of such bequests or gifts, or the produce thereof, as shall be so apportioned to any such separate divisions of any such parish, shall be made and distributed by the spiritual person serving the church or chapel of any such separate divisions, or the church or chapel wardens or select vestry of any such separate divisions, either jointly or severally, as the commissioners may in their discretion, (regard being had to the nature of the bequest or gift, and the application thereof,) think expedient ; and also to apportion among such separate divisions any debts which may have been before the period of such apportionment contracted or charged upon the credit of any church rates in such parish or place, regard being had in all such apportionments to the circumstances of such parish or place, and of the respective divisions thereof so made separate and distinct for ecclesiastical purposes as aforesaid ; and all such apportionments shall be registered in the registry of the diocese in which the parish or place shall be locally situate, and duplicates thereof shall be deposited with the churchwardens of each such separate districts as aforesaid, in respect of or in relation to which any such apportionments as aforesaid shall have been made.

Commissioners may, in case of division of parishes, apportion charitable gifts and debts.

“XII. And be it further enacted, that it shall be lawful for the said commissioners, in every case in which any parish or place shall be divided, under the provisions of the said recited acts, into district parishes or places for ecclesiastical purposes, with distinct district churches for each of such divisions, to order and direct, with the consent of the bishop of the diocese, that all or any proportion of the fees, dues, and emoluments, arising and accruing from the publication of banns and celebration of marriages, and from churchings and burials, and the making, opening, or using any catacombs, vaults, or ground for burials, in all or any the several districts and divisions of such parish or extra-parochial place, shall remain with and continue to belong to, and to be received by or for and on account of, and to the use of, and to be accounted for, wholly or in part, as the case may require, to the incumbent of the original church or chapel, anything in the said recited acts or either of them, or in this act, contained to the contrary notwithstanding ; and every such order shall be registered in the registry of the diocese, and a duplicate copy thereof deposited and kept in the respective chests of the churches and chapels respectively of such parish or place : provided always, that it shall be lawful for the commissioners, with such consent as aforesaid, at any time within five years after the making of any such original order or direction, to annul or in any manner to alter any such order or direction, or the appropriation made thereby ; and such

Commissioners may direct that fees for marriages and burials, in case of division into district parishes, shall continue to belong to the incumbent of original church of the parish.

STAT. 3 GEO.
4, c. 72.

In cases in which the rectorial tithes, &c. shall be surrendered by impropriators, &c. for the purpose of converting vicarages into rectories, the commissioners shall direct the same to be done accordingly.

new order or direction or alteration, when made, shall be registered in manner aforesaid.

“ XIII. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby authorized and empowered, to convert any vicarage of any parish or place, or the separate divisions of any vicarage of any parish or place, divided under the said recited acts or this act, into a rectory or rectories instead of a vicarage or vicarages, in any case in which the owner or owners entitled in fee-simple to the rectory or tithes, if an impropriate rectory, or the patron entitled in fee-simple of a sinecure rectory, and also the incumbent of the sinecure rectory, of any such parish or place, if the same shall not be void at the time of any such conversion, and the person or persons, (if any,) entitled to the absolute interest in any lease granted of the sinecure rectory or glebe or tithes thereof, shall be willing to restore and release and re-unite the tithes and glebe and all other rectorial rights, dues, and emoluments of any such parish or place, or of any such proportion of any such parish or place, as shall be satisfactory to such commissioners, to the incumbent or incumbents of such parish or parishes, or place or places, and his or their successors for ever; and in every such case such surrender, restoration, or release, shall be made in such form and by such instrument as the commissioners shall direct; and the said commissioners shall, by an instrument in writing under the seal of the said commissioners, direct such alteration to be made, and conversion of any such vicarage or vicarages into a rectory or rectories, from the period specified in such instrument, and upon the conditions as to the transfer, restoration, or re-uniting of tithes, glebe, or other rectorial rights, dues, and emoluments therein mentioned; which instrument shall be registered in the registry of the diocese in which the parish shall be locally situate, and enrolled in the high court of Chancery; and such parish or parishes, place or places, shall for ever therefrom be deemed and taken to be, to all intents and purposes, a rectory or rectories, without prejudice nevertheless to the rights and interests of any other persons; and the incumbent or incumbents of any such vicarage or vicarages shall thereupon become and be deemed to be the rector or rectors of such parish or parishes, or divided parishes, or place or places, without any new induction or proceeding whatever, and shall be entitled to have and use, and exercise, all such remedies for the recovery of their tithes, glebe, and all other rectorial rights, dues, and emoluments, as rectors of such parishes or divided parishes, as fully and effectually, to all intents and purposes, as if such parishes had been rectories, and such incumbents respectively had been in due form of law inducted as rectors therein; and it shall be lawful for the said commissioners in every such case, immediately after the passing of this act, and before any such transfer and division can be finally arranged, made, and completed, to accept and confirm any such restoration or release and re-union of any such tithes, and accept and record the consents or engagements in relation thereto, of any such impropriator, patron, or sinecure rector and incumbent, (if there shall have been any incumbent to consent at the time of such conversion,) and tenant or tenants, if any, and to proceed to the completing of any such transfer or division upon such consent, for the purpose of converting any such vicarage into a rectory or rectories; and all such consents shall in any such case be valid and binding upon the heirs and successors, and executors and administrators, respectively, of any such impropriator, patron, or sinecure rector and incumbent, tenant or tenants, if any death or changes shall thereafter occur in any such patronage or incumbency, as fully and effectually to all intents and purposes as if the consent had been given and transfer made by the impropriator, patron, or sinecure rector and incumbent, tenant or tenants, for the time being, when the arrangement and division shall be finally completed: provided always, that no incumbent shall in any such case become liable to the maintenance or upholding or repair of more than one house of residence in any such parish or place; and when in any such parish or place there shall be more than one house belonging to the church or chapels thereof, the bishop of the diocese shall decide, order, and declare, which shall thereafter be deemed the house of residence, and be upheld and maintained and repaired as such; and the order of

the bishop in relation thereto shall be registered in the registry of the diocese, and a duplicate copy of such order deposited and be kept in the chest of the church or chapel of such parish or place.

STAT. 3 GWO.
4, c. 72.

“XIV. Provided always, and be it further enacted, that in case the said commissioners shall think proper to convert into a rectory or rectories the vicarage of any parish or place, or separate division of a parish or place which shall be divided, or in which a new church shall be erected by virtue of the provisions contained in the said recited acts or this act, and the possessor or possessors of the sinecure rectory of such parish or place for two or more lives, by virtue of a lease granted thereof by a rector with the consent of the patron and ordinary, shall be desirous of retaining any manor or other hereditaments, being the glebe or part of the glebe of the said rectory, and shall be willing to surrender and release all his, her, or their estate and interest in the tithes, and the residue (if any) of the glebe of the said rectory, on condition that such manor and other hereditaments shall be vested in him, her, or them in fee simple, then and in every such case it shall be lawful for the said commissioners, and they are hereby authorized and empowered if they shall think proper, with the consent of the patron of the said rectory being entitled thereto in fee simple, and the incumbent thereof, by any instrument under the seal of the said commissioners, and sealed and delivered by the said patron and incumbent, (if any,) upon the execution by such possessor or possessors of the said rectory, together with the patron and incumbent (if any) thereof, and of the said commissioners, of such instruments as are hereinbefore mentioned or referred to, for surrendering, releasing, and investing all the rectorial tithes and glebe, (except the manor and other hereditaments to be retained as aforesaid,) to release and convey the said manor and other hereditaments to such possessor or possessors, or such other person or persons as he, she, or they shall in that behalf direct, his, her, or their heirs and assigns for ever; and such instruments in writing shall be enrolled in the high court of Chancery, and upon the execution thereof the manor and other hereditaments comprised therein, with their appurtenances, and the fee simple and inheritance thereof, shall be absolutely vested in the person or persons to whom the same should be thereby released and conveyed, his, her, or their heirs and assigns for ever, but shall be subject to tithes in the same manner as if the same had never been part of the glebe of the said rectory.

Sinecure rector may release part of rectorial glebe, &c. and retain the remainder in fee simple, for the purpose of converting any vicarage into a rectory by the commissioners.

“XV. (1) And be it further enacted, that it shall be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, husbands, guardians, trustees, and feoffees in trust, committees, executors, and administrators, and all other persons and trustees whomsoever, not only for or on behalf of themselves, their heirs and successors, but also for or on behalf of cestuique trusts, whether infants, issue unborn, lunatics, idiots, femes covert, or other person or persons, and to and for all femes covert who are or shall be possessed of or entitled to or interested in their own right, and for every other person whomsoever who shall be possessed of or entitled to or interested in any right of patronage or of presentation or appointment to any benefice, donative, perpetual curacy, or of any spiritual person to any church or chapel, or the performance of any ecclesiastical duties in any church or chapel, or for the trustees of any endowments or emoluments for the use of any church or chapel, or the incumbent thereof, or spiritual person serving the same, to surrender any such right of patronage, presentation, or appointment, endowments or emoluments, or to enter into or make any agreement relating thereto with the said commissioners and the bishop of the diocese, and to attach any contiguous division of any parish or place, with consent of the patron and incumbent of the parish or place, to any such chapel for the purpose of better enabling the said commissioners to convert any such church or chapel into the church or parochial chapel or chapel of ease of a district parish or chapelry, and to convert any chapelries or other divisions into districts or separate parishes for ecclesiastical purposes; anything contained in any act or acts of parliament, or in any deed or deeds, or any trusts relating thereto, respectively, to the contrary notwithstanding.

Bodies politic, &c. may give up rights of patronage and endowments, and emoluments held by them in trust, to enable the commissioners to establish district churches.

(1) *Vide* Stat. 1 & 2 Vict. c. 107, s. 15.

**STAT. 3 GEO.
4, c. 72.**

Commissioners may, with consent of ordinary, &c. convert district chapelries into district parishes, where suitable residences, &c. can be obtained for incumbent, and fees compensated for.

Where marriages are allowed to be celebrated in district chapelries, the banns of marriage shall be published in the chapels of the districts.

All acts relating to publishing banns of marriage and to marriages, &c. to apply to churches and chapels of extra-parochial places and districts.

When banns may be published and marriages celebrated in any churches and chapels, the bishop of the diocese to certify the same.

Marriages not to be invalid for want of such certificate, if had in the churches authorized by the acts.

“XVI. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered, with the consent of the ordinary and the patron and of the incumbent of the parish for the time being, or in case of the refusal of any incumbent, then with the consent of the ordinary upon the next avoidance, to convert any district chapelry made under the provisions of the said recited acts into a separate and distinct parish for ecclesiastical purposes, or into a district parish under the said acts, in any case in which a suitable house of residence, and such maintenance as the said commissioners shall deem competent, can be procured and established for the use of the minister of such separate and distinct or district parish so to be made, and his successors, and in which a compensation shall be provided to the satisfaction of the commissioners and the then incumbent of the parish, for all fees, oblations, offerings, and other ecclesiastical dues which may by such conversion be transferred to the minister of such separate and distinct or district parish so to be made; and every such conversion shall be made under the seal of the said commissioners, and registered in the registry of the diocese in which the parish shall be locally situate, and enrolled in the high court of Chancery, and duplicate thereof shall be lodged in the chest of the original parish church, and in the church or chapel of the separate and distinct or district parish.

“XVII. And be it further enacted, that in every case in which marriages are allowed, under any of the provisions of the said recited acts or either of them, to be solemnized in any chapel of a district chapelry, and in which the parties, or either of them, contracting such marriage, shall reside in the district of the chapelry, or in any other district of any chapelry, the banns of marriage shall be published in the chapel or chapels of each of the districts in which such parties respectively reside, and no publication of such banns in any other church or chapel shall be legal, valid, or effectual for the purposes of such marriage; anything in the said recited acts or either of them, or any other act or acts of parliament, contained to the contrary notwithstanding.

“XVIII. And be it further enacted, that all acts of parliament, laws and customs relating to publishing banns of marriage, and to marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to all extra-parochial places, and to all divisions and districts of any extra-parochial places in and for which any churches or chapels shall be built or appropriated, under the provisions of the said recited acts or this act, and to the churches and chapels thereof, and to the ecclesiastical persons having the cure of souls therein, or serving the same, in like manner, in every respect, as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law, to all intents and purposes.

“XIX. And be it further enacted, that when and so soon as banns of marriage may be published, and marriage celebrated and solemnized, in any church or chapel under the provisions of the said recited acts or this act, the bishop of the diocese within which such church or chapel shall be locally situate, whether in any parish or extra-parochial place or otherwise, shall certify the same, and such certificate shall be kept in the chest of the church or chapel with the books of registry thereof, and a copy thereof shall be entered in the books of registry of banns and marriages, and a duplicate of such certificate shall be registered in the registry of the diocese, and such certificate shall be deemed and taken to be conclusive evidence in all courts, and in all questions relating to any banns published or marriages celebrated or solemnized in any such church or chapel, that the same might, according to law, respectively be published and celebrated and solemnized in such church or chapel; and that all banns published, and marriages celebrated, solemnized, and had in any such church or chapel, according to the laws and canons in force within this realm in that behalf, shall, after the granting of such certificate, be good, valid, legal, and effectual to all intents and purposes whatsoever: provided always, that no banns of marriages respectively published, celebrated, solemnized, or had, according to the laws and canons in force within the realm in that behalf, in any church or chapel in which the same are authorized to be respectively published, celebrated, solemnized, and had by the said recited acts or this act, or either

of them, shall be or be deemed or taken to be invalid or illegal, or void or voidable, by reason of any such certificate not having been duly given, or registered or entered as hereinbefore required.

STAT. 3 GEO.
4, c. 72.

“XX. And whereas doubts may arise as to the repairs of churches or chapels acquired and appropriated, or built or enlarged or improved in aid of the churches of parishes or places, under the provisions of the said recited acts or this act; for remedy and prevention thereof, be it enacted, that all chapels acquired and appropriated, or built or enlarged and improved under any of the provisions of the said recited acts, or under any local acts, in cases in which no provision is made relating thereto in such local acts, in aid of the churches of the parishes or places in which they shall be situated, (whether any districts of any such parishes shall have been assigned or not to such chapels as belonging thereto for ecclesiastical purposes,) shall be repaired by the respective parishes or places at large to which such chapels shall belong, and rates shall be raised, levied, and collected for that purpose in like manner in every respect as for the repair of the churches of such parishes and places, and all the laws in force for making, raising, levying, and collecting rates for the repair of churches, shall be applied and put in force for the raising, making, levying, and collecting such rates for the repair of such chapels, as fully and effectually to all intents and purposes as if the same were severally, separately, and specially repeated and re-enacted in this act for that purpose, as to the repairs of such chapels; anything in the said recited acts, or any other act or acts of parliament, to the contrary notwithstanding.

All chapels belonging to parishes with or without districts assigned, to be repaired by the parishioners at large, in the same manner as the church of the parish.

“XXI. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby authorized and empowered, in any case in which any division of any parish already divided, or which may hereafter be divided under the provisions of the said recited acts or this act, shall be again divided, and on which any church or chapel shall be built or acquired and appropriated, for the use of any such new division, by any instrument under the seal of the said commissioners, to declare that all liability to any repairs of the church or chapel of the division from which such new division shall be so made as aforesaid shall cease from the period specified in any such instrument; and thereupon, from and after such period, the new division in which any such church or chapel shall be built, acquired, and appropriated, shall be liable only to the repairs of such church or chapel, and to the repairs, for whatever period shall remain of the twenty years under the said recited act, of the church of the original parish; anything in the said recited acts to the contrary notwithstanding.

Commissioners may exonerate any new subdivision of division of any parish already divided, or which may hereafter be divided, from repair of church of such division.

“XXII.(1) And be it further enacted, that it shall and may be lawful for the said commissioners, with the consent of the bishop and patron entitled in fee-simple, in cases where the said commissioners may not deem it expedient to divide any parish for ecclesiastical purposes, or create separate districts for ecclesiastical purposes therein, either to make a permanent rent charge on or to apportion any portion not exceeding a moiety of the glebe lands, tithes, moduses, or other emoluments, for the benefit of the incumbent of or person serving any such chapel or chapels in any such parish, as in their discretion they may think expedient: provided always, that the presentation of every such endowed chapel shall be vested in the patron of the church to which such chapel or chapels may appertain.

Commissioners may apportion glebe, tithes, &c. or make permanent charge thereon for benefit of persons serving any chapel in the parish.

“XXIII. And be it further enacted, that it shall be lawful for the said commissioners to transfer any rights to any pews, with the consent of the owners thereof, in any existing church or chapel, belonging to any person residing in any division of any parish or place in which any new church or chapel shall have been or shall be built, acquired, or appropriated under the provisions of the said recited acts, to the church or chapel of the division in which any such person or persons shall reside, for the purpose of enabling the said commissioners to make or increase the number of free seats in the church or chapel from which such rights shall be transferred; and the persons from whom any pews shall be so taken for such purpose as aforesaid, and to whom any pews in lieu of their former pews shall be

Commissioners may, with consent of owners, transfer pew rights from existing churches to new churches, &c. of divisions, for the purpose of making free seats.

STAT. 3 GEO.
4, c. 72.

No greater
right to be
given on the
transfer of
pews.

Regulation as
to letting of
pews.

For avoidance
of pew leases.

Parishes may,
with consent of
commissioners,
procure and
buy additional
burial grounds.

assigned by the said commissioners in any other church or chapel, shall have, hold, and enjoy the same respective rights and titles to the pews so assigned, as they respectively had, held, and enjoyed in their former pews, or such right and title as shall be directed and set forth in such assignment in lieu thereof, without any faculty, instrument, or other process than such assignment as aforesaid; and every such assignment shall be registered in the registry of the diocese in which the church or chapel shall be, and a duplicate thereof deposited in the chest of the church or chapel in which any such pew shall be so assigned as aforesaid: provided always, that no larger or greater or other right shall be given to any pew in any new church or chapel, upon any such transfer, than belonged to the owner, proprietor, or occupier of the pews in the existing church or chapel, in the pews in respect of which any such transfer shall be made.

"XXIV. And be it further enacted, that in every case in which rents shall have been fixed upon the pews in any church or chapel under the provision of the said recited acts for the purposes therein specified, notice shall be given for six successive weeks at the end of each year of all the pews which are vacant, or which will become vacant at the commencement of the next year, by affixing the same in writing upon the doors of the church or chapel and vestry room thereof respectively; and all such pews as shall not be taken at the rent respectively fixed thereon within fourteen days after the commencement of the ensuing year, shall in every such case be let to any inhabitant of any adjoining parishes or places in which there shall not be sufficient accommodation in the churches and chapels of the parish or place for the inhabitants thereof, at the rent respectively so affixed upon such pews, for any term not exceeding the end of the year; and at the expiration of the year, and also of every succeeding year in which any such pews shall be rented by inhabitants of any adjoining parishes, such pews shall be inserted in the list of vacant pews, to be taken in preference by the inhabitants of the parish or place to which the church or chapel shall belong; and all such pews as may not be so taken by any inhabitant of the parish or place may again be let and so on from year to year, to any inhabitants of any adjoining parish or place; anything in the said recited acts to the contrary notwithstanding.

"XXV. Provided always, and be it further enacted, that in case any inhabitant to whom any lease or demise of any pew, seat, or sitting, in church or chapel, of the parish or place or division or district of which he shall be an inhabitant, shall be granted for any longer term than one year, shall cease to be an inhabitant of the said parish, place, division, or district, or shall discontinue his or her attendance at the church or chapel for the space of any one year, then and in every such case his, her, or their lease, demise, term, estate, and interest in such pew, seat, or sitting respectively shall, at the end or expiration of the then current year of the said term or period, cease and determine to all intents and purposes whatsoever; and such pew, seat, or sitting, shall and may be again let in like manner hereinbefore mentioned.

"XXVI. And be it further enacted, that it shall be lawful for the said commissioners to authorize and empower any parish, chapelry, township, or extra-parochial place, which shall be desirous of procuring a burial ground, or adding to any existing church or chapel yard or cemetery, to procure and purchase any such land or ground as may in the opinion of the commissioners be sufficient and properly situated for a church or chapel yard or burial ground, or as an addition to any existing church or chapel yard or cemetery, (whether such land or ground shall be situated within the parish or place for the use of which the same shall be intended,) and to make, raise, levy, and collect rates for purchase thereof, or for the repayment with interest of any money borrowed for the making such purchase, at such times and in such proportions as shall be agreed upon with the person or persons advancing any such money and approved of by the said commissioners; and the churchwardens or chapelwardens or persons authorized under the said recited acts to make rates for any of the purposes of the said recited acts, of any such parish, chapelry, township, or extra-parochial place, may and shall in every such case use and exercise all the powers and authorities in the said recited acts for the purposes of making and completing such purchases, and also all the

powers and authorities in the said recited acts specified as to making, raising, and levying any rates for any of the purposes of the said recited acts; and when any such land or ground so purchased shall be situate out of the bounds of the parish or place for which the same is intended, the same shall after consecration become and be deemed part of such parish or place; anything in any act, law, or custom to the contrary notwithstanding.

“XXVII. And whereas provision is made in the said recited act of the fifty-ninth year aforesaid, for authorizing the remitting and allowing of duties of customs and excise upon materials used in the building of churches or chapels under the provisions of the said recited acts; and doubts may arise as to the allowing or remitting of such duties in cases of rebuilding or enlarging or increasing the accommodation of churches and chapels; for remedy and prevention thereof be it therefore further declared and enacted, that it shall be lawful for the commissioner of customs and excise of England, Ireland, and Scotland respectively, with the consent and under the authority in writing of the lord high treasurer of the United Kingdom of Great Britain and Ireland, or of any three or more of the commissioners of his majesty's treasury for the time being respectively, to remit all or any proportion of the duties of customs or excise respectively, or to order the same to be drawn back or repaid, for, upon, or in respect of any stone, slate, bricks, timber, or other materials which shall have been or shall be *bond fide* procured for, and have been or shall be used in the rebuilding, or enlarging or increasing the accommodation of any churches or chapels under the provisions of the said recited acts or this act, or which have been built or enlarged or increased with the approbation of the commissioners; (and which approbation may be at any time certified under their seal;) and such duties shall, in every such case, be remitted, drawn back, or repaid, as the case may be, under such rules, regulations, and restrictions, and in such manner as shall be ordered and directed by the lord high treasurer, or any three or more of the commissioners of his majesty's treasury, in that behalf; anything in any act or acts of parliament to the contrary notwithstanding.

“XXVIII. And whereas by the said recited act of the fifty-ninth year aforesaid, the commissioners for managing the duties upon stamped vellum, parchment, and paper, are authorized to allow the full amount of stamp duties upon instruments made in relation to the said recited acts; and it is expedient to make other provisions in relation to such stamp duties; be it therefore enacted, that no deed of gift, or grant, security, contract, agreement, deed, or conveyance, or other instrument, made for any of the purposes in the said recited acts mentioned, or for any other of the purposes or under any of the provisions in the said recited acts or either of them, or of this act, or for the carrying into execution any of the powers, authorities, regulations, purposes, or provisions thereof, or therein mentioned respectively, shall be subject to any of the duties upon stamped vellum, parchment, or paper; anything in any act or acts of parliament to the contrary notwithstanding.

“XXIX. And be it further enacted, that from and after the expiration of five years after the transfer or conveyance of any messuages, lands, grounds, tenements, or hereditaments, to the said commissioners, or to any person or persons, for the use of any parish or place, as a site for any church or chapel, or any church or chapel yard or cemetery, whether such transfer or conveyance shall have been by gift or grant, or upon or in pursuance of any sale or purchase under the provisions of the said recited acts or this act, although no church or chapel shall have been before the expiration of the said five years erected or built and consecrated upon such site, the said messuages, lands, grounds, tenements, or hereditaments, shall become and be and remain absolutely vested in such commissioners, or the person or persons to whom the same was conveyed for the purposes of the said acts and this act, free from all demands or claims of any body politic or corporate, or person or persons whatever, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same.

“XXX. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby authorized and empowered, by any instrument under seal, with the consent of the ordinary and of the patron and incumbent of any

STAT. 3 GEO.
4, c. 72.

To remove doubts as to allowance of duties upon materials for rebuilding or enlarging of churches, &c.

Grants, instruments, contracts, or bonds, not to be subject to stamp duty.

Titles to sites not to be questioned after five years

Commissioners may transfer the endowments, &c. of

STAT. 3 GEO.
4, c. 72.

existing
churches, &c.
to those
churches built
in lieu thereof,
upon certain
conditions.

parish or place in which any new church or chapel shall have been built, or shall be built, acquired, or appropriated, for the use of such parish or place, instead of the old church or chapel of such parish or place, under the provisions of the said recited acts or this act, to authorize and direct the transfer of the endowments, emoluments, or rights, of or belonging to the old or existing church or chapel of such parish or place, or to the minister for the time being thereof, to any such new church or chapel so built, acquired, or appropriated, in such parish or place, and to the minister thereof for the time being, and his successors; and it shall be lawful in every such case for any trustees of any chapel, or of any rights, emoluments, or endowments, of or belonging to any church or chapel, or to the incumbent of any church or chapel for the time, and they are hereby required, to transfer all such rights, emoluments, and endowments, according to the direction of the said commissioners as aforesaid: provided always, that in every such case the inhabitants of the parish or place in which such new church or chapel shall be built shall raise and pay to the said commissioners, towards the expenses of such new church or chapel, either by subscription or rate, such sum at the least as would have been necessary for the repair of the old church or chapel, in case such new church or chapel had not been built, and such further sum as the inhabitants of such parish or place would have been liable to raise in such parish or place, for any purposes relating to the effectual and sufficient reparation of and maintaining such old church or chapel, or the cemetery thereof, or any other expenses incident thereto, or to which such parish or place would have been liable in respect thereof, in case such new church or chapel had not been built; and immediately from and after any such transfer as aforesaid, all tithes or tenths, moduses, or other compositions for tithes or tenths, and all emoluments, dues, fees, offerings, oblations, obventions, and other profits and advantages, and all messuages, glebe and other lands, tenements, or hereditaments, rents, sums of money, or real or personal chattels whatsoever, and all rights and privileges wheresoever, and of what nature or kind soever, wherewith any such old or existing church or chapel then is, or at any time theretofore had or ought to have been, or at the time of such substitution of such new church or chapel for any such old or existing church or chapel may be endowed, or to which the minister thereof then is or at any time theretofore was or ought to be entitled, with all the respective rights, privileges, members, easements, and appurtenances thereto belonging or in anywise appertaining, or to or with the same or any part thereof had, held, used, or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or as belonging to such minister; and the same, together with all reversion and reversions, remainder and remainders, yearly and other rents, issues, estates, rights, interests, dividends, emoluments, and profits, of all and singular any such messuages, lands, hereditaments, rents, or sums of money, shall severally and respectively become and be vested in the parson or minister for the time being of the new church or chapel, and his successors for ever, in as full and ample a manner as the parson or minister of the old or existing church or chapel might or could have had, received, and enjoyed the same in case such substitution or transfer had not been made and passed; and every such substitution and transfer shall be registered in the registry of the diocese within which the place shall be locally situate, and enrolled in the high court of Chancery; and all acts of parliament, laws, and customs, relating to the publishing of banns of marriage, and celebration of marriages, christenings, churchings, and burials, and the respective registering thereof, and to all ecclesiastical fees, oblations, and offerings, shall apply to every such new church in like manner, in any respect as to the old church of the parish or place.

Appointment
of ecclesiastical
persons to
serve new
churches or
chapels, built
by aid from

“XXXI. And be it further enacted, that in every case in which the commissioners shall build or grant any sum of money in aid of the building of any new church or chapel, in any parish or place in which the patronage of or nomination or appointment of the ecclesiastical person to serve such church or chapel shall not belong to his majesty, or to any body politic or corporate or collegiate, or any corporation sole or aggregate, or to any trustees, commissioners, directors, or other

persons having the charge, care, or management of any public or charitable institution, or to any trustees of any church or chapel, or to any private person, it shall be lawful for the said commissioners, by any instrument under seal, to declare that such patronage, nomination, or appointment shall, either for ever, or for such time and in such manner as the said commissioners shall direct, go to or be exercised by the bishop of the diocese within whose jurisdiction as diocesan such parish or place shall be, or if exempt from such jurisdiction, then by the bishop of the diocese in which such parish or place shall be locally situate; anything contained in any act or acts of parliament, or law or laws, or any usage or custom, to the contrary notwithstanding.

“XXXII. And whereas doubts have arisen whether the commissioners are empowered to use, exercise, and enforce certain of the provisions of the said recited acts and this act in aid of the parishes and places in certain cases not within the limitations of the said recited acts, with respect to the population or extent of such parishes or places, or which may not come within any of the regulations of the said recited acts or this act, in respect of any advances or loans in aid of such parishes, or in which parishes or places cannot comply with the regulations and restrictions contained in the said recited acts or this act; be it therefore declared and enacted, that it shall be lawful for the said commissioners, in any case in which they shall, under the special circumstances of any parish or place which shall not be within any of the provisions of the said recited acts or this act, deem it expedient, and they are hereby authorized and empowered, to use, exercise, and put in execution, all or any of the provisions of the said recited acts or this act relating to the procuring or taking of any land or ground for the purpose of procuring for any such parish or place, or of aiding in the procuring for any such parish or place, any land or ground for any of the purposes of the said recited acts or this act, or for the purpose of carrying into execution any of the provisions of the said recited acts or this act with respect to the division or consolidation of any parish or district: provided nevertheless, that the commissioners shall in every such case enter in their proceedings the nature of the special grounds and circumstances under which they shall deem it expedient so to act.

“XXXIII. And whereas doubts have arisen and may arise as to grants made by the said commissioners, in cases in which trusts have been created by acts of parliament or otherwise, in relation to the churches or chapels for which such grants have been or may be made, and whether the making such grants may, under the provisions of the said recited acts and this act, interfere with such trusts; for remedy and prevention whereof, be it therefore declared and enacted, that it shall be lawful for the said commissioners to make any grant or grants in relation, or confirm any grant or grants heretofore made for any church or chapel in relation to which any trusts have been created by any act or acts of parliament, or any deed or deeds, or instrument of consecration, which may not in all respects concur with the provisions of the said recited acts or this act, and to declare at the time of making or confirming any such grant that any such trusts shall notwithstanding remain and continue in full force: provided always, that the commissioners shall, in any such case, enter in their proceedings the special grounds upon which every such grant has been made and confirmed; and in every such case such trusts shall remain and continue in full force; anything in the said recited acts or this act, or in the said trusts and regulations, to the contrary notwithstanding.

“XXXIV. And be it further enacted, that in every case in which any grant shall have been or shall be made of any land or ground, for any of the purposes of the said recited acts or this act, as a gift, or without any pecuniary consideration being paid for the same, and in which the commissioners shall determine not to apply such land or ground to any of the purposes of the said recited acts or this act, it shall be lawful for the said commissioners, and they are hereby authorized and empowered, to exchange any such land or ground for any other land or ground which may, in the judgment of the said commissioners, be more eligible for the purpose for which the same was given; or with the consent of the grantor or grantors thereof, or their heirs or successors, to apply such land or ground to any

STAT. 3 GEO.
4, c. 72.

commissioners, in certain cases to belong to the diocesan.

Commissioners may, under any special circumstances, to be recorded in their proceedings, apply their powers in aid of parishes for procuring land, &c.

For removing doubts as to the powers of the commissioners in relation to certain grants.

Commissioners may reconvey land given for purposes of the acts, and not used, to the grantors, or their heirs or successors.

STAT. 3 GEO.
4, c. 72.

other ecclesiastical purposes, either as glebe or otherwise, for the use of the incumbent of the parish or place, or for the purpose of any parochial or charitable school, or any other charitable or public purpose relating to any such parish or place; or to reconvey, without requiring, taking, or receiving any pecuniary consideration for such reconveyance, any such land or ground, or any part thereof, in case only a part of any such land or ground shall have been applied to the purposes of the said recited acts or this act, to the grantor or grantors thereof, or their heirs or successors; anything in the said recited acts or this act to the contrary notwithstanding.

This act not to affect the powers of acts relating to any particular parish.

“XXXV. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to repeal or alter, vary or affect, any powers, authorities, clauses, or provisions contained in any act or acts of parliament passed in the last session of parliament, or which may be passed in this present session of parliament, relating to any particular parish or place, or to authorize or empower the commissioners under the said recited acts or this act to make or enforce any order, direction, or regulation under the provisions of the said recited acts or this act, so as to alter or affect any such powers or authorities as aforesaid, or otherwise contrary to any clause or provision contained in any such act or acts of parliament relating to any particular parish or place; and that all the powers, authorities, clauses, regulations, and provisions in such local acts contained shall remain in full force, and be used, enforced, and applied in the same manner and by the same persons as if this act had not passed; anything in this act to the contrary notwithstanding.

Powers of bishops, &c. not to be invalidated;

“XXXVI. Provided always, and be it further enacted and declared, that neither this act nor the said recited acts, nor anything therein or herein contained, nor any act, matter, or thing done by or under the authority of the same, or of the commissioners under the said recited acts or this act, shall extend to invalidate or avoid any ecclesiastical law or constitution of the church of England, or to destroy any of the rights or powers belonging to any bishop of any diocese, or any archdeacon, chancellor, or official.

but may exercise ecclesiastical jurisdiction.

“XXXVII. And be it further enacted and declared, that every bishop of any diocese, and every archdeacon, chancellor, and official respectively, may at all times hereafter visit, institute, and exercise ecclesiastical jurisdiction in all the parishes to be erected or divided by virtue or in pursuance of this act, and in every division or district into which any parish may be divided under the provisions of the said recited acts or this act, and in relation to every church and chapel within the same, as amply as they or any of them may do now therein, and in such manner as in any other parishes or places within his or their dioceses or jurisdictions respectively.

Act may be altered or repealed this session.

“XXXVIII. And be it further enacted, that this act may be amended, altered, or repealed by any act to be passed in this present session of parliament.”

STAT. 3 GEO.
4, c. 75.

XLIII. STAT. 3 GEORGII 4, c. 75 (1). A.D. 1822.

“An Act to amend certain Provisions of the twenty-sixth of George the Second, for the better preventing of Clandestine Marriages.”

26 Geo. 2, c. 33.

“Whereas it is, amongst other things, provided, by an act passed in the twenty-sixth year of the reign of his late majesty King George the Second, intituled, ‘An Act for the better preventing of Clandestine Marriages,’ that all marriages solemnized by licence after the twenty-fifth day of March, one thousand seven hundred and fifty-four, where either of the parties, (not being a widower or a widow,) shall be under the age of twenty-one years, which shall be had without the consent of the father of such of the parties so under age, (if then living,) first had and obtained, or, if dead, of the guardian or guardians of the person of the party so under age lawfully appointed, or one of them, and in case there shall be no such guardian or guardians, then of the mother, (if living and unmarried,) or if there shall be no mother living and unmarried, then of a guardian or guardians

(1) Stat. 3 Geo. 4, c. 75, ss. 8-26, have 4 Geo. 4, cc. 17 & 76; Stat. 5 Geo. 4, c. 32; been repealed, but it has been considered and Stat. 11 Geo. 4 & 1 Gul. 4, c. 18. advisable to print such sections. *Vide* Stat.

of the person appointed by the court of Chancery, shall be absolutely null and void to all intents and purposes whatsoever; and whereas great evils and injustice have arisen from such provisions; for remedy hereof, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that so much of the said statute as is hereinbefore recited, as far as the same relates to any marriage to be hereafter solemnized, shall be and the same is hereby repealed.

"II. And be it further enacted, that in all cases of marriage had and solemnized by licence *before the passing of this act* (1), without any such *consent* (2) as is required by so much of the said statute as is hereinbefore recited, and where the parties shall have *continued to live together as husband and wife* (3) till the death of one of them, or till the passing of this act, or shall only have discontinued their cohabitation for the purpose or during the pending of any proceedings touching the validity of such marriage, such marriage, *if not otherwise invalid* (4), shall be deemed to be *good and valid* (5) to all intents and purposes whatsoever.

"III. Provided always, and be it enacted, that nothing in this act contained

STAT. 3 GEO. 4, c. 75.

Certain parts of 26 Geo. 2, relating to consent, repealed.

Marriages solemnized by licence without consent, as required by recited act, &c. if not otherwise invalid, shall be deemed good.

Act not to render valid

(1) *Before the passing of this act*:—The retrospective operation of Stat. 3 Geo. 4, c. 75, is not repealed by Stat. 4 Geo. 4, c. 76. *Rose v. Blakemore*, R. & M. 382.

(2) *Consent*:—In *Duins v. Donovan*, (3 Hagg. 305,) Dr. Lushington observed: "The 3rd Geo. 4, c. 75, s. 2, (pleaded in the libel,) generally and practically speaking, may be said to render valid, with certain exceptions, all marriages of minors previously solemnized by licence without the consent of the parent or guardian, thus far restoring the general law as to the validity of such marriages, which the former act declared absolute nullities."

(3) *Continued to live together as husband and wife*:—To have constituted a living together of persons as man and wife, under a marriage, whilst minors, without consent, &c. within Stat. 3 Geo. 4, c. 75, s. 2, so as to give the marriage legal effect, notwithstanding the provisions of the statute, the parties must either have cohabited till the death of one of them, or be separated by deed recognising their character as husband and wife, or a separate maintenance must have been allowed to the wife as such.

In *King v. Sansom*, (3 Add. 277,) a marriage by licence which was null and void, by reason of minority, and want of legal consent, under Stat. 26 Geo. 2, c. 33, was held to be rendered a good and valid marriage by the retrospective operation of Stat. 3 Geo. 4, c. 75, it being held, that the parties, though not actually cohabiting up to the time of the passing of Stat. 3 Geo. 4, c. 75, did still "continue to live together as husband and wife," in legal construction, within its true intent and meaning, up to that time, sufficiently to render the retrospective provisions of Stat. 3 Geo. 4, c. 75, applicable to such their marriage.

But in *Poole v. Poole*, (2 C. & J. 66,) where it appeared that, in February, 1816, a marriage took place between two minors, by licence, without consent; that they cohabited until June, 1816, when, from the misconduct of the husband, he was obliged to leave the house where they had been residing; that they then lived separate until October, 1817, when the husband died; that, after

the separation in June, 1816, he, on various occasions, insisted that she was not his lawful wife, and gave that as a reason for not living with her again; but there was some slight evidence of small sums supplied to the wife, being allowed in the rent of a farm held under the husband, but under what circumstances did not appear:—it was held, that these parties did not live together as man and wife, until the death of the husband, within the meaning of Stat. 3 Geo. 4, c. 75, s. 2.

In *Bridgwater v. Crutchley*, (1 Add. 473,) a marriage by licence was deemed null and void, under Stat. 26 Geo. 2, c. 33, by reason of minority and want of legal consent, and *not* to be cured by Stat. 3 Geo. 4, c. 75, s. 2, there not having been a subsequent cohabitation.

(4) *If not otherwise invalid*:—Stat. 3 Geo. 4, c. 75, did not render good and valid marriages had by banns, prior to the passing of that act, such marriages being in themselves null and void by reason of undue publication of banns; but only such as, being had by licence prior to that period, were, in themselves, null and void by reason of minority and want of legal consent. A marriage, therefore, prior to the 1st of September, 1822, had in virtue of banns unduly published, is still a nullity; and must be so pronounced, upon proof made, in a suit instituted for that purpose.

Thus, in *Stayte v. Farguharson*, (3 Add. 282,) a marriage had in virtue of false banns, (the wife, *de facto*, personating, at the time of the marriage, the female as for whose marriage with the husband, *de facto*, the banns had been published,) was pronounced null and void under Stat. 26 Geo. 2, c. 33, a statute still in force, as to the particular marriage under Stat. 3 Geo. 4, c. 75, and Stat. 4 Geo. 4, c. 76.

(5) *Good and valid*:—A marriage which would have been void by Stat. 26 Geo. 2, c. 33, and had once been rendered valid by Stat. 3 Geo. 4, c. 75, s. 2, could not, subsequently, be rendered invalid by the marriage of either of the parties, during the life of the other, with a third person. *Ras v. St. John Delpike*, 2 B. & Ad. 226.

STAT. 3 GEO.
4, c. 75.

any marriage
declared invalid
by any court
competent.

This act not to
render any mar-
riage valid, the
invalidity of
which has been
established on
trial.

Not to render
valid any mar-
riage, the vali-
dity of which,
or the legiti-
macy of chil-
dren, has been
brought into
question, &c.
Property or
title of honour
on the ground
of invalidity of
marriage not
affected by
this act.

Not to affect
anything done
under the
authority of
any court, &c.

No licence to
be granted till
oath be made
to the effect
herein men-
tioned.

shall extend or be construed to extend to render valid any marriage declared invalid by any court of competent jurisdiction, before the passing of this act, nor any marriage where either of the parties shall at any time afterwards, during the life of the other party, have lawfully intermarried with any other person.

"IV. Provided also, that nothing in this act contained shall be taken or deemed to render any marriage valid, the invalidity of which has been established before the passing of this act, upon the trial of any issue touching its validity, or touching the legitimacy of any person alleged to be the descendant of the parties to such marriage.

"V. Provided also, that nothing in this act contained shall be taken or deemed to render valid any marriage, the validity of which, or the legitimacy of any person alleged to be the lawful descendant of the parties married has been duly brought into question in proceedings in any causes or suits in law or equity in which *judgments or decrees, or orders of court, have been pronounced* (1) or made, before the passing of this act, in consequence of or from the effect of proof in evidence having been made in such causes or suits of the invalidity of such marriage, or the illegitimacy of such descendant.

"VI. Provided further, and be it further enacted, that if at any time before the passing of this act any property, real or personal, has been in any manner possessed, or any title of honour has been in any manner enjoyed by any person or persons whomsoever, upon the ground, or upon the pretence, or under colour of the invalidity of any marriage, by reason that it was had and solemnized without such consent as aforesaid, then and in such case, although no sentence or judgment has been pronounced in any court against the validity of such marriage, the right and interest in such property or title of honour shall in no manner be affected or prejudiced by this act, or anything herein contained, but shall remain and be the same to all persons, and to all intents and purposes, as if this act had never been made.

"VII. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to affect or call in question any act done before the passing of this act under the authority of any court, or in the administration of any personal estate or effects, or the execution of any will or testament, or the performance of any trust.

"VIII. And be it further enacted, that no licence for any marriage shall, from and after the first day of September in the year of our Lord one thousand eight hundred and twenty-two, be granted by any person having authority to grant the same, until oath shall have been made by the persons and to the effect required by this act; and if such licence shall be required for the marriage of parties, both or either of whom shall be alleged to be of the age of twenty-one years, such parties shall respectively make oath that they are respectively, and that each of them believes the other to be, of the full age of twenty-one years or upwards; and if both parties shall be under the age of twenty-one years, but shall be alleged to be a widower and widow, then each of such parties shall make oath accordingly, as to himself and herself, and as to his and her belief with respect to the other party; and if one of the parties shall be of the age of twenty-one years, but the other party shall be under that age, and a widower or widow, both parties shall make oath accordingly, as to himself and herself, and as to his and her belief with respect to the other party; and if both or either of the parties shall be under the age of twenty-one years, not being a widower or widow, both of such parties shall make oath accordingly, as to himself and herself, and as to his and her belief with respect to the other party; and in such case both parties shall also make oath that the person or persons whose consent shall be required by law to the marriage of such parties has been given, and has been signified in the manner required by this act;

(1) *Judgments or decrees, or orders of court, have been pronounced*:—An appeal only *suspends* the sentence appealed from, and does not render it a nullity. Hence, the Stat. 3 Geo. 4, c. 75, which passed after a sentence of the Consistory court of London

pronouncing a marriage null and void by reason of minority and want of consent under Stat. 26 Geo. 2, c. 33, though *pending an appeal from that sentence*, was held, in no degree, to affect the question of such marriage. *Blyth v. Blyth*, 1 Add. 312.

and if both or either of the parties shall be alleged to be of the age of twenty-one years, such licence shall not be granted until there shall be produced, to the person from whom such licence shall be required, an extract or extracts from the register of the baptism of such parties or party so alleged to be of the age of twenty-one years, if such register shall be in England, and can be found; and each of such extracts shall be proved upon oath, by some other person or persons, to be a true extract from such register, and to relate to the baptism of the party to whom the same shall be alleged to relate, or according to the belief of the person making such oath; but if such register shall not be in England, or cannot be found, then such licence shall not be granted unless such fact shall be proved upon oath to the satisfaction of the person from whom such licence shall be sought, and unless some person or persons, having knowledge of the party or parties so alleged to be of the full age of twenty-one years, shall make oath of the fact that such party or parties is or are of that age to the knowledge or belief of such person or persons so making oath as aforesaid, stating the grounds for such knowledge or belief; and in all cases except cases of special licences to be granted by the Archbishop of Canterbury and his officers, according to the proviso for that purpose in the said act of the twenty-sixth year of King George the Second, oath shall also be made, by each of the parties for whose marriage a licence shall be sought, of the residence of such parties for the space of four weeks immediately before the granting of such licence, according to the said act of twenty-sixth year of King George the Second.

STAT. 3 GEO
4, c. 75.

“IX. And be it further enacted, that from and after the said first day of September, the consent of any person or persons whose consent shall be required by law to the marriage of any person under the age of twenty-one years, not being a widower or widow, shall be signified in writing, signed by such person or persons, and the signature thereto shall be attested by two or more witnesses, who shall subscribe their names to an attestation of such signature; and such consent shall fully describe the person or persons giving such consent, and shall state whether such person or persons shall be authorized to give such consent as lawful parent or as lawful guardian or guardians of the party to whose marriage such consent shall be given; and no licence shall be granted, from and after the said first day of September, for the marriage of any person under the age of twenty-one years, not being a widower or widow, unless such consent in writing shall be delivered to the person from whom such licence shall be sought, and unless one of the witnesses to the signing of such consent shall make oath that he or she saw such consent signed by the person or persons who shall appear to have signed the same, and also saw the other witness to the attestation of such signature sign such attestation, and that the names of such persons so subscribed to such consent, and attesting the signature thereof, are of the proper handwriting of such persons respectively; and some person, not being one of the parties for whose marriage such licence shall be sought, shall also make oath that the person or persons, who shall have signed such consent as lawful parent or lawful guardian or guardians of the party to whose marriage such consent shall be required, is or are, to the best of his or her knowledge and belief, the lawful parent or lawful guardian or guardians of such party, and has or have authority to give such consent, and that the person making such oath well knows such parent or guardian or guardians, and also the party to whose marriage such consent shall be required.

Consent of
parents or
guardians shall
be given in
writing, signed
in the presence
of two wit-
nesses, &c.

“X. And be it further enacted, that all such oaths as are required by this act for the purpose of obtaining any licence shall be respectively sworn and taken before a surrogate of the person from whom any such licence as aforesaid shall be sought, or before a surrogate of some other person having power to grant licences of marriage; and if any person or persons in any oath to be made and taken in pursuance of this act, for the purpose of obtaining any licence of marriage, shall knowingly and wilfully swear any matter or thing which shall be false or untrue, every person so offending shall, on conviction thereof, be deemed guilty of perjury, and shall suffer the like pains and penalties, and incur the same disabilities, as persons guilty of wilful and corrupt perjury are subject to and incur; and if any person shall knowingly and wilfully obtain any licence for the marriage of such person, or of

Oaths to be
taken before a
surrogate.

Punishment
for false swear-
ing, or obtain-
ing licence on
false oath, &c.

STAT. 3 GEO.
4, c. 75.

any other person, by means of any false oath, or by means of any false instrument in writing, contrary to the provisions of this act, knowing such oath or instrument to be false, such person being thereof convicted by due course of law, shall be deemed guilty of felony, and shall be liable to transportation for life as a felon; and if the person convicted of such offence shall be one of the persons who shall have contracted marriage by means of such licence, such person shall forfeit and lose to the king's majesty all estate, right, title, interest, benefit, profit, and advantage which such person may derive from or be entitled to by virtue of such marriage, and such forfeiture shall and may be disposed of in such manner as to his majesty shall seem fit; any grant of forfeitures or other matter or thing to the contrary notwithstanding.

Oaths to be
preserved by
the proper
officer.

"XI. And be it further enacted, that all and every the oaths and instruments required by this act for the purpose of obtaining any such licence as aforesaid shall be duly preserved by the proper officer or officers of the person authorized by law to grant such licence, and shall for that purpose be transmitted, by the officer from whom any such licence shall be obtained, to the registrar of the diocese within which such licence shall be granted, within ten days after such licence shall have been granted, together with a copy of the licence so granted, and shall be there filed and preserved; and the registrar of such diocese shall cause an entry to be made of such licence, and of the several instruments on faith whereof such licence shall have been granted, in a calendar to be kept for such purpose, so that the copy of such licence, and such several instruments on faith whereof such licence shall have been granted, may be easily found and resorted to; and all persons shall be at liberty to inspect such calendar and such copy of licence, and all such other instruments as aforesaid, at all reasonable times.

Licences shall
state the facts
on which
granted.

"XII. And be it further enacted, that in every licence for the solemnization of any marriage which shall be granted after the said first day of September, the facts on which such licence shall have been founded shall be stated, and it shall also be stated that such facts have been fully proved as required by this act.

Officer grant-
ing licences,
not duly ob-
serving the
provisions of
this act, guilty
of a misde-
meanor.
With whom
the power of
granting
licences lies.

"XIII. And be it further enacted, that if any officer of any person authorized by law to grant any such licence shall not duly observe all the provisions contained in this act respecting such licence, such officer shall be deemed guilty of a misdemeanor, and, being thereof duly convicted, shall suffer all the penalties and punishment which may be inflicted by law on a person guilty of a misdemeanor.

"XIV. And be it further enacted, that no person shall, from and after the passing of this act, be deemed authorized by law to grant any licence for the solemnization of any marriage, except the Archbishops of Canterbury and York, according to the rights now vested in them respectively, and except the several other bishops within their respective dioceses, for the marriage of persons one of whom shall be resident at the time within the diocese of the bishop in whose name such licence shall be granted, such residence to be proved in manner hereinbefore directed; and such archbishops and bishops shall make such orders and regulations for the observance of their respective officers within their respective jurisdictions, as they shall deem necessary for the more effectual performance of the duties of their several officers within the true intent and meaning of this act; and if any such officer shall not duly observe all such orders and regulations, such officer shall be deemed guilty of a misdemeanor, and, being thereof duly convicted, shall be subject to punishment as guilty of a misdemeanor.

Marriage by
licence not to
be impeached
on the ground
of informality.

"XV. Provided always, and be it further enacted, that after the solemnization of any marriage by licence it shall not be lawful to impeach or invalidate any such marriage, on the ground that any of the forms necessary to entitle parties to receive a licence as hereinbefore enacted have been neglected, or have been executed in a manner different from what is hereinbefore required.

Before publi-
cation of banns,
affidavit as to

"XVI. And be it further enacted, that before the publication of banns of matrimony in any church or chapel, pursuant to the provisions for that purpose in the said act of the twenty-sixth year of the reign of his said late majesty

King George the Second, there shall be delivered to the proper minister of the said church or chapel an affidavit or affidavits in writing, sworn before such minister or one of his majesty's justices of the peace, by the parties for whose marriage such banns shall be required to be published, stating truly the christian and surnames of such parties respectively, and the house or houses of their respective abode within such parish or chapelry, or within an extra-parochial place adjoining to such parish or chapelry, if both shall abide therein, or of one of such parties if one only shall abide therein, and the time during which such parties respectively, or one of them, if one only shall abide therein, shall have dwelt in such house or houses, as occupier or occupiers thereof, or as lodger or lodgers therein; and such affidavit or affidavits shall also state, either that both the parties for whose marriage such banns shall be required to be published have attained the age of twenty-one years, or if both of them shall be under such age then such affidavit shall state that both of them are under such age, and if one of them only shall be under such age then such affidavit shall state that such party is under such age; and such affidavit or affidavits shall be delivered to such minister before the publication of such banns; and in case any person shall in any such affidavit wilfully swear falsely in any matter contained therein, such person shall be deemed guilty of wilful and corrupt perjury, and, being thereof convicted by due course of law, shall suffer the pains and penalties of wilful and corrupt perjury, and shall forfeit and lose to the king's majesty all estate, benefit, profit, and advantage, which such person shall derive from the marriage of such person, in consequence of the publication of banns of matrimony in pursuance of such affidavit, to be disposed of by his majesty as he shall see fit; any grant of forfeitures or other matter or thing to the contrary notwithstanding.

"XVII. And be it further enacted, that such banns shall not be published until the true Christian and surnames of the said persons, and the house or houses of their respective abodes within such parish or chapelry, or extra-parochial place as aforesaid, as stated in such affidavit, shall be affixed on the principal door of the church or chapel, and in some conspicuous place within the said church or chapel, in which such banns shall be published as aforesaid, and shall remain so affixed until the expiration of the three Sundays on which such banns shall be published.

"XVIII. And be it further enacted, that every minister to whom any such affidavit shall be delivered, for the purpose of obtaining the publication of banns of matrimony, shall deliver such affidavit to the churchwarden or chapelwarden of the church or chapel in which such banns shall be published, and the same shall be deposited by such churchwarden or chapelwarden in a chest to be provided for that purpose, and kept in the church or chapel in which such banns shall be published.

"XIX. Provided always, and be it further enacted, that after the solemnization of any marriage, under a publication of banns, it shall not be necessary, in support of such marriage, to give any proof of any such affidavit, nor shall any evidence be received to prove that such affidavit was not made and delivered as required by this act, in any suit touching the validity of such marriage; nor shall such marriage be avoided for want of or by reason of any defect in any such affidavit, or on account of the true name or names of either party not being used in the publication of such banns, or for such name or names not having been affixed as aforesaid; but it shall be lawful in support of such marriage to give evidence that the persons who were actually married by the names specified in such publication of banns were so married, and such marriage shall be deemed good and valid to all intents and purposes, notwithstanding false names or a false name, assumed by both or either of the said parties in the publication of such banns, or at the time of the solemnization of such marriage.

"XX. And be it further enacted, that whenever a marriage shall not be had within three months after the complete publication of banns, no minister shall proceed to the solemnization of the same until the banns shall have been republished on three several Sundays, in the form and manner prescribed in this act, and in the

STAT. 3 GEO.
4, c. 75.

residence, &c.
shall be delivered to the minister.

Before publication, banns shall be affixed on the principal door of the church.

Affidavits to be delivered over to the churchwardens.

After solemnization of marriage under banns, proof of affidavit having been made not necessary in support of marriage, nor shall false names, &c. invalidate the marriage.

Republishing of banns necessary, if marriage be not solemnized within three months.

STAT. 3 GEO.
4, c. 73.

Commence-
ment of the
act.

If marriages by
licence be not
solemnized
within three
months, new
licences to be
obtained.

Not to extend
to the royal
family.

Not to extend
to marriages
among Quakers
or Jews.

Act to be read
in churches,
&c. at certain
times.

Act to extend
only to Eng-
land.

said recited act of the twenty-sixth of George the Second, or by licence duly obtained according to the provisions of this act.

"XXI. And be it further enacted, that all and every the clauses and provisions in this act, touching the publication of banns of matrimony, and touching marriages solemnized by such banns, shall commence and have effect on and after the first day of September, one thousand eight hundred and twenty-two, and not before.

"XXII. And be it also enacted, that whenever a marriage shall not be had within three months after the grant of a licence by any archbishop, bishop, or any ordinary or person having authority to grant such licence, no minister shall proceed to the solemnization of marriage until a new licence shall have been obtained, or by banns duly published according to the provisions of this act.

"XXIII. Provided always, that nothing in this act contained shall extend to the marriage of any of the royal family.

"XXIV. Provided likewise, that nothing in this act contained shall extend to any marriages amongst the people called Quakers, or amongst the people professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively, nor to any marriages solemnized beyond the seas.

"XXV. And be it further enacted, that this act shall be publicly read in all churches and public chapels, by the parson, vicar, minister, or curate, of the respective parishes or chapeltries, on some Sunday immediately after Morning Prayer, or immediately after Evening Prayer, if there shall be no morning service on that day, in each of the months of October, November, and December, in the year of our Lord one thousand eight hundred and twenty-two; and at the same times on three several Sundays in the year one thousand eight hundred and twenty-three, that is to say, the Sundays next before the twenty-fifth day of March, twenty-fourth day of June, and twenty-ninth day of September.

"XXVI. And be it further enacted, that this act shall extend only to that part of the kingdom called England."

STAT. 3 GEO.
3, c. 79. [IR.]

XLIV. STAT. 3 GEORGII 4, c. 79. [IRELAND.] A.D. 1822.

"An Act to amend an Act of the fifty-third year of the Reign of His late Majesty, for the Appointment of Commissioners for the Regulation of the several Endowed Schools in Ireland."

STAT. 3 GEO.
4, CAP. CVI.

XLV. STAT. 3 GEORGII 4, CAP. CVI. A.D. 1822.

"An Act to repeal the Acts now in force relating to Bread to be sold in the City of London, and the Liberties thereof, and within the Weekly Bills of Mortality, and ten miles of the Royal Exchange; and to provide other Regulations for the making and sale of Bread, and preventing the Adulteration of Meal, Flour, and Bread, within the Limits aforesaid."

Bakers baking
bread or rolls
on the Lord's
day, or selling
bread, or
baking bread,
pies, &c. ex-
cept between
certain hours.

"XVI. Provided always, and be it further enacted, that no master, mistress, journeyman, or other person respectively, exercised or employed in the trade or calling of a baker, within the limits aforesaid, shall, on the Lord's day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind; or shall, on any other part of the said day than between the hours of nine of the clock in the forenoon and one of the clock in the afternoon, on any pretence whatsoever, sell or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes, of any sort or kind; or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, except as hereinafter is excepted, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and every person offending against the last mentioned regulations, or any one or more of them, or making any sale or delivery hereby allowed otherwise than within the bakehouse or shop, and being

thereof convicted before any justice of the peace of the city, county, or place where the offence shall be committed, within six days from the commission thereof, either upon the view of such justice, or on confession by the party, or proof by one or more credible witness or witnesses upon oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say,) for the first offence the penalty of ten shillings; for the second offence the penalty of twenty shillings; and for the third and every subsequent offence respectively the penalty of forty shillings; and shall moreover, upon every such conviction, bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings per diem, and to be paid to the prosecutor or prosecutors for his, her, and their own use and benefit, and the residue of such penalty to be paid to such justice, and within seven days after his receipt thereof, to be transmitted by him to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof; and in case the whole amount of the penalty, and of the costs and expenses aforesaid, be not forthwith paid after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders; and in default or insufficiency of such distress, commit the offender or offenders to the house of correction, on a first offence for the space of seven days, for a second offence for the space of fourteen days, and on a third or any subsequent offence, for the space of one month, unless the whole of the penalty, costs, and expenses, be sooner paid and discharged: provided nevertheless, that it shall be lawful for every master or mistress baker, residing within the limits aforesaid, to deliver to his or her customers, on the Lord's day, any bakings, until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained."

STAT. 3 GEO.
4, CAP. CVI.

Penalty.
First offence.
Second offence.
Subsequent offence.

Bakings may
be delivered
till half-past
one on Sun-
days.

XLVI. STAT. 3 GEORGII 4, CAP. CXIII. A.D. 1822.

STAT. 3 GEO.
4, CAP. CXIII.

"An Act for the better Regulation of the Fund, called the Orphans' Fund."

XLVII. STAT. 3 GEORGII 4, C. 125 (1). [IRELAND.] A.D. 1822.

STAT. 3 GEO.
4, C. 125. [IR.]

"An Act to enable Ecclesiastical Persons, and others in Ireland, to grant Leases of Tithes, so as to bind their Successors."

"Whereas it is desirable to render the incomes of ecclesiastical persons in Ireland more certain in their amount, and more easy of collection, and to avoid controversies respecting the same, and to encourage the industry and enterprise of farmers and occupiers of land; and the permitting leases of tithes to be made by ecclesiastical persons for terms of years certain, and to be binding on their successors, may have a tendency to produce the said good effects, and may, under proper restrictions, be just and expedient; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the first day of September one thousand eight hundred and twenty-two, it shall and may be lawful to and for all and every archbishops, bishops, deans, deans and chapters, archdeacons, prebendaries, or other dignitaries ecclesiastical, and for all parsons, rectors, vicars, chapters, vicars choral, and all other ecclesiastical persons and bodies corporate, of whatsoever rank and description, in Ireland, and to and for every lay impropiator or person entitled to any inappropriate tithes or portions of tithes, to demise and lease for any term of

Ecclesiastical
persons, &c.
to demise and
lease tithes to
persons in pos-
session of
lands out of
which such
tithes shall be
issuable.

(1) Vide Stat. 3 & 4 Gul. 4, c. 37; Stat. 99; Stat. 1 & 2 Vict. c. 109; and Stat. 6 & 4 & 5 Gul. 4, c. 90; Stat. 6 & 7 Gul. 4, c. 7 Vict. c. 57.

STAT. 3 GEO.
4, c. 125. [18.]

years, not exceeding twenty-one years, to any person or persons seised or possessed of the lands out of which such tithes shall be issuable respectively, having any freehold title or interest, or any interest for a certain term of years, in such lands, or to the person or persons having a reversionary interest of the like nature in such lands expectant on any term not exceeding seven years, or expectant on any freehold interest not exceeding one life, or to such persons jointly, or to any person or persons having any freehold interest, or any interest for a certain term of years, vested and in possession jointly with any person or persons having a reversionary interest immediately expectant upon such interest vested and in possession, all and every or any tithes or portions of tithes, predial or mixed, payable or belonging to such ecclesiastical dignitaries, persons or bodies corporate respectively, by virtue and in right of their ecclesiastical dignities, preferments, or benefices respectively, or payable, to any such lay impropiator respectively, in manner and under the regulations, restrictions, and conditions hereafter specified and set forth; any thing in any act or acts in Ireland to the contrary in anywise notwithstanding.

Lease shall be made by indenture. The patron of a benefice to be a party consenting.

"II. And be it further enacted, that every such lease or demise shall be made by indenture; and that where such lease shall be made by the incumbent of any benefice, presentative or donative, the patron of such benefice, or the committee or guardian of the estate of such patron, and if such patron shall be a minor or lunatic, or the king's attorney-general if the king shall be the patron, shall be a party consenting thereto, such consent to be signified before the execution of such indenture or the counterpart thereof, by indorsement on such indenture and counterpart subscribed by such patron, or by such committee, guardian, or attorney-general respectively, with the day and year on which such consent shall be signified; and that every such indenture shall be signed and sealed by all the parties thereto, and that a counterpart of such indenture shall be signed and sealed in like manner; and that in every such indenture and counterpart there shall be contained a full and sufficient description, by metes and bounds, of the lands subject to the tithes thereby demised, and a statement of the pariah and county; and if in a county at large, then of the barony or half barony in which such lands shall lie; and to every such indenture and counterpart there shall be annexed a map or terre chart, or ground plan of the said lands so subject to the said tithes so demised; and that the rent reserved and made payable in and by every such lease shall be made payable during the whole term of such lease, and shall be the best annual value of such tithes that can be had or gotten for the same at the time of making such lease, without fraud or covin, and without any fine, premium, or foregift being taken or received by or paid to the lessor of such tithes.

Indenture and counterpart shall be signed and sealed, with description and map of lands chargeable with tithes.

Rent best annual value without fine.

Consent of the ordinary to be indorsed before execution, on all leases by deans or inferior dignitaries, or ecclesiastical corporations. A memorial of every such lease shall be registered with the registrar of the diocese.

"III. And be it further enacted, that every such lease which shall be made by any dean or other ecclesiastical dignitary, or parson or incumbent of lower rank, or by any ecclesiastical body corporate, shall be made with the consent and approbation of the ordinary of the diocese; and that before the execution of such indenture of demise, or the counterpart thereof, the consent and approbation of the said ordinary shall be indorsed on such indenture and counterpart, and shall be subscribed by such ordinary with his name and the day and year on which such consent and approbation shall be signified.

"IV. And be it further enacted, that a memorial of every such indenture of lease, with such map or terre chart or ground plan thereto annexed, shall be lodged in the registry of the diocese within which the lands out of which the tithes demised by such lease shall be issuable, shall lie and be situate, within six calendar months next after the date and execution of such lease; and that such memorial shall be written upon vellum or parchment, and directed to the registrar of such diocese, and shall be under the hand and seal or hands and seals of some one or more of the parties to such indenture of lease, and shall be attested by one of the witnesses to such indenture of lease, and such witness shall, by affidavit at the foot of such memorial, made before the said registrar, (who is hereby empowered and required to administer the same,) prove the signing and sealing of such memorial, and the execution of such indenture and counterpart, by one at least of the parties thereto respectively, and also the signature of the patron and

ordinary respectively indorsed on such indenture and counterpart, in all cases where such indorsements or either of them shall be necessary under this act; and such indenture and counterpart shall be produced, together with such memorial, to such registrar, who shall thereupon certify on the back of such indenture and counterpart the registration thereof, and the day whereon the same shall be so registered, and shall make an entry of such memorial in a book to be kept for that purpose, with a sufficient index for the purpose of reference, and shall deposit the said memorial amongst the archives of such diocese; and every such registrar shall be entitled to receive a fee of two shillings and sixpence and no more, for or in respect of such registration; and every person shall be entitled to inspect such registry, and to have a copy of any such entry, or of any such memorial, on paying for the same respectively a sum of two shillings and sixpence and no more; and such indorsement of registry upon such indenture and counterpart as aforesaid, shall to all intents and purposes be good and sufficient evidence of the registration thereof, according to the terms of such indorsement.

“V. And be it further enacted, that no such lease or leases, or counterpart or counterparts, or memorial or memorials, shall be liable or subject to the payment of any duty in respect of any stamp or stamps thereon; nor shall any stamp or stamps be required to be imposed thereupon; any act or acts to the contrary notwithstanding.

“VI. And be it further enacted, that from and after such registry, every such lease so registered shall be good, valid, and effectual during the continuance of such lease, not only against the parties thereto, for and during the continuance of the interest of such parties in the said lands, but also against all persons claiming under them, and the successor or successors of all such ecclesiastical dignitaries and persons and bodies corporate respectively, on the one part; and on the other part, against all and every person or persons who shall succeed to the ownership or possession, or be or become occupiers or proprietors of the lands out of which such tithes shall be payable, either by assignment or other title from or under the original lessee of such tithes, or by reason or means of any forfeiture or breach of any covenant or condition for payment of rent or otherwise; and such lease shall, from and after such registry thereof, be deemed and taken to be, and to amount in law and in fact, to a suspension of the right of claiming or taking the tithes thereby demised, or of any payment in respect of the same, other than the rent reserved in such lease, for and during the continuance of such lease; and the occupier or occupiers of such land, and every part thereof, shall from time to time, during the continuance of such lease, hold such land freed and discharged of and from all tithes, and of and from all payment in respect of tithes, other than the rent reserved in and by such lease, if made to the occupier of such lands at the time of the execution of such lease, except in cases hereinafter specially provided for.

“VII. Provided always, and be it enacted, that if any spiritual dignitary or person, or body corporate, who shall make any lease of tithes under this act, shall receive or take any fine, foregift, grant, or compensation, or any sum of money or consideration whatever, other than the rent reserved by such lease pursuant to this act, then and in such case such lease shall be absolutely void and of no effect; anything in the said lease or demise to the contrary in anywise notwithstanding.

“VIII. Provided also, and be it enacted, that no lease of tithes which shall be made to any tenant for years of any land out of which such tithes shall be issuable, shall be valid or effectual beyond the term of years for which such tenant or his assigns shall hold such land under or by virtue of a lease of such land in existence at the time of the making the lease of such tithes, or of some renewal of such lease of such land; and that no lease of tithes which shall be made to any tenant or occupier of any land out of which such tithes shall be issuable, at any time after any declaration in an action of ejectment at the suit of the landlord of such tenant shall have been duly served upon such tenant, shall be valid or effectual after final judgment against such tenant in such action of ejectment; but in such cases, or either of them, every such lease of tithes shall become and be deemed to be expired

STAT. 3 GEO.
4, c. 125. [1u.]

Fee for registry, 2s. 6d.
Fee for inspection of copy, 2s. 6d.

Leases to be free from stamp duty.

Lease valid during the whole term demised, against the lessors and their successors, &c. and against assignees of lessees, and all future occupiers. Such lease shall suspend the right of taking tithes, or any payment for tithes, except the rent reserved.

Where fine is taken, lease shall be void.

Lease of tithes made to tenant for years shall not be valid beyond the interest of the tenant, or his assignee. Lease of tithes made to tenant after declaration in ejectment, shall be determined by judgment against tenant.

STAT. 3 GEO.
4, c. 125. [18.]

Rent shall be a charge on the land, and leviable by the collector of grand jury cess, or other person appointed, with like remedy as grand jury cess.

Lessors may sue or distrain for rent, as in case of land.

Owner of land, the tithes of which are leased to him, shall let such land tithe-free, and the occupier paying the tithe may deduct it out of his rent;

but such deduction shall not be a discharge to prevent ejectment for nonpayment, if any part remains unpaid to the landlord.

and determined; anything in this act contained to the contrary in anywise notwithstanding.

"IX. And be it further enacted, that the amount of the rent reserved in and by every such lease of tithes, and all arrears thereof from time to time, not exceeding the amount of one whole year's such rent, shall be a charge on the lands specified in such lease during the continuance of such lease; and that it shall be lawful for the lessor in every such lease to levy the amount of such rent, or to cause the same to be levied on and from such lands, in preference to any other charge thereon, whether for rent of the said lands, or for any taxes or assessments, parliamentary or other; and it shall and may be lawful for such lessor to appoint the collector of the grand jury cess for the barony in which such lands shall be situate, or any other person or persons, to collect and levy such rents so reserved in and by any such lease of tithes, from time to time as the same shall come due; and every such collector or other person or persons so appointed shall collect and levy, and is and are hereby authorized, empowered, and required to collect and levy, all and every sum and sums of money which shall become due from time to time in respect of such rent, with the like powers and authorities, and in like manner, to all intents and purposes, as the collectors of grand jury cess are empowered to levy any money under the presentment of a grand jury, and under the warrant of the treasurer of the county, and with all the like remedies in case of nonpayment thereof, or of any part thereof, as are prescribed by law with respect to any money to be levied under any presentment of a grand jury; and such money, when so levied, shall be paid over to the lessor or his successors, who shall be entitled to the same under such lease, deducting only such reasonable charges as shall be agreed between such lessor or his successors, and such collector or other person appointed to collect and levy such rent, to be paid for the collecting and levying the same.

"X. Provided always, and be it enacted, that the lessors of all such tithes as shall be demised or leased under this act, shall and may have such remedies by suit at law, against the lessees in such lease, and their heirs, executors, administrators, and assigns respectively, as the lessors of any land may have against their lessees; and that it shall and may be lawful for the lessors of such tithes to distrain on the lands out of which such tithes shall be issuable, or any part thereof, for such arrears of rent as shall at any time remain due and unsatisfied, not exceeding the amount of one year's rent; and such distress shall be subject to all such rules, regulations, and provisions, as distresses for the rent of land under any act or acts, or law or laws, in force in Ireland, relating to such distresses.

"XI. And be it further enacted, that whenever, under the provisions of this act, any tithes shall be demised to any person having a freehold or leasehold interest in the land out of which such tithes shall be issuable, and such person shall afterwards let, set, or demise such land, or any part thereof, to any other person or persons, such lease or demise of such land shall be made free from the payment of tithes during the continuance of the lease of such tithes; and in such case it shall and may be lawful for the lessee or occupier of such land to pay the amount of the rent of such tithes as shall be due from time to time to the lessor of such tithes, or to the person employed to collect the rent of such tithes, and it shall be lawful for such lessee or occupier of such land to deduct the amount of all such payments from time to time out of the amount of rent payable by such lessee or occupier of such land to his immediate landlord, and the receipt or acquittance of such lessor of such tithes, or of such collector, shall be a good and sufficient discharge to the lessee or occupier of such land for so much of the rent payable by such lessee or occupier to such landlord, as the sum specified in such receipt shall amount unto; and every such landlord shall accept such receipt in payment of so much of the rent payable by the lessee or occupier to him: provided nevertheless, that such deduction shall not be held to be a discharge of any portion of any gale or quarterly or other payment of rent, due by such lessee or occupier of such land, so as to prejudice the right of such landlord to recover the possession of such land by ejectment for nonpayment of the rent thereof, in any case where the remaining portion of such gale shall be unpaid, but that it shall and

may be lawful for such landlord to proceed for the recovery of such land by ejectment, as effectually as if the entire gale of rent, out of which such deduction is hereby allowed, had remained wholly due and unpaid to such landlord.

STAT. 3 GEO.
4, c. 125. [1R.]

"XII. Provided always, and be it enacted, that whenever any agreement for a lease or demise of tithes shall be entered into between any person or persons beneficially interested in such land as aforesaid, out of which such tithes shall be issuable, not being the actual occupier of such land, and any ecclesiastical person or body corporate or impropiator hereinbefore mentioned, pursuant to the provisions hereinbefore mentioned, it shall and may be lawful for such person or persons so beneficially interested in such land to serve or cause to be served, a notice in writing personally on the occupier or occupiers of such land, or any part thereof, having an interest therein for any term not exceeding seven years, or for one life only, requiring such occupier or occupiers to become a party or parties to such lease or demise, and such notice so served shall contain the particulars of such lease or demise with respect to the lands out of which such tithes shall be issuable, and the rent reserved for the tithes thereof, and shall specify the place where such person or persons so beneficially interested reside, or at which the answer to such notice shall be required to be given; and in case such occupier or occupiers shall not, within the space of fourteen days next after being served with such notice, signify his, her, or their consent in writing to become party to such lease or demise, and cause the same to be duly served at the place specified for that purpose in the notice from the person or persons so beneficially interested in such land, or if such occupier or occupiers after signifying such consent shall refuse to become party or parties to such lease or demise, or shall refuse to sign the counterpart of such lease on being required so to do, and the same being tendered for such purpose, it shall and may be lawful for the person or persons so beneficially interested in such land, having duly executed the counterpart of such lease of the tithes issuing out of such land, pursuant to the provisions of this act, and his or their heirs, executors, administrators, or assigns, having paid the rent reserved by such lease, at all times during the continuance of such lease, and of the interest of such occupier or occupiers aforesaid, to have, use, and exercise all such rights and powers for the recovery of the tithes issuing out of the lands holden by any such occupier or occupiers, during the period for which such rents shall have been paid, as the owner of such tithes had for the same previous to the making of any such lease of such tithes; and such person or persons so beneficially interested in such land shall and may sue for, levy, and recover such tithes accordingly, to all intents and purposes, as if no such lease had been made; any thing in this act contained to the contrary in anywise notwithstanding.

Owner of land having agreed for lease of tithes shall give notice to occupier, not having more than a seven years' term, or for one life only, to be a party to such lease; and on his refusal, the owner being lessee, may recover the tithes against such occupier.

"XIII. Provided always, that in every such case the person so beneficially interested in such land shall, from the time of his executing the counterpart of such lease as aforesaid, be answerable for the rent reserved in and by such lease, as fully, to all intents and purposes, as if he were in the actual occupation of the lands out of which such tithes shall be issuable.

Persons beneficially interested on executing counterpart of lease answerable for rent.

"XIV. Provided also, and be it enacted, that whenever any tithes shall be demised to any person beneficially interested in the land out of which such tithes shall be issuable, not being the actual occupier of such land, the occupier or occupiers of such land, or of any part thereof, shall not in any case be liable to the payment of the rent, or any part of the rent of such tithes, to the lessor of such tithes, nor to any distress for the same, beyond the amount of the rent payable by such occupier or occupiers respectively, for the land actually holden by such occupier or occupiers; and that no occupier or occupiers of land shall be liable to any person beneficially interested in such land, and being lessee of such tithes, for the payment of the tithes of any lands not actually holden by such occupier; anything contained in this act, or in any lease or demise of such tithes, or any law, usage, or custom to the contrary in anywise notwithstanding.

Occupier not liable to lessor of tithes for rent of tithes beyond the amount of rent paid for land occupied by him; nor to lessee for tithes of any land not held by such occupier.

"XV. And be it further enacted, that the possession and enjoyment of the lands out of which such tithes shall be issuable by the occupier of such lands, discharged from the payment of such tithes, for the continuance of the lease of such

The possession of the land by the occupier

**STAT. 3 GEO.
4, c. 125. [In.]**
under such
lease discharg-
ed of tithes; or
the receipt of
tithes by his
landlord, shall
be deemed the
possession of
the tithes by
the lessor.

Lessee of tithes having a new term in the lands, may re-new the lease of tithes within the last three years previous to its determi-nation.

Not to authorize renewals, except within the last three years of the term originally demised.

**Form of lease
of tithes.**

tithes, or the receipt of such tithes by the landlord of such occupier in the case hereinbefore provided for, during any part of the term of the lease of such tithes, shall be deemed and taken to be, in law and in fact, tantamount to and to be the actual possession and enjoyment of such tithes by the lessor or lessors of such tithes, and of his or their successor or successors, and shall and may be so alleged and insisted upon in all and every or any proceedings and proceeding in law and equity, in all cases whatsoever.

“XVI. And be it further enacted, that if at any time during the three years next preceding the end, by effluxion of time, of the term demised by any lease or demise of tithes to be made under the regulations of this act, the lessee or lessees of such tithes under such lease, or the executors, administrators, or assigns of such lessee or lessees, shall be or become possessed of an interest in such lands, which may continue longer than the term remaining in the lease of such tithes, whether such longer term or interest in such lands shall be a part of the original interest of such lessee, or shall be held or obtained by virtue of any new lease or otherwise, and such lessee or lessees of such tithes shall be disposed to obtain a renewal or new lease of such tithes, then and in any such case it shall and may be lawful to and for the parties interested in such lease of tithes respectively, to grant and receive a renewal or new lease of such tithes, either alone or together with any other tithe or tithes, in like manner and under all such and the same restrictions, qualifications, conditions, and requisites, as are hereinbefore required with respect to every such lease of tithes; and every such new lease shall commence and take effect from the making thereof; and when such new lease of such tithes shall be complete in all respects, and duly registered in manner required by this act, the same shall not be avoided or impeached by reason of the existence of such former lease, but from the registration of such new lease, the former lease shall cease and determine to all intents and purposes, except only as to the recovery of any rent then due under the same: provided always, that nothing herein contained shall extend or be construed to extend to authorize the surrender or renewal of any lease of tithes made under this act, at any time more than three years distant from the end of the term originally demised by any such lease; and that any lease, made at any time more than three years distant from the end of such original term, by effluxion of time, shall be null and void to all intents and purposes whatsoever.

“XVII. And to prevent doubts and disputes as to the form of the lease of such tithes, be it enacted, that every such lease shall be in the form here following, or in some other form of words of that or the like effect ; that is to say,

“ This indenture, made the _____ day of _____ between *A. B.* (the lessor of the tithes) of _____ of the one part; and *C. D.* [or, *C. D.* and *E. F.*] (the person or persons beneficially interested in the land, as the case may be, to whom the said lease is to be made) of the other part: whereas the said *C. D.* [or, *C. D.* and *E. F.* as the case may be] is [or are] entitled to all that and those [here describe the lands] situate, lying, and being in the parish of [if any] barony of [if any] and county of _____ for the term of _____ years, or for and during the life [or lives] of [here set out the lessee's interest]: and whereas the said lands are subject to the payment of tithe, or, half or other portion of tithe, to the said *A. B.* and his successors [here set out in what right they are entitled to the said tithe, or half or other portion of the tithe]: and whereas the said *A. B.* (with the consent of *G. H.* patron, &c., and *I. K.* ordinary, &c. (as the case may be) testified by indorsement on this present indenture) hath agreed to demise the said tithe, or, half or other portion of tithe of the said lands, according to the statute in such case made and provided, on the terms hereinafter contained: now this indenture witnesseth, that the said *A. B.*, for and in consideration of the rents and covenants hereinafter contained, hath demised, granted, and set, and by these presents doth demise, grant, and set, all and every the said tithes, or, half or other portion of tithes, so payable to the said *A. B.* and his successors, out of the said lands and every part and parcel thereof, to have and to hold the same to the said *C. D.* [or, to the said *C. D.* and *E. F.* as the case may be,] or to his [or their] heirs, executors, administrators, and assigns, being occu-

piers [or owners] of the said land, from the first day of May last past [or next coming, as the case may be] for and during and unto the full end and term of years; [adding, if the interest of such lessee shall be for a life or lives not renewable, these words, to wit; "provided the said life or lives or any of them (as the case may be) shall so long continue;" and the said *C. D.* [or, *C. D.* and *E. F.* as the case may be] in consideration thereof, hath given and granted, and by these presents doth give and grant, unto the said *A. B.* and his successors, one yearly rent or sum of

STAT. 3 GEO.
4, c. 125. [1a.]

clear of all taxes, charges, assessments, and impositions whatsoever, to be issuing out of all that and those the lands and tenements aforesaid, to have and to hold the said yearly rent or sum of to the said *A. B.* and his successors from the first day of May aforesaid, for and during the continuance of the demise so made to the said *C. D.* [or *C. D.* and *E. F.* as the case may be] as aforesaid; the said yearly rent or sum to be paid and payable by two equal half-yearly payments, on every first day of November and first day of May during the said term; and further, the said *C. D.* [or *C. D.* and *E. F.* as the case may be] doth [or do, and each of them doth] grant and agree, to and with the said *A. B.* and his successors, that in case the said yearly rent, or any gale or part thereof, shall at any time be due and unpaid by the space of three calendar months after any of the said days of payment thereof, then and in every such case it shall and may be lawful to and for the said *A. B.* and his successors, unto the said lands and tenements, or any part or parts thereof, to enter and distrain, and the distress and distresses there found to take, lead, drive, carry away, sell, and dispose of, according to law, for the recovery of the sum or sums to them due, and the reasonable costs of so recovering the same; and it is hereby further agreed, by and between the said parties, that in case the said rent, or any gale thereof, shall be due, behind, and unpaid, for the space of three calendar months next after any of the said gale days respectively, then and in every or any such case, the said demise hereinbefore contained, and every part thereof, shall, at the election of the said *A. B.* and his successors, but not otherwise, be and be deemed and taken to be null and void, to all intents and purposes, from the said gale day; and in such case it shall and may be lawful to and for the said *A. B.* and his successors, to take and receive all and every tithe, or, half or other portion of tithe, of the growth, produce, or increase of the said lands, or of any part thereof, which shall have been severed since the said day from which such lease shall be so void, or to proceed for or in respect of the subtraction thereof, in the same manner in all respects as if this lease had not been made; and the said *C. D.* for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said *A. B.* and his successors, that he the said *C. D.* his heirs, executors, administrators, and assigns, or some of them, shall and will from time to time hereafter, well and truly pay or cause to be paid, unto the said *A. B.* and his successors, the said yearly rent or sum of at the days and times hereinbefore mentioned for the payment thereof, by even and equal portions as aforesaid; [or, the said *C. D.* and *E. F.* do respectively for themselves, their heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said *A. B.* and his successors, that they will respectively, from time to time hereafter, when and so long as their interest shall continue to be, or shall become vested in possession, well and truly pay or cause to be paid, to the said *A. B.* and his successors, the said yearly rent or sum of by equal and even portions as aforesaid:] in witness whereof the parties aforesaid have hereunto set their hands and seals, the day and year first above written.

"XVIII. And be it further enacted, that no action or other proceeding whatsoever shall be had or taken, by any person whomsoever, for the avoiding or defeating of any lease of tithes made under the provisions of this act, unless such person shall give notice in writing of such his intention, six calendar months at least before the expiration of some year, reckoning from the commencement of such lease, to the party or parties against whom such action or proceeding shall be intended to be had or brought; and such notice shall particularly specify and set forth the cause or causes for which such lease is sought to be avoided or defeated."

No action for
defeating any
lease shall be
brought unless
six months
notice shall be
given.

STAT. 4 GEO.
4, c. 5.

XLVIII. STAT. 4 GEORGII 4, c. 5. A.D. 1823.

"An Act to render valid certain Marriages."

3 Geo. 4, c. 75.

"Whereas by an act passed in the third year of the reign of his present majesty King George the Fourth, intituled, 'An Act to amend certain Provisions of the twenty-sixth of George the Second, for the better preventing of Clandestine Marriages,' it is amongst other things enacted, that no person shall, from and after the passing of this act, be deemed authorized by law to grant any licence for the solemnization of any marriage, except the Archbishops of Canterbury and York, according to the rights now vested in them, and except the several other bishops within their respective dioceses, for the marriage of persons one of whom shall be resident at the time within the diocese of the bishop in whose name such licence shall be granted: and whereas, notwithstanding such enactment, divers licences for marriage have, through error, been granted since the passing of the said act by or in the name of bodies corporate or persons, their officers or surrogates, other than the said archbishops and bishops, which bodies corporate or persons, their officers or surrogates, before the passing of the said act, were or were deemed to be authorized by law to grant such licences; and divers persons have been married by virtue or in consequence of licences so granted, the validity of which marriages is affected by the enactment aforesaid; and whereas it is expedient to remedy the same: be it enacted by the king's most excellent majesty, by and with the consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all and every marriages and marriage solemnized by virtue or in consequence of a licence granted after the passing of the said act of the third year of his present majesty, and before the passing of this act, by or in the name of a body corporate or person, his or their officer or surrogate, other than the Archbishops of Canterbury and York, according to the rights vested in them respectively, or the several other bishops within their respective dioceses, which body corporate or person, his or their officers and surrogates, before the passing of the said act, were or were deemed to be authorized by law to grant such licences, shall be as good and valid marriages to all intents and purposes whatsoever, as the same would have been if the said enactment restraining the power and authority of granting such licences had not been made.

Marriages solemnized by virtue of licences granted after passing of recited act, and before the passing of this act, by persons authorized by law previous to recited act, declared valid.

Persons granting such licences not liable to penalties.

"II. And be it further enacted, that such bodies corporate and persons as aforesaid, their officers and surrogates, who have granted such licences as aforesaid since the passing of the said act, and their officers and others concerned therein, and such ministers as have acted under the authority of the same, shall not be or be held to be liable to any pains or penalties, or censures respectively, for or on account of the granting or acting under the same."

STAT. 4 GEO.
4, c. 17.

XLIX. STAT. 4 GEORGII 4, c. 17 (1). A.D. 1823.

"An Act to repeal certain Provisions of an Act passed in the third year of His present Majesty, intituled, An Act to amend certain Provisions of the twenty-sixth of George the Second, for the better preventing of Clandestine Marriages."

STAT. 4 GEO.
4, cap. xvii.

L. STAT. 4 GEORGII 4, cap. xvii. A.D. 1823.

"An Act for effecting an Exchange between the Right Honourable Henry Hall, Viscount Gage, and the Dean and Chapter of the Cathedral Church of the Holy Trinity of Chichester, of Estates in the County of Sussex."

STAT. 4 GEO.
4, cap. xviii.

LI. STAT. 4 GEORGII 4, cap. xviii. (2). A.D. 1823.

"An Act for enabling the President, Vice-Presidents, Treasurer, and Members of the Philanthropic Society to purchase from the Corporation and other Persons entitled thereto the Lands and Hereditaments in the Parish of Saint George the Martyr, Southwark, in the County of Surrey, upon which they have erected a Chapel, Buildings, and other Works, and such other Land adjoining thereto, as may be required for the Purposes of their Charity."

(1) Repealed by Stat. 4 Geo. 4, c. 76.

(2) Vide Stat. 46 Geo. 3, CAP. CXLIV. (anti 998).

LII. STAT. 4 GEORGII 4, CAP. XXI. A.D. 1823.

STAT. 4 GEO.
4, CAP. XXI.

"An Act for appointing Select Vestrymen, Governors, and Directors of the Poor of the Parish of Saint Matthew Bethnal Green, in the County of Middlesex; and for altering and amending two Acts passed in the thirteenth and fifty-third years of His late Majesty King George the Third, relating to the same."

LIII. STAT. 4 GEORGII 4, CAP. XXVI. A.D. 1823.

STAT. 4 GEO.
4, CAP. XXVI.

"An Act to enable the Trustees of the Will of the late Sir William East, Baronet, deceased, and Tenants under the See of Canterbury, to join in Grants of Building and Repairing Leases with the Archbishop of Canterbury, for the time being, of Lands in Lambeth Marsh, held under the said See."

LIV. STAT. 4 GEORGII 4, CAP. XXVIII. A.D. 1823.

STAT. 4 GEO.
4, CAP. XXVIII.

"An Act for changing the Site of the Hospital at Sheffield, in the County of York, founded by the Right Honourable Gilbert, Earl of Shrewsbury; and for the better Regulation of the Affairs of that Charity."

LV. STAT. 4 GEORGII 4, C. 31. A.D. 1823.

STAT. 4 GEO.
4, C. 31.

"An Act to amend an Act passed in the nineteenth year of the Reign of His late Majesty King George the Second, intituled, An Act more effectually to prevent Profane Cursing and Swearing."

"Whereas by an act passed in the nineteenth year of the reign of his late majesty King George the Second, intituled, 'An Act more effectually to prevent Profane Cursing and Swearing,' it is amongst other things provided, that the said act shall be publicly read four several times in the year, in all parish churches and public chapels, by the parson, vicar, or curate of the respective parishes or chapels, immediately after morning or evening prayer, on four several Sundays; (that is to say,) the Sunday next after the twenty-fifth day of March, twenty-fourth day of June, twenty-ninth day of September, and twenty-fifth day of December in every year; or in case divine service shall not be performed in any such church or chapel on any of the Sundays before mentioned, then upon the first Sunday after any of the said quarterly days on which divine service shall happen to be performed in any such church or chapel, upon pain of forfeiting the sum of five pounds for every such omission and neglect, to be levied by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of any one justice, mayor, bailiff, or other chief magistrate as aforesaid: and whereas it is expedient that the above-recited provision should be repealed; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said statute as is hereinbefore recited shall be and the same is hereby repealed.

19 Geo. 2, c. 21.

Provision of
recited act
requiring the
same to be
read quarterly
in all parish
churches, &c.
repealed.

"II. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

LVI. STAT. 4 GEORGII 4, C. 32(1). [IRELAND.] A.D. 1823.

STAT. 4 GEO.
4, C. 32. [18.]

"An Act for the Amendment of the Laws respecting Charitable Loan Societies in Ireland."

(1) Amended by Stat. 10 Geo. 4, c. 42; 6 & 7 Gul. 4, c. 55, and by Stat. 1 & 2 Vict. repealed and other provisions made by Stat. c. 78.

STAT. 4 GEO.
4, c. 52.

LVII. STAT. 4 GEORGII 4, c. 52. A.D. 1823.

"An Act to alter and amend the Law relating to the Interment of the Remains of any Person found Felo de se."

Remains of
persons against
whom a finding
of *felo de se* is
had to be pri-
vately buried
in the parish
churchyard.

"Whereas it is expedient that the laws and usages relating to the interment of the remains of persons, against whom a finding of *felo de se* shall be had, should be altered and amended: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall not be lawful for any coroner, or other officer having authority to hold inquests, to issue any warrant or other process directing the interment of the remains of persons, against whom a finding of *felo de se* shall be had, in any public highway; but that such coroner or other officer shall give directions for the private interment of the remains of such person *felo de se*, without any stake being driven through the body of such person, in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of *felo de se* had not been found against such person; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night.

Rites of Chris-
tian burial not
to be perform-
ed; and former
laws and
usages not to
altered.

"II. Provided nevertheless, that nothing herein contained shall authorize the performing of any of the rites of Christian burial on the interment of the remains of any such person as aforesaid; nor shall anything hereinbefore contained be taken to alter the laws or usages relating to the burial of such persons, except so far as relates to the interment of such remains in such churchyard or burial ground, at such time and in such manner as aforesaid."

STAT. 4 GEO.
4, c. 64.

LVIII. STAT. 4 GEORGII 4, c. 64. A.D. 1823.

*"An Act for consolidating and amending the Laws relating to the building, repair-
ing, and regulating of certain Gaols and Houses of Correction in England and
Wales."*

Justices may
appoint a
clergyman to
each prison.

"XXVIII. And be it further enacted, that the justices assembled in general or quarter sessions shall and they are hereby required from time to time to nominate for each prison within their jurisdiction, to which this act shall extend, a clergyman of the church of England to be chaplain thereof; and the said justices may, if it seem to them expedient, nominate the same clergyman to be and officiate as chaplain to any two prisons situate within a convenient distance from each other; and the said justices are hereby authorized to appoint a salary to be paid to the clergyman so nominated chaplain as aforesaid, out of the county rate, or rate lawfully applicable to the maintenance of such prisons; and the amount of salary shall be regulated in the following manner; *videlicet*, where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive does not exceed fifty, then the salary to be paid to him shall not be more than one hundred and fifty pounds; where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive does not exceed one hundred, then the salary shall not be more than two hundred pounds; where the chaplain shall be appointed to one prison only, calculated to contain more than one hundred prisoners, including debtors, the salary shall not be more than two hundred and fifty pounds; and where the chaplain shall be appointed to one prison only, calculated to contain more than two hundred, or where the chaplain shall be appointed to two prisons, whatever the number of prisoners such two prisons may be calculated to contain, it shall be lawful for the justices to appoint the salary at their discretion, with reference to the duties to be performed; provided also, that when any two or more prisons shall be under the custody of one and the same keeper, they shall be considered as one prison with reference to the duties and salary of the chaplain; provided also, that in case of sickness or necessary engagement, the chaplain shall appoint a clergyman to be his substitute for the occasion,

His salary.

Where two
prisons have
one keeper,
they shall be
considered as
one with re-
spect to the
duties and
salary of the
chaplain.

such substitute being approved of by the visiting justices; and the name and residence of such substitute shall be specified in the chaplain's journal.

"XXIX. And be it further enacted, that no clergyman so nominated shall officiate in any prison until he shall have obtained a licence for that purpose from the bishop of the diocese wherein the prison is situate, nor for any longer time than while such licence shall continue in force; and notice of every such nomination shall, within one month after it shall take place, be transmitted to the bishop by the clerk of the peace or town clerk.

"XXX. And be it further enacted, that every such chaplain shall on every Sunday, and on Christmas Day and Good Friday, perform the appointed morning and evening services of the church of England, and preach at such time or times, between the hours of nine and five of the day, as shall be required by the rules and regulations to be made as directed by this act; and shall catechize or instruct such prisoners as may be willing to receive instruction; and shall likewise visit the prison on such other days and perform such other duties as shall be required by the rules and regulations to be made as directed by this act; and shall administer the holy sacrament of the Lord's supper to such prisoners as shall be desirous, and as such chaplain may deem to be in a proper frame of mind to receive the same; and such chaplain shall also frequently visit every room and cell in the prison occupied by prisoners, and shall direct such books to be distributed and read and such lessons to be taught in such prison as he may deem proper for the religious and moral instruction of the prisoners therein; and he shall visit those who are in solitary confinement; and it shall be his particular duty to afford his spiritual assistance to all persons under warrant or order for execution; and he shall have free access to all persons convicted of murder, any law, statute, or usage to the contrary notwithstanding; except to such persons as shall be of a religious persuasion different from that of the established church, who shall have made a request that a minister of such persuasion shall be allowed to visit them; and every such chaplain shall communicate from time to time to the visiting justices any abuse or impropriety which may have come to his knowledge; and he shall further keep a journal, in which he shall enter the times of his attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and such journal shall be kept in the prison, but shall regularly be laid before the justices for their inspection at every quarter sessions, and shall be signed by the chairman of the sessions, in proof of the same having been there produced; and if it shall appear to the justices in general or quarter sessions assembled, that any chaplain is incompetent to the due performance of his duties, or is unfit to be continued in his office, or shall have refused or wilfully neglected to perform the duties required of him by the rules and regulations to be made as directed by this act, they are hereby empowered to remove him from such office.

"XXXI. And be it further enacted, that if any prisoner shall be of a religious persuasion differing from that of the established church, a minister of such persuasion, at the special request of such prisoner, shall be allowed to visit him or her at proper and reasonable times, under such restrictions imposed by the visiting justices as shall guard against the introduction of improper persons, and as shall prevent improper communications.

"XXXII. And be it enacted, that in case any chaplain shall, from confirmed sickness, age, or infirmity, become incapable of executing the office in person, the justices of the peace, at any general or quarter sessions of the county, riding, division, district, city, town, or place respectively, shall take the circumstances of the case into their consideration; and if such justices shall deem it expedient, they are hereby empowered to grant to such chaplain such annuity as they in their discretion shall think proportionate to the merits and time of his services, and may order the payment out of the rates lawfully applicable to the building and repairing such gaols and prisons; provided always, that the amount so paid by way of superannuation or allowance to any retired chaplain of any one prison shall not exceed the amount of two-thirds of the salary fixed for the succeeding chaplain of such prison.

STAT. 4 GEO.
4, c. 64.

Clergymen not
to officiate till
licensed by the
bishop.

Duties of
chaplains.

Journal to be
kept by them.

Ministers
allowed to visit
other prisoners,
under
certain re-
strictions.

Power to
quarter ses-
sions to grant
annuity to any
chaplain inca-
pable, from
infirmity, of
executing his
office.

STAT. 4 GEO.
4, c. 64.

Book to be
kept, in which
visits of chap-
lain, &c. shall
be entered.

"XXXIV. And be it further enacted, that from and after the commencement of this act there shall be kept, in every prison to which this act shall extend, a book, in which the chaplain and every other officer of the said prisons not residing within such prisons, but attending on or required to attend on such prison shall regularly insert the date of every visit made by such chaplain or other such officer respectively; and every such entry shall be signed with the name and in the proper handwriting of such chaplain or other officer respectively, and shall contain such remarks as may be thought necessary on the occasion of any such visit; and every keeper of every such prison shall be responsible for the safe custody of such book, whole, unmutilated and unaltered, and shall at all times, when required so to do, produce such book, for inspection, to the justices at every general or quarter sessions, and to the visiting justices, or to any justice of the peace for the county, riding, division, district, city, town, or place wherein such prison shall be situate; and the chaplain shall, on every Michaelmas quarter sessions, deliver to the justices a statement of the condition of the prisoners, and his observations thereupon."

LIX. STAT. 4 GEORGH II, c. 67. A.D. 1823.

STAT. 4 GEO.
4, c. 67.

"An Act to declare valid certain Marriages that have been solemnized at Saint Petersburg since the Abolition of the British Factory there."

Marriages of
British sub-
jects solemn-
ized at Saint
Petersburgh
declared valid.

"Whereas the British factory at St. Petersburg was, by the manifesto of the Emperor of Russia, declared to be abolished from and after the twentieth day of June, in the year one thousand eight hundred and seven; and whereas divers marriages of subjects of this realm resident at St. Petersburg have, since the said twentieth day of June, one thousand eight hundred and seven, been solemnized there by the chaplain of the Russia Company in the chapel of the said company, and in private houses, before witnesses, according to the religious ceremonies of the church of England: and whereas it is expedient to declare the validity of such marriages, in order that no doubts or disquietude may hereafter arise thereupon; may it therefore please your majesty that it may be declared and enacted, and be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all marriages, (both or one of the parties thereto being subjects or a subject of this realm,) that have, since the said twentieth day of June, one thousand eight hundred and seven, been solemnized, or that shall hereafter be solemnized, at St. Petersburg by the chaplain to the said Russia Company, or by a minister of the church of England officiating instead of such chaplain, in the chapel of the said Russia Company, or in any other place, before witnesses, shall be as good and valid in law, and so deemed in the United Kingdom of Great Britain and Ireland, and in the dominions thereunto belonging, as if the same had been solemnized before the abolition of the said factory."

STAT. 4 GEO.
4, CAP. LXVIII.

LX. STAT. 4 GEORGH II, CAP. LXVIII. A.D. 1823.

"An Act for raising a further Sum of Money for carrying into execution an Act passed in the fifty-seventh year of His late Majesty King George the Third, intituled, An Act for rebuilding the Church and improving the Churchyard of the Parish of Saint Paul Shadwell, in the County of Middlesex; and for amending the said Act."

STAT. 4 GEO.
4, c. 71.

LXI. STAT. 4 GEORGH II, c. 71. A.D. 1823.

"An Act for defraying the Charge of Retiring Pay, Pensions, and other Expenses of that Nature, of His Majesty's Forces serving in India; for establishing the Pensions of the Bishops, Archdeacons, and Judges; for regulating Ordinations; and for establishing a Court of Judicature at Bombay."

"Whereas by an act made and passed . . . in the fifty-third year of the reign of his late majesty King George the Third, intituled, 'An Act for continuing in

the East India Company, for a further term, the Possession of the British Territories in India, together with certain exclusive Privileges; for establishing further Regulations for the Government of the said Territories, and the better Administration of Justice within the same, and for regulating the Trade to and from the Places within the Limits of the said Company's Charter,' it is enacted, &c.

"II. And whereas by the said act of the fifty-third year of the reign of his said late majesty King George the Third, provision was made for granting certain pensions to the Bishop of Calcutta, and the Archdeacons of Calcutta, Madras, and Bombay respectively, who should have exercised in the East Indies, or parts in the said act mentioned, for fifteen years, the office or offices of bishop or archdeacon; and it is expedient to shorten the period during which such bishops and archdeacons respectively are required to hold their said offices before such pensions could be granted to them respectively, and to make other provisions respecting such pensions; be it enacted, that so much of the said act as relates to such pensions shall be and the same is hereby repealed.

"III. And be it further enacted, that it shall and may be lawful for his majesty, his heirs, and successors, in manner in the said act mentioned, to grant to any such bishop who shall have exercised in the East Indies, or parts aforesaid, for ten years, the office of bishop or archdeacon, and to any such archdeacon who shall have exercised in the East Indies or parts aforesaid, for ten years, the office of archdeacon, pensions not exceeding such sums respectively as his majesty by the said act of the fifty-third year of the reign of his late majesty is empowered to grant to any such bishop or archdeacon.

"IV. Provided also, and be it further enacted, that if any person residing any time in the East Indies or parts aforesaid, as one of the chaplains of the said united company, shall have been or shall be appointed to the office of such archdeacon as aforesaid, and shall have resided in the East Indies or parts aforesaid as such archdeacon seven years, the period of residence of such person as chaplain shall be accounted and taken as and for a residence as such archdeacon, in the proportion of three years' residence as such chaplain, to two years' residence as such archdeacon: provided also, that nothing herein contained shall extend, or be construed to extend, to prejudice the right of any person being or having been a chaplain of the said united company, to any benefit he may be entitled to as under or by virtue of any regulation now in force, or hereafter to be made by the said united company or their court of directors, nor to prejudice or affect the right of the said united company, or their court of directors, to make, repeal, vary, or alter, any regulation or regulations respecting the chaplains of the said united company, or the pay or allowances, pensions, or retirements, of such chaplains which the said united company or their court of directors may now lawfully make, repeal, vary or alter.

"V. And whereas it is proper that a suitable house of residence should be provided for the said bishop, and that the expenses of his visitations should be defrayed by the said company; be it therefore further enacted, that it shall and may be lawful for the said company, and they are hereby required to provide a suitable house at Calcutta for the residence of the said bishop, and that the expense of the visitations to be made by the said bishop from time to time shall be defrayed by the said company, out of the revenues of the British territory in India: provided always, that no greater sum on account of providing such house, or of such visitations, be at any time issued, than shall from time to time be defined and settled by the court of directors of the said company, with the approbation of the commissioners for the affairs of India, any law or statute to the contrary notwithstanding.

"VI. And whereas doubts have arisen whether the Bishop of Calcutta, in conferring holy orders, is subject to the several provisions and limitations established by the laws of this realm or canons ecclesiastical, as to the titles of the persons to be ordained, and as to the oaths and subscriptions to be by such persons taken and made; be it further declared and enacted, that it shall and may be lawful for the Bishop of Calcutta for the time being to admit into the holy orders of

STAT. 4 GEO. 4, c. 71.

Repeal of provision in 53 Geo. 3, c. 155, respecting pensions of bishop and archdeacons.

Pensions to bishop and archdeacons.

Chaplains acting as archdeacons to be entitled to pension, in a certain proportion.

Further provision as to chaplains.

Residence and expense of visitations of bishop to be defrayed by the company.

Power to the Bishop of Calcutta to admit persons to holy orders.

STAT. 4 GEO.
4, c. 71.

Provisions of
53 Geo. 3,
c. 155, not to
be affected.

deacon and priest respectively any person whom he shall, upon examination, deem duly qualified, specially for the purpose of taking upon himself the cure of souls, or officiating in any spiritual capacity within the limits of the said diocese of Calcutta, and residing therein; and that a declaration of such purpose, and a written engagement to perform the same, under the hand of such person, being deposited in the hands of such bishop, shall be held to be a sufficient title with a view to such ordination; and that in every such case, it shall be distinctly stated in the letters of ordination of every person so admitted to holy orders, that he has been ordained for the cure of souls within the limits of the said diocese of Calcutta only; and that unless such person shall be a British subject of or belonging to the United Kingdom of Great Britain and Ireland, he shall not be required to take and make the oaths and subscriptions which persons ordained in England are required to take and make: provided always, that nothing herein contained shall be construed to repeal or affect the provisions of an act passed in the fifty-third year of the reign of his late majesty King George the Third, intituled, 'An Act for continuing in the East India Company, for a further term, the possession of the British Territories in India, together with certain exclusive Privileges; for establishing further Regulations for the Government of the said Territories, and the better Administration of Justice within the same; and for regulating the Trade to and from the Places within the Limits of the said Company's Charter,' or any letters patent issued by his late majesty, or by his present majesty, their heirs, and successors, in virtue of the said act, or of their lawful prerogative."

STAT. 4 GEO.
4, c. 76.

LXII. STAT. 4 GEORGII 4, c. 76(1). A.D. 1823.

"An Act for amending the Laws respecting the Solemnization of Marriages (2) in England."

"Whereas it is expedient to amend the laws respecting the solemnization of marriages in England; be it enacted by the king's most excellent majesty, by and

(1) *Vide post.* Stat. 4 Geo. 4, c. 91; Stat. 5 Geo. 4, c. 32; Stat. 6 Geo. 4, c. 92; Stat. 11 Geo. 4 & 1 Gul. 4, c. 18; Stat. 3 & 4 Gul. 4, c. 45; Stat. 4 & 5 Gul. 4, c. 28; Stat. 6 & 7 Gul. 4, c. 85 ss. 42 & 43; Stat. 6 & 7 Gul. 4, c. 86; Stat. 7 Gul. 4 & 1 Vict. c. 22; Stat. 1 & 2 Vict. c. 108; Stat. 3 & 4 Vict. c. 72; Stat. 5 & 6 Vict. c. 113; and Stat. 6 & 7 Vict. c. 39.

Vide Stat. 20 Hen. 2, c. 9 (*ante* 3); Stat. 13 Edw. 1, St. I. c. 34 (*ante* 23); Stat. 25 Hen. 8, c. 21 (*ante* 160); Stat. 25 Hen. 8, c. 22 (*ante* 172); Stat. 28 Hen. 8, c. 7 (*ante* 205); Stat. 28 Hen. 8, c. 18 (*ante* 221); Stat. 32 Hen. 8, c. 38 (*ante* 269); Stat. 2 & 3 Edw. 6, c. 23 (*ante* 327); Stat. 12 Car. 2, c. 33 (*ante* 563); Stat. 13 Car. 2, c. 12 (*ante* 564); Stat. 6 & 7 Gul. 3, c. 6 (*ante* 649); Stat. 7 & 8 Gul. 3, c. 35 (*ante* 659); Stat. 10 Ann. c. 7 (*ante* 698); Stat. 10 Ann. c. 19 (*ante* 704); Stat. 15 Geo. 2, c. 30 (*ante* 816); Stat. 12 Geo. 3, c. 11 (*ante* 880); Stat. 1 Geo. 4, c. 101 (*ante* 1179); Stat. 3 Geo. 4, c. 75 (*ante* 1206); Stat. 4 Geo. 4, c. 5 (*ante* 1220); Stat. 4 Geo. 4, c. 17 (*ante* 1220); and Stat. 4 Geo. 4, c. 67 (*ante* 1224). *Vide* Stephens on Nisi Prius, tit. THE SOLEMNISATION OF MARRIAGE, 11-24; and Stephens' Clerical Law, tit. MARRIAGE.

(2) *Solemnization of Marriages*:—In *Davis v. Black (Clerk)*, (1 Q. B. 900,) the declaration, which was in case, stated that the plaintiff (a man) and Mary Ann Hogg, were desirous to intermarry; that a licence was granted to the end that the marriage might

be solemnized in the parish church of Blaisdon, by the rector, vicar, or curate thereof, without banns, within three months from the date, Mary Ann Hogg's usual place of abode having been in Blaisdon for fifteen days immediately before the granting of the licence; provided there should appear to be no impediment by reason of former marriage, consanguinity, &c., nor any suit depending by reason thereof; and that the celebration should be in the said church between eight and twelve in the forenoon: the declaration also averred, that the defendant was rector and sole minister of the church of Blaisdon, that there was no impediment by reason, &c., nor any suit, &c.; and that, by reason of the premises, and by force of the licence, it became the defendant's duty, as rector, &c., on notice of the licence, to solemnize the marriage in the manner and time specified in the licence, when thereunto requested; that the defendant had notice of the licence, and afterwards, viz., on, &c., and on several other days between that day, and the death of Mary Ann Hogg, was requested by the plaintiff to solemnize the marriage in the manner and time specified in the licence:—yet the defendant, not regarding his duty, but contriving wrongfully and illegally to harass, oppress, and injure the plaintiff, would not, on the said, &c., or at any time afterwards, solemnize the marriage, but wrongfully and illegally refused so to do; that, while he continued so to refuse, Mary Ann Hogg died; and that by reason, &c., the

with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and Stat. 4 Geo. 4, c. 76.

plaintiff lost the benefit of the licence, and the marriage, and had been put to expenses which were rendered useless, had been injured in his good name, and had suffered anxiety of mind:—it was held to be bad after verdict, for not averring a request from Mary Ann Hogg, or notice to the defendant that Mary Ann Hogg was willing that the marriage should take place:—

Lord Deasman observing, "I am by no means prepared to say, that such an action as that, might not be maintained, upon the declaration making a proper complaint of a public officer neglecting his public duty to the temporal, and it might be to the very great damage of an individual. Such a neglect of the duty of a clergyman may be actionable, if it be malicious and without probable cause. But there is no great danger in saying, that an action can hardly be maintained against an officer not required by law to perform the duty at any particular time, without allegation of malice, or of the time at which he refused, being a reasonable time for the performance. Allowing fully that the action is maintainable on principle, the declaration is essentially defective. Hardly any of the objections made can be got over. One is clearly fatal. At the time when the clergyman is supposed to have acted wrongfully, it does not appear, that he had notice, that both the parties were willing to be married. It is alleged that, at the time of the grievance, they were in fact willing; but it is not averred that the woman joined in the request. This is quite fatal. For you charge the minister with having improperly refused to marry; yet the whole declaration might be proved, although he had no reason to believe the woman to be willing. It would be going far beyond all limits within which we allow defective declarations to be cured by verdict, if we suffered this. Nothing can be supplied beyond that of which the proof is necessarily involved in the proof of what is alleged."

Mr. Justice Patteson: "It is not necessary to determine generally whether such an action will lie; and I own that I feel great difficulty on that point. At common law, parties might marry anywhere. It is true, however, that Stat. 26 Geo. 2, c. 33, ss. 1, 4, [vide Stat. 4 Geo. 4, c. 76, ss. 2, 10,] confines them to the church of the parish where one of them has been resident for a certain time. And, as a clergyman of the church might prevent any other clergyman from performing the marriage service in his church, it may perhaps be said that the duty is now cast on him. Here, however, the question arises on the declaration. Now suppose (which seems very doubtful) the duty here to be properly alleged; the duty is to marry on request. Suppose, also, that the request was made in the time pointed out by the licence, and that this is sufficiently averred by the words, 'in the manner and time specified;' (though the licence gives three months from the date;) still, by

whom is the request made? One party might wish to be married, the other not; the request must be by both. Here is no averment that the woman joined in the request, or that the plaintiff's request was made with her knowledge and consent; and that alone shows, that the declaration is insufficient. And this cannot be cured by verdict; for nothing is so cured except that without the proof of which the judge could not have allowed the verdict to pass. *Jackson v. Peaked*, (1 M. & S. 234,) shows, that we cannot intend a finding upon what is not averred directly, or by implication; and we cannot say that an averment of a request by the woman is included in that of a request by the man. Nor can we say that a judge must have required proof of this before he allowed the verdict to be taken. The other objection, arising from the licence allowing three months, seems also fatal. And the declaration does not even allege, that the licence was in force at the time of the request."

Argar v. Holdsworth, (2 Lee (Sir G.), 515,) seems to support the proposition, that an action for damages may be sustained against a clergyman for a neglect of his duties, but clearly lays down, that a clergyman may be prosecuted by any one for neglect of his clerical duty. As this question is of importance, the case of *Argar v. Holdsworth* is given at length, and which is reported in the following language:

Dr. Simpson, for Argar. "William Argar promoted articles in the court of the Archdeacon of Totness, against Henry Holdsworth, vicar of St. Saviour's in Dartmouth, for neglecting or refusing to solemnize marriage between the said Argar and Jane How, both of the parish of St. Saviour's, and having a licence to be married from the Chancellor of Exeter. On 18th September, 1756, the articles were admitted at Totness, pleading, 1st, that Holdsworth is a clerk and vicar of St. Saviour's in Dartmouth; 2nd, that by canons, &c., every minister is to obey his ordinary's licence, &c.; 3rd, that, every minister is obliged by law to marry such of his parishioners as have resided a month in his parish; that the parties named in the licence are his parishioners, and have resided a month, and have obtained a licence to be married together; 4th, that Argar had a proper licence to marry How, and acquainted Holdsworth therewith, and desired him to marry them, but he refused; 5th, that he has thereby incurred ecclesiastical censures; 6th, that he is subject to the jurisdiction of the court at Totness; 7th, pray he may be censured, &c. From admitting these articles, Holdsworth appealed to the Chancellor of Exeter. On 4th March, 1757, the chancellor pronounced for the appeal for admitting the 3rd and 4th articles, as not concludent, &c. and rejected such articles, but admitted the rest, and retained the cause, with costs. Argar appealed to the Arches from rejecting the 3rd and 4th

STAT. 4 GEO.
4, c. 76.

after the first day of November next ensuing the passing of this act, so much of an act passed in the twenty-sixth year of the reign of King George the Second, inti-

articles, and retaining the cause, and condemning him in costs, and Holdsworth did not adhere to the appeal."

Dr. *Bettesworth*, for Holdsworth, said, "that Argar should have brought a suit at law for damages, or if any suit lay in the spiritual court, it should have been brought before the Chancellor of Exeter, who granted the licence; that the licence was not exhibited, without which the articles were not concludent; that a minister is not obliged by law to marry by licence, but is only permitted so to do, and if he has reason to think it was fraudulently obtained, he ought to refuse to marry in consequence of it, which was the case with Holdsworth, and, therefore, the judge ought to have rejected all the articles."

Judgment — Sir *George Lee*: "I said, that possibly Argar might have no action for damages, but, nevertheless, the clergyman might be prosecuted by any one for neglect of his clerical duty; that the suit for such neglect might be brought in order to his being admonished or suspended in the archdeacon's court, notwithstanding the licence was granted by the chancellor; that the licence might be exhibited at any time before conclusion of the cause; that I was of opinion a licence was a legal authority for marriage, and that a minister was guilty of a breach of his duty who should refuse to marry pursuant to a proper licence from his ordinary. If Holdsworth had reason to believe the licence was obtained fraudulently, and only delayed to gain time for inquiry, that would be proper matter for his defence; but surely the chancellor had acted strangely in rejecting the articles which alone pleaded the facts relative to this cause, and admitting these articles which pleaded only the general law. I, therefore, pronounced for the appeal, and remitted the cause to the archdeacon's court at Totness, and condemned Holdsworth in 25*l.* costs."

Respecting fees for the solemnization of marriages, it was held in *Patten v. Castleman*, (1 *Lee* (Sir G.), 387,) that the claim of a vicar for a fee on the wedding of one of his parishioners in the church of another parish, was not substantiated; the general principle of law being, that where no service is done, no fee can be due.

Sir *George Lee* observing, "I was of opinion that no fee was due by law where no service was done; anciently no fee was demandable for marriage, but only a voluntary offering was made of what sum the party married thought fit to give, which appears from *Lyndwood*, lib. 3, tit. 16, cap. 'Quia quidam,' in these words: 'Quia quidam maledictionis filii in nubentium solemnibus, purificationibus mulierum, mortuorum exequiis, et aliis in quibus ipse Dominus in ministrorum suorum personis solebat oblationum libamine populariter honorari ad unius denarii vel alterius modice quantitatis oblationem, populi devotionem prestringere moliti sunt, residuum oblationis fidelium

suis pro libito vel alienis usibus multoties applicantes;' therefore excommunicating the instigators; and *Lyndw.* Gloss. verb. Nubentium solemnibus, sets forth the times when it was lawful to marry, and when not; and therefore the Constitution must speak of offerings for marriages actually performed. If then no law has established a fee for actual marriage, it can be demandable only by custom, and accordingly, *Watson's Clergyman's Law*, chap. 52, p. 572, says, 'Accustomary payments for marriages, christenings, churchings, and burials, properly belong to the parson or vicar of the church where they are made, and are recoverable by law, where there is a custom for the payment of certain sums upon the performance of these several duties;' and in chap. 53, p. 575, 'under offerings, called also oblations and obventions, are comprehended all customary payments for marriages, christenings, churchings, and burials, and have been, and yet are recoverable in the ecclesiastical court, as is notorious.'

"And notwithstanding the Statute of *Circumspecte agatis*, and of 2 & 3 *Edw.* 6, if the custom is denied, a prohibition will go to try it at common law, and it must be immemorial; and so it was held by the whole court of King's Bench, *Hill*. 7 *Geo.* 2, *Read v. Dealtary*, which case I argued, and a prohibition was granted to stay a suit in the ecclesiastical court for customary Easter offerings, and the custom was denied; but if the custom is admitted, then the spiritual court may proceed, and in the present case, if a prohibition had been prayed, it would certainly have been granted; and therefore, as this was a matter subject to the cognizance of the common law, I thought myself bound to determine agreeably to that law, that there may not be a diversity of judgments in different courts; and clearly by the common law this custom is not proved, for it is not sufficiently proved, even by the ecclesiastical law, which requires a usage for forty years to be proved; but here no instance has been given of paying the fee demanded for above twenty-one years; and therefore I thought the custom was not proved, but if it had been proved, the custom would be unreasonable, for no ecclesiastical law warrants a demand of a fee where no service is done, and though I could not find in the Common Law Reports any determination upon the particular point now before me, yet, in similar cases, the temporal courts had determined, that a custom to pay a fee where no service was done, was unreasonable, as appeared from the cases cited by the counsel for *Patten*, in the cases of burials, christenings, and churchings, which are thus reported:

"*Hobart*, 175. '*Edward Topeall and others v. Ferrers*. Edward Topeall, clerk, parson of St. Botolph's Without, Aldersgate, and the churchwardens of the same, libelled in the court Christian, against Sir John Ferrers, Knight, and alleged, that

tuled, 'An Act for the better preventing of Clandestine Marriages,' as was in force immediately before the passing of this act, and also an act passed in the present session of parliament, intituled, 'An Act to repeal certain Provisions of an Act passed in the third year of His present Majesty, intituled, "An Act to amend certain Provisions of the twenty-sixth of George the Second, for the better preventing of Clandestine Marriages,"' shall be and the same are hereby repealed; save and except as to any acts, matters, or things done under the provisions of the said recited acts, or either of them, before the said first day of November, as to which the said recited acts shall respectively be of the same force and effect as if this act had not been made; save also and except so far as the said recited acts or either of them repeal any former act, or any clause, matter, or thing therein contained.

"II. And be it further enacted, that from and after the first day of November all banns of matrimony shall be published (1) in an audible manner in the parish Banns, where, when, and

there was a custom within the city of London, and especially within that parish, that if any person die within that parish, being man or woman, and be carried out of the same parish, and be buried elsewhere, that there ought to be paid to the parson of this parish, if he be buried elsewhere, in the chancel, so much, and to the churchwardens so much, being the sums that they alleged were by custom payable unto them for such as were buried in their own chancel, and then alleging, that the wife of Sir John Ferrers died within the parish, and was carried away and buried in the chancel of another church, and so demand of him the said sum; whereupon, for Sir John Ferrers, a prohibition was prayed by Serjeant Harris, and upon debate it was granted; for this custom is against reason, that he that is no parishioner, but may pass through the parish, or lie in an inn for a night, should be forced to be buried there, or to pay as if he was, and so upon the matter, to pay twice for his burial.'

"1 Salk. 332. '*Burdeaux v. Lancaster (Dr.) and others*, Hill. 9 Will. 3, B. R. Burdeaux, a French protestant, had his child baptized at the French church in the Savoy, and Dr. Lancaster, vicar of St. Martin's, in which parish it is, together with the clerk, libelled against him for a fee of 2s. 6d. due to him, and 1d. to the clerk. A prohibition was moved for, and *Levinas* urged this was an ecclesiastical fee due by the canon.—*Holt*, C. J. Nothing can be due of common right, and how can a canon take money out of a layman's pocket? Lyndwood says it is simony to take anything for christening or burying, unless it be a fee due by custom, but then a custom for any person to take a fee for christening a child when he does not christen it, is not good; like the case in Hobart, where one dies in one parish, and is buried in another, the parish where he died, shall not have a burying fee. If you have a right to christen you should libel for that right, but you ought not to have money for christening when you do not.'

"Lord Raymond's Reports, 2nd vol. fo. 1558. 2 Geo. 2 Regis, B. R. 1729. '*Naylor qui tam v. Scott*. In a prohibition granted to stay a suit in the spiritual court by the vicar of Wakefield, grounded upon a custom for a due for churching women,

which was alleged to be this, viz. 'That every inhabitant keeping a house, and having a family in Wakefield, in Yorkshire, and having a child or children born in that parish at the time of churching the mother of the child, or at the usual time after her delivery, when she should be churched, have time out of mind paid ten pence to the vicar of that parish, for or in respect of such churching, or at the usual times when the mother of such child should be churched.' Issue was taken upon the custom, and a verdict found for the defendant, that there was such a custom; and upon motion made to the court by Mr. Filmer for the plaintiff, in arrest of judgment, to prevent the granting a consultation, the court being of opinion, that it was a void custom; 1st, Because it was not alleged, what was the usual time the women were to be churched, and therefore uncertain. 2nd, Because it was unreasonable, because it obliged the husband to pay; if the woman was not churched at all, or if she went out of the parish, or died, before the time of churching, judgment was arrested. Mr. Crowle, counsel for the defendant in the prohibition.'

"As to the clause in the marriage licence, I was of opinion, it was only a general saving of such right as the minister might have, but if he had none by law, the licence neither did or could give him any. Upon the whole, I was of opinion, the fee demanded was not due by any law, that the custom was not proved, but if it had been proved, it would be an unreasonable custom by the ecclesiastical as well as the common law, and void, and therefore I pronounced no fee to be due in this case to the vicar, and dismissed Patten, but did not give costs, because it was a new case, and because the clergy did generally imagine a fee was due, and in fact it had been paid in many instances to Mr. Castleman and his predecessors, and likewise to his neighbouring clergy, and therefore he could not be said to be litigious."

(1) *All banns of matrimony shall be published*:—The two principal cases respecting the publication of banns of matrimony are *Tongue v. Allen*, (1 Curt. 38,) and *Wright v. Elwood*, (Ibid. 49, 669;) vide etiam *Brealy v. Reed*, 2 Ibid. 833; *Rees v. Tibshelf (Inhabitants of)*, 1 B. & Ad. 190; *Rees v. Burton-upon-Trent (Inhabitants of)*, 3 M. & S. 537; *Rees v. St. Faith's, Newton*, 3

Stat. 4 Geo. 4, c. 76.

26 Geo. 2, c. 33,
4 Geo. 4, c. 17,
repealed.

STAT. 4 GEO.
4, c. 76.
how published.

church, or in some public chapel, in which chapel banns of matrimony may now or may hereafter be lawfully published, of or belonging to such parish or chapelry

D. & R. 348; *Cloves v. Cloves*, 3 Curt. 185. In *Tongue v. Allen*, the suit of nullity of marriage under Stat. 4 Geo. 4, c. 76, by reason of undue publication of banns, was sustained, both parties "having knowingly and wilfully intermarried after such undue publication;" and in *Wright v. Elwood*, the suit of nullity of marriage under Stat. 4 Geo. 4, c. 76, by reason of undue publication of banns, was rejected.

The facts of such cases, and the reasons upon which such judgments were given, will appear from the following abridged judgments.

In *Tongue v. Allen*, (1 Curt. 41,) Sir Herbert Jenner observed:

"... The result then is this, that at the marriage the minor was between seventeen and eighteen years of age, the woman thirty-four or thirty-five, and a widow, or representing herself as such, and the sister of the master of the school where he was placed; that the marriage was clandestine, and continued secret and unknown to the family of the minor, for nearly twelve months; that the name of baptism, by which alone he was generally known, was omitted in the publication of banns; and that this was done for the purpose of concealment, in fraud of the father's rights, there can be no doubt.

"The question therefore is, whether a marriage under such circumstances is good and valid according to the existing marriage law of this country; for under the original marriage act, (the 26 Geo. 2, c. 33,) the marriage would have been clearly void, it having been repeatedly held, that the omission of the name of general repute in the publication of banns, when for the purpose of fraud, rendered the marriage void, as in the case of *Jaeger v. Probst*, 2 Coomb. 142, in which Lord Stowell observed, 'That all parts of a baptismal name ought to be set forth, as comprising altogether the name and legal designation of the party, yet he would not go the length of deciding, that in all cases the omission of a name would be fatal, where no fraud was intended, nor any deception practised, and where the suppression was only of a distant name.'

"The present statute, the 4 Geo. 4, c. 76, does not require the true names of both parties to be published, but in order to obviate the inconveniences, and to prevent the crying abuse which arose out of the law as it formerly stood, and the fraud in cases to which innocent parties were exposed, it has provided that in order to avoid a marriage on the ground of the banns having been unduly published, the parties must have knowingly and wilfully intermarried without due publication of banns. The construction which has been put upon the twenty-second section of the 4 Geo. 4, c. 76, in the two cases as yet determined, seems to be that such parties must be ignorant of the undue publication. This indeed seems to arise necessarily from the words of the act itself: the

'parties' are spoken of in the plural number, and there would have been no necessity for any enactment at all upon the subject, if the knowledge of one party would have been sufficient to render the marriage void, as there can hardly be a case, in which one of the parties must not be cognizant of the fact.

"But, however this may be, the same construction has been put upon this section of the act in the courts of common law as in these courts; the cases have been referred to in the argument, and the court will notice them hereafter; at present it will be enough to say, that it entirely agrees in the soundness of that construction; and it only remains to be seen, whether there is a sufficient proof in the present case to justify the court in coming to the conclusion, that both parties were cognizant of the undue publication of banns, before the marriage was solemnized; for I also agree with the decisions before adverted to, that the knowledge must be shown to have existed before, and not after the marriage. The manner in which this knowledge is to be proved, must vary according to the circumstances of each case; that may be quite sufficient in one which would not suffice in another, and although it may be true, that in construing the law, the favourable or unfavourable nature of the transaction in question ought not to be taken into consideration, yet circumstances may give a greater or less effect to the evidence of the facts to which the law is to be applied, and may furnish a clue to guide the court to the proper conclusion to be drawn from them. It cannot be required, that in every case direct and positive proof should be adduced; if so, I am inclined to agree with the observations of Dr. Addams, that in most cases the fraud would be successful, the parties would have nothing to do but to keep their own secret. The court must therefore take all the circumstances into consideration, and deduce its conclusion from them. It was indeed hardly denied, that circumstantial evidence would be sufficient, but it was said, it must be such as to leave no reasonable doubt on the mind of the court. It is necessary then to consider, what the circumstances are.

"In all cases of this kind, three questions naturally arise.

"First, Whether a marriage has been had between the parties to the suit?

"Secondly, Whether there has been an undue publication of banns?

"Thirdly, Whether both parties were cognizant of the undue publication before the marriage was solemnized?

"Now here there can be no doubt of the fact of marriage between these parties, nor of their identity.

"Secondly, There can be no doubt from what has been observed, that there was an undue publication of banns, it would be a waste of time to enquire further on this point, and it is equally clear that concealment was the object of both parties. The third point, whether both parties were cog-

wherein the persons to be married shall dwell, according to the form of words prescribed by the Rubric prefixed to the Office of Matrimony in the Book of Common

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and marriage

nizant of the undue publication, remains to be considered. Now, that Mrs. Allen knew cannot be denied; she in fact, although it is otherwise pleaded in the libel, gave the instructions for the publication of the banns; it was said, that the evidence as to this fact was irregularly introduced, and perhaps it was so, but if it were not true, it might have been contradicted even after publication, but no attempt of that kind was made either here or in the court below; I must therefore take that fact as proved. There is certainly no direct proof of concert between the parties, but there is a pretty strong presumption of it; both were living in the same house, having daily communication with each other; both must have known of the necessity for concealment, and neither could well have been ignorant of the means to be used from the very nature of the transaction; but it does not rest here; the proceedings at the time of the marriage are material; it is sworn, that it is the practice in this parish to show the banns book to both parties, and to inquire whether they are correctly described or not, and Sarah Haynes, the sextoness, says, 'she is sure it was done on the present occasion.' Now, was the fact so or not? The witness deposes positively to the practice, and that it was observed on this occasion; if the fact were not so, it might have been counterpleaded, and the minister and clerk might have been brought to contradict the sextoness; there is no reason to believe, that she deposes falsely, and there can be no reason assigned why the usual practice should not have been adhered to at this marriage. Again, during the ceremony the minor must have answered to the name of Edward, and there is no evidence to show, that he evinced any surprise at being so addressed. And after the ceremony was concluded, he signed that name to the entry in the register, without hesitation. This latter circumstance standing alone, might not perhaps have been sufficient to fix him with a knowledge of the undue publication of banns, but taken in conjunction with all the other circumstances, it goes a considerable way to satisfy me of his previous knowledge of the intended fraud.

"These facts then taken altogether, form a strong body of evidence upon which the court, had this been the first case arising under the statute, might, and would, have felt itself justified in pronouncing this marriage to be void, as having been knowingly and wilfully by both parties contracted without due publication of banns.

"But cases have been referred to, which the court must now proceed to consider, in order to see, whether they at all interfere with the impression it has stated itself to entertain, as to the effect of the evidence here produced.

"The first, that of *Wiltshire* against *Prince*, (3 Hagg. 332,) in the Consistory court of London, was a suit brought by the father of a minor, for the purpose of setting aside the marriage of his son with a woman

servant in the family; wrong names had been used in the publication of the banns, and there was clear proof that both parties knew it, and that it was for the purpose of fraud; there was no doubt of the fact of both parties being cognizant of the undue publication of banns before the marriage, and the court accordingly pronounced it void; that case therefore is important only, as showing the construction put upon the words of the act of parliament, by the learned judge of that court, namely, that both parties must be cognizant of the undue publication of banns; nothing was there determined as to the nature of the proof required.

"The second case cited, was that of *The King* against *The Inhabitants of Wroston*, (4 B. & Ad. 640,) which was a question sent by the quarter sessions for the opinion of the court of King's Bench. The facts were found by the justices, and the court was bound by them; on what evidence the justices came to the conclusion of the fact does not appear; but they stated, that the woman was ignorant of the false publication, although the names used were very different from the true names.

"The decision of the King's Bench, on the facts found by the justices was, that as the woman did not know of the false publication of banns, the marriage was good; in fact, it goes no further than to adopt and confirm the construction which had been put upon the statute in the case of *Wiltshire v. Prince*. (3 Hagg. 332.) These cases, therefore, prove nothing more than that in order to render a marriage null and void, by reason of undue publication of banns, both parties must be shown to have been cognizant of the undue publication before the celebration of the marriage.

"But the case more particularly relied upon, as applicable to the case now before the court, was that of *Hadley v. Reynolds*, which occurred in this court, but has not yet been reported. The circumstances of that case were extremely different from the present; there the husband, after a cohabitation of three years and a half, and the birth of a child, sought to set aside his own marriage, he himself having caused the banns to be published;—it was so pleaded on his part. He was a clergyman of twenty or twenty-seven years of age, the woman twenty-two, both were therefore at full liberty to contract marriage: no rights of third parties were invaded. The woman having no occasion to have recourse to fraudulent concealment, nor having any reason to suppose, that fraud was to be committed, there was no evidence to show, that she was at all acquainted with the intention as to false names; the banns were published at Birmingham, she was at Worcester: there was not any ground to presume, that there was any previous knowledge on her part of the undue publication: that it was not answered, during the ceremony, to the wrong name, and also after the marriage, against

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to be solemn-

Prayer, upon three Sundays preceding the solemnization of marriage, during the time of morning service, or of evening service, (if there shall be no morning service

that name in the register; those were the only circumstances from which her knowledge could be inferred, and the court rightly holding, that in such a case the strictest proof was necessary, was of opinion, that those circumstances alone were not sufficient evidence of the fact.

"But what is the present case? A woman, situated as I have described, persuades, for so I must presume, a boy not half so old as herself, to marry her; she knowing that he had a father, who would disapprove of the marriage, gives instructions for the publication of the banns, omitting that, which must be considered as the only real baptismal name of the minor, and this for the purpose of fraud, the parties being in constant and daily communication with each other; they proceed to Bristol on the morning of the marriage, and return to school the same day, when they resume their usual occupations, she superintending her brother's pupils, he continuing his education; no one of his schoolfellows nor any one else suspecting that any connexion existed between them. It is precisely the case against which the legislature must have intended to provide; the maxim *semper præsumitur pro matrimonio*, strongly applies to *Hadley's case*, but not to this, where fraud was meditated by both parties, and which it may not unjustly be presumed, that both were acquainted with the means by which that fraud was to be carried into effect.

"On the whole, I cannot bring my mind to doubt, that both parties knowingly and wilfully intermarried without due publication of banns, and I therefore pronounce for the appeal, retain the principal cause, and declare the marriage to be null and void."

In *Wright v. Elwood*, (1 Curt. 669,) Sir Herbert Jenner stated, "... It has been maintained, that the publication of banns of a woman who is already married, and whose husband is alive, is a mere nullity; that it is not properly an undue publication of banns, but it is no publication at all, and that it would be contrary to the policy of the law if the court were to uphold a marriage not preceded by any publication of banns, nor by a licence; and it has been also stated, that such was the case, even before the passing of the first Marriage Act, (26 Geo. 2, c. 33.) in 1754. But I confess I do not feel very strongly the force of that argument; for, as far as I can understand the principle upon which marriages are made null and void, on these grounds, under the act, it is, that where false names are used intentionally, with a view of deceiving the public, it is no publication at all. So that in the case of the publication of false names, the publication is a mere nullity. In *Pouget v. Tomkins*, (2 Consist. 146,) Lord Stowell said, 'The clear intention of the act is, that the true names of the parties should be published, and if they are not so published, it is no publication: no notice is given, and no opportunity is afforded to any one to allege an impediment. It has been constantly held, therefore, since the case of *Early v. Stevens*,' which was in 1785, and I believe the earliest case under the Marriage Act, 'that a publication in false names is no publication.' 'And on no other principle could such a case have been brought under the provisions of that act, where the terms made use of are, "without publication of banns;" it does not speak of "undue publication;" but that statute required that a marriage should be preceded by publication of banns, or by licence. It seems to me, that a marriage was void under that statute only where there had been no publication; undue publication was not sufficient, unless it amounted to the absence of all publication.'

"This was the state of the law under the 26 Geo. 2, c. 33. Before that statute, marriages, without publication of banns or any religious ceremony, contracts *per verba de præsentibus*, might be good and valid, though irregular; the parties and the minister might be liable to punishment, but the *vinculum matrimonii* was not affected. After the passing of the act 26 Geo. 2, c. 33, marriages were placed on a different footing, as to banns and licences; a certain degree of regularity was essential to the validity of the marriage contract, and marriages not preceded by banns or licence, were null and void. In that act, however, there was no provision for the protection of innocent parties, and many cases are in the recollection of the court in which it had produced very injurious consequences. Parties even guilty of actual fraud having obtained a separation without the possibility of doing justice to the party not cognizant of the fraud.

"This state of things continued many years, but at length the legislature interfered to prevent the mischievous effects resulting from the provisions of this act, and to soften the rigour of the existing law.

"I pass by the act 3 Geo. 4, which existed but for a short time, and I proceed to the act 4 Geo. 4, c. 76, which was in force at the time of this marriage, and is the law which is applicable to it.

"This act begins by repealing all the former acts then in force. Part of the act 26 Geo. 2 had been repealed by the act 3 Geo. 4, but still part remained in force, and the remainder of that act, as well as the 3 Geo. 4, was repealed, so that, at that time, if the legislature had done no more, the common law and general law, as it existed before the marriage, would have been good and valid without any publication of banns or licence. But the legislature did not stop here; it went further, and declared, in the 22nd section, that where parties shall intermarry, knowingly and wilfully, without due publication of banns or licence, the marriage shall be null and void. It has not adopted the terms of the former act, declaring that marriages shall not be solemnized 'without publication of banns,' but the legislature has said: 'If any persons shall knowingly and wilfully

in such church or chapel upon the Sunday upon which such banns shall be so published,) immediately after the second lesson; and whensoever it shall happen that the persons to be married shall dwell in divers parishes or chapelries, the banns shall in like manner be published in the church or in any such chapel as aforesaid belonging to such parish or chapelry wherein each of the said persons shall dwell; and that all other the rules prescribed by the said rubrick concerning the publication of banns and the solemnization of matrimony, and not hereby altered, shall be duly observed; and that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever.

“III. And be it further enacted, that the bishop of the diocese, with the consent of the patron and the incumbent of the church of the parish in which any public chapel having a chapelry thereunto annexed may be situated, or of any chapel situated in an extra-parochial place, signified to him under their hands and seals respectively, may authorize by writing under his hand and seal, the publication of banns and the solemnization of marriages in such chapel for persons residing within such chapelry or extra-parochial place respectively; and such consent, together with such written authority, shall be registered in the registry of the diocese.

“IV. Provided always, and be it enacted, that in every chapel in respect of which such authority shall be given as aforesaid, there shall be placed in some conspicuous part of the interior of such chapel a notice in the words following: ‘Banns may be published and Marriages solemnized in this Chapel.’

“V. Provided always, and be it further enacted, that all provisions now in force, or which may hereafter be established by law, relative to providing and keeping marriage registers in any parish churches, shall extend and be construed to extend to any chapel in which the publication of banns and solemnization of marriages shall be so authorized as aforesaid, in the same manner as if the same

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nized where banns published.

Bishop, with consent of patron and incumbent, may authorize publication of banns in any public chapel.

Notice to be placed in such chapel.

Provisions relative to marriage registers extended to chapels so

intermarry without due publication of banns, or licence, from a person or persons having authority to grant the same, first had and obtained, the marriages of such persons shall be null and void, to all intents and purposes whatsoever;’ thereby, as I have stated, softening the rigour of the former law, under the 26 Geo. 2. And according to the construction put upon this section by the Consistory court of London, (*Wiltshire v. Prince*, 3 Hagg. 332,) by this court during the time of my predecessors, (*Hadley v. Reynolds*, not reported,) as well as in my own time, (*Tongue v. Allen*, 1 Curt. 38,) by the court of King’s Bench, (*Rex v. Wroston (Inhabitants of)*, 4 B. & Ad. 640,) and I think I might say by the judicial committee of the Privy Council, (*Tongue v. Tongue*, 1 Moore’s P. C. Ca. 90,) (though, perhaps, the point has not received an actual and direct decision of the latter tribunal,) where the parties are not both cognizant of the false name, the marriage cannot be declared void. It is necessary, that both the parties should be accessory to the fraud; the act of one will not operate to the prejudice of the other, unless a participator.

“The question then is, as the act speaks of marriages ‘without due publication of banns,’ what is the consequence, where there is no publication of banns? For, according to Lord *Stowell*, in the case to which I have adverted, the publication of banns, in a false name, is equivalent to no publication. The court can see no difference between the cases, which stand precisely on the same grounds; nor does there seem a reason why there should be a difference; the fraud is the same

in both; the remedy is the same in both.

“It is, however, contended that the words, ‘without due publication of banns,’ used in the statute 4 Geo. 4, c. 76, do not extend to cases of marriage not preceded by any publication of banns, as there are no words in the act to that effect; but if that were so, the former Marriage Act being repealed altogether, upon its repeal, the general law was revived, and came into operation, and continues to be in operation, except so far as it is qualified and restrained by the 4 Geo. 4, c. 76, the only act now in operation; and unless this act extends to cases of marriage not preceded by any publication of banns, as distinguished from undue publication, a marriage, where a false name was used, would be a good and valid marriage. But I have no doubt, that a marriage, which has not been preceded by any publication of banns at all, is a marriage within the meaning of the terms, that is, a marriage without due publication of banns. Marriages without due publication of banns, are declared null and void, and I should be glad to know how it is possible, that that can be a *due publication of banns*, which is no publication at all, and how it can be contended with any effect, that marriages, where the publication of banns is a mere salaried act, are distinguished from marriages where a *due publication of banns*.”

It may be here remarked that in *James v. Aldrich (Clerk)*, 2 Wils. 71, a *curate* was granted to a *curate* in the *parish* of *St. Martin* for marrying without banns or licence, because it was a matter of *conscience* to him.

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4, c. 76.

authorized as
aforesaid.

Book to be
provided for
the registra-
tion of banns,
&c.

Notice of the
names and
place and time
of abode of
parties to be

were a parish church; and everything required by law to be done relative thereto by the churchwardens of any parish church shall be done by the chapelwarden or other officer exercising analogous duties in such chapel.

"VI. And be it further enacted, that on or before the said first day of November, and from time to time afterwards as there shall be occasion, the churchwardens and chapelwardens of churches and chapels wherein marriages are solemnized shall provide a proper book of substantial paper, marked and ruled respectively in manner directed for the *register book of marriages* (1); and the banns shall be published from the said register book of banns by the officiating minister, and not from loose papers, and after publication shall be signed by the officiating minister, or by some person under his direction.

"VII. Provided always, and it is hereby further enacted, that *no parson, vicar, minister, or curate shall be obliged to publish the banns of matrimony between any persons whatsoever* (2), unless the persons to be married shall, seven days at the

(1) *Register book of marriages*:—In *Parson's case*, (1 Irish Circ. Rep. 800,) it was held, that the entry of a marriage in a parish register may be proved by the production of a copy, proved to have been made by the clergyman from the book which he called the register, and which the witness examined with him, without producing the clergyman, or otherwise proving the register. The prisoner was indicted for bigamy, and it appeared, that he had been married, in 1812, in Ireland, to Martha Grey, who was still living; and, in 1832, he was married, at Southampton, in England, to Thompson Halsey. The indictment averred that he had been apprehended at Glenreagh, in the county of Donegal. At the time of the first marriage, the prisoner was a member of the established church, and Martha Grey was a presbyterian; and they had been married by the presbyterian minister of the congregation of Letterkenny, in the county of Donegal. The second marriage had been performed in the parish church of Southampton, by the vicar of the parish.

In order to prove the second marriage, the father of Thompson Halsey, who was present at it, and Thompson Halsey herself, were produced and examined. They proved that the prisoner had been married at the time alleged, and in the parish church of Southampton, by the Rev. Mr. Shrubb, to Thompson Halsey. A document was then produced, which Thompson Halsey swore was copied by the said Mr. Shrubb, in her presence, from a book in his possession, which he stated to her, was the register of marriages for the parish of Southampton, and that such copy was compared with the register, by Mr. Shrubb's reading the book while she read the copy, and that it was a correct copy, and was signed by Mr. Shrubb. He was not produced, nor was any other evidence given of the register. The counsel for the crown were about reading that copy; when the counsel for the prisoner, objected that it could not be read; because there was not sufficient evidence, that it was an examined copy of the extract from the register. It should be shown, that the book from which it was copied was, in fact, the register; but the evidence as to that, was only hearsay of hearsay. The counsel for the crown contended, that it was sufficient, if the book were produced by the proper officer as the register.

Upon such facts and arguments, Mr. Serjeant Warren observed: "... This point has been already decided in the *case of Walker v. Buchanan*, (6 C. & P. 552,) upon the principle, that where the law authorizes a person to give extracts from a book in his custody, the law presumes that he will do his duty, and give correct extracts. I therefore think, that the document produced is sufficiently proved to be an examined copy of the register, and I accordingly admit it."

(2) *No parson, vicar, minister, or curate shall be obliged to publish the banns of matrimony between any persons whatsoever*:—This language is an adoption of that, which is embodied in Stat. 26 Geo. 2, c. 33, s. 2, (*ante* 848,) upon which Lord Chancellor Eldon, in *Nicholson v. Squire*, (16 Ves. 260,) made the following observations:—"With regard to the clergyman, a notion seems to prevail, that everything is correct, if a paper describing the parties, between whom banns are to be published, being handed up to the clergyman in the usual manner during the service, he publishes them, without more. It is true, that a marriage by banns is good; though neither of the parties was resident in the parish: but, if a clergyman, not using due diligence, marries persons, neither of whom is resident in the parish, he is liable at least to ecclesiastical censure; perhaps to other consequences. It has been uniformly said, especially as to marriages in London, that the clergyman cannot possibly ascertain, where the parties are resident: but that is an objection, which a court, before whom the consideration of it may come, cannot hear. The act of parliament, (Stat. 26 Geo. 2, c. 33,) has given the means of making the inquiry: and, if the means provided are not sufficient, it is not a valid excuse to the clergyman, who has not used those means, that he could not find out where the parties were resident, or either of them. If he has used the means given to him, and was misled, he is excusable; but he can never excuse himself, if no inquiry was made. The habit of taking the description of the parties in this loose way makes it very excusable in the individual clergyman; but that is not the notice, intended by the act of parliament; which has a clause, (sect. 2,) expressly requiring, that no parson, vicar, minister, or curate, shall be obliged to publish banns, unless the persons to be married shall,

least before the time required for the first publication of such banns respectively, deliver or cause to be delivered to such parson, vicar, minister, or curate, a notice in writing, dated on the day on which the same shall be so delivered, of their *true Christian names and surnames* (1), and of the house or houses of their respective

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4, c. 76.

given to minister seven days before publication of banns.

seven days at least before the time, required for the first publication of such banns, respectively deliver or cause to be delivered to such parson, &c., a notice in writing of their true Christian and surnames, and (not of the parish, but) of the house or houses of their respective abodes within such parish, &c.; and of the time, during which they have dwelt, inhabited, or lodged, in such house or houses respectively. The clergyman, therefore, has only to repair to the house, in which they are represented to have lived; and to inform himself whether the statement is true. The explanation given by this gentleman, satisfies me, that he did not mean ill; but, recollecting the extreme difficulty Lord *Thurlow* had to avoid committing Dr. Markham, I did not think, I ought to permit this subject to come to a conclusion without stating publicly the law upon it." Vide *Priestley v. Lamb*, 6 Ves. 421. *Millet v. Rowe*, 7 Ibid. 419. *Bathurst v. Murray*, 8 Ibid. 74; and 1 Ves. 155 in not.

(1) *True Christian names and surnames*:—Stat. 26 Geo. 2, c. 33, s. 2, (*ante* 848,) contains in effect similar words. In *Rex v. Billinghurst* (*Inhabitants of*), (3 M. & S. 250,) where a person whose baptismal and surname was Abraham Langley, was married by banns by the name of George Smith, having been known in the parish where he resided, and was married, by that name only, from his first coming into the parish, till his marriage, which was about three years, it was held, that the marriage was valid:—Lord *Ellenborough* observing, "All that the law requires on this subject is, that marriages shall be solemnized either by licence, or publication of banns, otherwise the Stat. 26 Geo. 2, c. 33, s. 8, declares, that they shall be void. The statute does not specify what shall be necessary to be observed in the publication of banns; or that the banns shall be published in the true names; but certainly it must be understood, as the clear intention of the legislature, that the banns shall be published in the true names, because it requires, that notice in writing shall be delivered to the minister, of the true Christian and surnames of the parties, seven days before the publication; and unless such notice be given, he is not obliged to publish the banns. The question then is, has there been in this case, that which is required, a due notification by the minister, on a Sunday, in time of divine service, of one of the persons intending to contract marriage. Now it appears, that such notification has been made by the name of George Smith, by which name alone the party was known in the place where he resided, and which he had borne for three years prior to the celebration of the marriage, in that place, and that he was not known there by any other name. It would lead to perilous consequences, if in every case an inquiry were to be instituted, at the hazard of endangering the marriage of a woman, who had every

reason to think she was acquiring a legitimate husband, whether the name by which the husband was notified in the banns were strictly his baptismal name, or whether at the period of his baptism, he may not have received some other name. What the consequences might be of encouraging such inquiries, as to the avoiding of marriages, and bastardizing the issue of them, it is not very difficult to imagine. The object of the statute in the publication of banns was to secure notoriety, to apprise all persons of the intention of the parties to contract marriage; and how can that object be better attained, than by a publication in the name by which the party is known? If the publication here had been in the name of Abraham Langley, it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman, who probably was known, would perhaps have led those who knew her, and knew that she was about to be married to a person of another name, to suppose, either that these were not the same parties, or that there was some mistake. Therefore the publication in the real name, instead of being notice to all persons, would have operated as a deception; and it is strictly correct to say, that the original name in this case would not have been the true name within the meaning of the statute. On these grounds, I think that the act only meant to require, that the parties should be published by their known and acknowledged names, and to hold a different construction would make a marriage by banns a snare, and in many instances a ruin upon innocent parties. The court, therefore, cannot lend itself to a construction, which would be pregnant with such consequences." Vide etiam *M'Anerney's case*, 1 Irish Circ. Rep. 270.

In *Clowes v. Clowes*, (3 Curt. 190,) Sir *Herbert Jenner* *Just* observed, "... Where there has been no error as to the person, and no fraud practised in obtaining the licence, that is, such fraud as, if known, would have prevented the granting of the licence, the marriage cannot be voided. This I consider as the result of the decisions in *Cope v. Burt*, (1 Consist. 434,) and *Cockburn v. Garnault*, (cit. Ibid. 435.) ... The only fraud that can be relied upon in this case, consists in the substitution of the name of 'Terry' for that of 'Jones.' I can find no fraud in the mode of obtaining the licence. ... There was no *error de personâ*, although there may have been *error nominis*. But in point of fact, in all these cases, the distinction has been established between a marriage by banns and a marriage by licence. The publication of banns is a notice to all the world, that the two parties intend to contract a marriage, and the words of the act of parliament are direct, 'That the true Christian and surname of the parties must be used,' and, therefore, if the banns are published in

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4, c. 76.

Ministers not punishable for marrying minors without consent of parents, &c., unless they have notice of dissent; if dissent publicly declared, publication of banns void.

Republication of banns necessary if marriage not solemnized within three months.

Licences to be granted to marry in the church, &c. of such parish only wherein one of the parties resided for fifteen days before.

Where *cessat* entered, no licence to issue till matter examined by judge.

Parishes where no church or chapel, and extra-parochial places, deemed to belong to any adjoining parish, &c.

Where churches are demolished or under repair, banns to be proclaimed in a church or chapel of an adjoining parish, &c.

abodes within such parish or chapelry as aforesaid, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively.

"VIII. Provided always, and be it enacted by the authority aforesaid, that no parson, minister, vicar, or curate, solemnizing marriages after the first day of November next, between persons both or one of whom shall be under the age of twenty-one years, after banns published, shall be punishable by ecclesiastical censures for solemnizing such marriages without consent of parents or guardians, unless such parson, minister, vicar, or curate shall have notice of the dissent of such parents or guardians; and in case such parents or guardians, or one of them, shall openly and publicly declare or cause to be declared, in the church or chapel where the banns shall be so published, at the time of such publication, his, her, or their dissent to such marriage, such publication of banns shall be absolutely void.

"IX. And be it further enacted, that whenever a marriage shall not be had within three months after the complete publication of banns no minister shall proceed to the solemnization of the same until the banns shall have been republished on three several Sundays, in the form and manner prescribed in this act, unless by licence duly obtained according to the provisions of this act.

"X. (1) And it is hereby further enacted, that no licence of marriage shall from and after the said first day of November be granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences to solemnize any marriage in any other church or chapel than in the parish church or in some public chapel of or belonging to the parish or chapelry within which the usual place of abode of one of the persons to be married shall have been for the space of fifteen days immediately before the granting of such licence.

"XI. And be it further enacted, that if any *cessat* be entered against the grant of any licence for a marriage, such *cessat* being duly signed by or on the behalf of the person who enters the same, together with his place of residence and the ground of objection on which his *cessat* is founded, no licence shall issue till the said *cessat*, or a true copy thereof, be transmitted to the judge out of whose office the licence is to issue, and until the judge has certified to the register that he has examined into the matter of the *cessat*, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the *cessat* be withdrawn by the party who entered the same.

"XII. Provided always, and be it further enacted, that all parishes where there shall be no parish church or chapel belonging thereto, or none wherein divine service shall be usually solemnized every Sunday, and all extra-parochial places whatever, having no public chapel wherein banns may be lawfully published, shall be deemed and taken to belong to any parish or chapelry next adjoining, for the purposes of this act only; and where banns shall be published in any church or chapel of any parish or chapelry adjoining to any such parish or chapelry where there shall be no church or chapel, or none wherein divine service shall be solemnized as aforesaid, or to any extra-parochial place as aforesaid, the parson, vicar, minister, or curate publishing such banns shall, in writing under his hand, certify the publication thereof in the same manner as if either of the persons to be married had dwelt in such adjoining parish or chapelry.

"XIII. (2) Provided always, and be it further enacted and declared, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid; and

the false names of both parties, the marriage is invalid. A licence is a dispensation from the necessity of publication of banns, and is granted on such terms and conditions as the ordinary is willing to accept; in this case, the terms are contained in the affidavit to

lead the licence, and on the oath of the party, the licence was granted, and the parties married;—a marriage so solemnized, is not to be set aside on slight grounds."

(1) *Vide* Stat. 6 & 7 Gul. 4, c. 85, s. 1.

(2) *Vide* Stat. 5 Geo. 4, c. 32.

STAT. 4 GEO.
4, c. 76.

If the father of
minor be *non*
compos mentis,
or if guardians
or mother of
minor be *non*
compos mentis,
or beyond sea,
&c. parties
may apply to
the lord chan-
cellor.

Surrogate to
take oath of
office.

the marriage of such party so under age, unless there shall be no person authorized to give such consent.

"XVII. And be it further enacted, that *in case the father or fathers of the parties to be married, or of one of them, so under age as aforesaid shall be non compos mentis, or the guardian or guardians, mother or mothers, or any of them whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be non compos mentis, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent* (1) to a proper marriage, then it shall and may be lawful for any person desirous of marrying, in any of the before-mentioned cases, to apply by petition to the lord chancellor, lord keeper, or the lords commissioners of the great seal of Great Britain for the time being, master of the rolls, or vice-chancellor of England, who is and are respectively hereby empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to be proper, the said lord chancellor, lord keeper, or lords commissioners of the great seal for the time being, master of the rolls, or vice-chancellor, shall judicially declare the same to be so; and such judicial declaration shall be deemed and taken to be as good and effectual, to all intents and purposes, as if the father, guardian or guardians, or mother of the person so petitioning, had consented to such marriage.

"XVIII. Provided always, and be it enacted, that from and after the said first day of November no surrogate hereafter to be deputed by any ecclesiastical judge, who hath power to grant licences, shall grant any such licence until he hath taken an oath before the said judge, or before a commissioner appointed by commission under the seal of the said judge, which commissioner the said judge is hereby authorized to issue, faithfully to execute his office according to law, to the best of his knowledge, and hath given security by his bond in the sum of one hundred pounds to the bishop of the diocese, for the due and faithful execution of his said office.

quired for the marriage of such party so under age, unless there shall be no person authorized to give such consent." The language of this section is merely to require consent; it does not proceed to make the marriage void, if solemnized without consent. Then the twenty-second section declares, that certain marriages shall be null and void, and a marriage by licence without consent is not specified. Thus far, therefore, the question depends upon the direction in the sixteenth section; and if there were any doubt upon the construction of that section, it would be removed by the twenty-third, which enacts, that "if any valid marriage solemnized by licence shall be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under age, by means of falsely swearing to any matter to which such party is required personally to depose," *not* that the marriage shall be void, but that all the property accruing from the marriage shall be forfeited, and shall be secured for the benefit of the innocent party, or the issue of the marriage. This is a penalty for disobeying the direction of the legislature given in the sixteenth section, and is calculated to prevent fraudulent and clandestine marriages, by depriving the guilty party of the pecuniary benefit, which is most commonly the inducement moving to the fraud. For these reasons it appears to us that the marriage in this case is valid, and the order of sessions right."

(1) *In case the father . . . shall be non compos mentis, or in parts beyond the seas, or shall unreasonably or from undue motives*

refuse or withhold his . . . consent:—

In Exp. I. C. an infant, (3 M. & C. 471.) it was holden, that the foregoing language did not apply to the case of a father who is beyond the seas, or unreasonably withholds his consent, but only to a case in which he is *non compos mentis*:—Lord Chancellor Coltenham observing, "that, in his opinion, the words 'any of them whose consent,' &c., referred to the persons named in the immediately preceding member of the sentence, viz., 'the guardian or guardians, mother or mothers,' and that the discretionary power of consent vested in the judges of this court, in case the consent should be withheld unreasonably, or from undue motives, applied exclusively to the case of such guardian or mother so acting. As, however, the point had been under the vice-chancellor's consideration, he should take an opportunity of conferring with his honor upon it." Upon a subsequent day, the lord chancellor said, "he had seen the vice-chancellor on the subject of the construction to be put on the Marriage Act in this case. They had looked at the act together; and they were clearly of opinion that its provisions did not extend to the case of a father beyond seas, or unreasonably withholding his consent, but solely to the case of a father who was *non compos*. There could be no doubt, that the order in *Exp. Cooper* would not have been made, if the act had been properly brought under his honor's attention at the time. The date of the order, being the 19th of August, afforded a very sufficient explanation of the circumstances under which that order was obtained."

"XIX. And be it also enacted, that whenever a marriage shall not be had within three months after the grant of a licence by any archbishop, bishop, or any ordinary or person having authority to grant such licence, no minister shall proceed to the solemnization of such marriage until a new licence shall have been obtained, unless by banns duly published according to the provisions of this act.

"XX. Provided always, and be it further enacted, that nothing hereinbefore contained shall be construed to extend to deprive the Archbishop of Canterbury and his successors, and his and their proper officers, of the right which hath hitherto been used, in virtue of a certain statute made in the twenty-fifth year of the reign of the late King Henry the Eighth, intituled, 'An Act concerning Peter Pence and Dispensations,' of granting special licences to marry at any convenient time or place.

"XXI. (1) And be it further enacted, that if any person shall, from and after the said first day of November, solemnize matrimony in any other place than a church, or such public chapel wherein banns may be lawfully published, or at any other time than between the hours of eight and twelve in the forenoon, unless by special licence from the Archbishop of Canterbury, or shall solemnize matrimony without due publication of banns, unless licence of marriage be first had and obtained from some person or persons having authority to grant the same; or if any person, falsely pretending to be in holy orders, shall solemnize matrimony according to the rites of the church of England; every person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of felony, and shall be transported for the space of fourteen years, according to the laws in force for transportation of felons: provided that all prosecutions for such felony shall be commenced within the space of three years after the offence committed.

"XXII. Provided always, and be it further enacted, that if any persons shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns may be lawfully published, unless by special licence as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or licence from a person or persons having authority to grant the same (2), first had and obtained, or shall knowingly and wilfully consent to or acquiesce in the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever.

"XXIII. And be it further enacted, that if any valid marriage solemnized by licence shall, after the said first day of November next, be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, contrary to the provisions of this act, by means of such party falsely swearing as to any matter or matters to which such party is hereinbefore required personally to swear, such party wilfully and knowingly so swearing; or if any valid marriage by banns shall, after the said first day of November next, be procured by a party thereto to be solemnized by banns between persons, one or both of whom shall be under the age of twenty-one years, not being a widower or widow, such party knowing that such person as aforesaid under the age of twenty-one years had a parent or guardian then living, and that such marriage was had without the consent of such parent or guardian, and knowing that banns had not been duly published according to the

STAT. 4 GEO.
4, c. 76.

If marriages by licence be not solemnized within three months, new licence to be obtained.

Right of Archbishop of Canterbury to grant special licences.

Persons solemnizing marriage in any other place than a church or chapel, or without banns or licence, or under pretence of being in holy orders, shall be transported. Prosecution to be commenced within three years.

Marriage to be void where persons wilfully marry in any other place than a church, &c. or without banns or licence.

When marriage solemnized between parties under age contrary to this act, by false oath, or fraud, the guilty party to forfeit all property accruing from the marriage.

(1) Vide Stat. 6 & 7 Gul. 4, c. 85, s. 39.

(2) Licence from a person or persons having authority to grant the same:—The marriage of parties under a licence from "a person not having authority to grant the same," is not void by Stat. 4 Geo. 4, c. 76, s. 22, unless both parties knowingly and wilfully intermarry by virtue of such licence: thus, in *Dormer v. Williams*, (1 Curt. 870,) Dr. Lushington observed, "Now with respect to the words in the clause in question, 'a licence from a person or persons having authority to grant the same,' the following

considerations arise: whether they mean authority to grant a licence at all, or authority to grant the particular licence required on the occasion. I am willing, for the present purpose, to take it, that they mean the particular licence required on the occasion; then, in my judgment, the whole question turns upon this; whether the facts and circumstances are such as to prove that both parties knowingly and wilfully intermarried without a licence from a person having authority to grant that licence."

STAT. 4 GEO.
4, c. 76.

provisions of this act, and having knowingly caused or procured the undue publication of banns, then and in every such case it shall be lawful for his majesty's attorney-general (or for his majesty's solicitor-general in case of the vacancy of the office of attorney-general) by information in the nature of an English bill in the court of Chancery or court of Exchequer, at the relation of a parent or guardian of the minor, whose consent has not been given to such marriage, and who shall be responsible for any costs incurred in such suit, such parent or guardian previously making oath as is hereinafter required, to sue for a forfeiture of all estate, right, title, and interest in any property which hath accrued or shall accrue to the party so offending by force of such marriage; and such court shall have power in such suit to declare such forfeiture, and thereupon to order and direct that all such estate, right, title, and interest in any property, as shall then have accrued or shall thereafter accrue to such offending party, by force of such marriage, shall be secured under the direction of such court for the benefit of the innocent party, or of the issue of the marriage, or of any of them, in such manner as the said court shall think fit, for the purpose of preventing the offending party from deriving any interest in real or personal estate, or pecuniary benefits from such marriage; and if both the parties so contracting marriage shall, in the judgment of the court, be guilty of any such offence as aforesaid, it shall be lawful for the said court to settle and secure such property, or any part thereof, immediately for the benefit of the issue of the marriage, subject to such provisions for the offending parties, by way of maintenance or otherwise, as the said court, under the particular circumstances of the case, shall think reasonable, regard being had to the benefit of the issue of the marriage during the lives of their parents, and of the issue of the parties respectively by any future marriage, or of the parties themselves, in case either of them shall survive the other: provided also, that no such information as aforesaid shall be filed, unless it shall be made out to the satisfaction of the attorney or solicitor-general before he files the same, by oath or oaths sworn before one of the masters in ordinary in Chancery, or before one of the barons of the Exchequer, and which they are hereby respectively empowered to administer, that the valid marriage to be complained of in such information hath been solemnized in such manner, and under such circumstances, as in the judgment of the said attorney or solicitor-general are sufficient to authorize the filing the information under the provisions of this act, and that such marriage has been solemnized without the consent of the party or parties at whose relation such information is proposed to be filed, or of any other parent or guardian of the minor married, to the knowledge or belief of the relator or relators so making oath; and that such relator or relators had not known or discovered that such marriage had been solemnized more than three months previous to his or their application to the attorney or solicitor-general.

Previous
agreements to
be void.

"XXIV. And be it further enacted by the authority aforesaid, that all agreements, settlements, and deeds, entered into or executed by the parties to any marriage, in consequence of or in relation to which marriage such information as aforesaid shall be filed, or by either of the said parties, before and in contemplation of such marriage, or after such marriage, for the benefit of the parties or either or them, or their issue, so far as the same shall be contrary to or inconsistent with the provisions of such security and settlement as shall be made by or under the direction of such court as aforesaid, under the authority of this act, shall be absolutely void, and have no force or effect.

Information
to be filed
within one
year.

"XXV. Provided always, and be it further enacted, that any original information to be filed for the purpose of obtaining a declaration of any such forfeiture as aforesaid, shall be filed within one year after the solemnization of the marriage by which such forfeiture shall have been incurred, and shall be prosecuted with due diligence; and in case any person or necessary party to any such information shall abscond, or be or continue out of England, it shall be lawful for the court in which such information shall be filed, to order such person to appear to such information, and answer the same, within such time as to such court shall seem fit; and to cause such order to be served on such person at any place out of England, or to cause such order to be inserted in the *London Gazette*, and such other British or

foreign newspapers as to such court shall seem proper; and in default of such person appearing and answering such information within the time to be limited as aforesaid, to order such information to be taken as confessed by such person, and to proceed to make such decree or order upon such information as such court might have made if such person had appeared to and answered such information: provided always, that in case the person at whose relation any such suit shall have been instituted shall die pending such suit, it shall be lawful for the court of Chancery, if such court shall see fit, to appoint a proper person or proper persons at whose relation such suit may be continued.

"XXVI. Provided always, and be it further enacted, that after the solemnization of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of the actual dwelling of the parties in the respective parishes or chapelries wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual *place of abode* (1) of one of the parties, for the space of fifteen days as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage.

"XXVII. And be it further enacted, that in no case whatsoever shall any suit or proceedings be had in any ecclesiastical court in order to compel a celebration of any marriage *in facie ecclesie*, by reason of any contract (2) of matrimony whatsoever, whether *per verba de presenti*, or *per verba de futuro*, any law or usage to the contrary notwithstanding.

"XXVIII. (3) And in order to preserve the evidence of marriages, and to make the proof thereof more certain and easy, and for the direction of ministers in the celebration of marriages and registering thereof, be it enacted, that from and after the said first day of November all marriages shall be solemnized in the presence of two or more credible witnesses, besides the minister who shall celebrate the same; and that immediately after the celebration of every marriage an entry thereof shall be made in the register book provided and kept for that purpose as by law is now directed, or as shall be hereafter directed; in which entry or register it shall be expressed that the said marriage was celebrated by banns or licence, and if both or either of the parties married by licence be under age, not being a widower or widow, with consent of the parents or guardians, as the case shall be; and such entry shall be signed by the minister with his proper addition, and also by the parties married, and attested by such two witnesses; which entry shall be made in the form or to the effect following; that is to say,

"A. B. of { the } parish, and C. D. of { the } parish, were married in
this { church } by { banns, } with consent of { parents, } this
day of { chapel } by { licence, } guardians, }
in the year

"By me, J. J. { Rector.
Vicar.
Curate.

"This marriage was solemnized between us, { A. B.
C. D.

in the presence of { E. F.
G. H.

STAT. 4 GEO.
4, c. 76.

Proof of the actual residence of the parties not necessary to the validity of a marriage, whether after banns or by licence.

No suit shall be had to compel celebration of marriage by reason of any contract of marriage. Marriages to be in the presence of two witnesses, and to be registered;

and signed, &c.

Form.

(1) *Place of abode*.—The words of this section correspond with Stat. 26 Geo. 2, c. 33, s. 10 (*ante* 849). In *Tree v. Quin*, (2 Phill. 14,) a libel in a suit for nullity of marriage was admitted, so far as it pleaded, that banns were published under an additional Christian name, which did not belong to the woman, but that part of the libel was rejected, which charged "that neither she, nor her husband, were inhabitants of the parish in the church of which they were married; or had any house, lodging, or usual place

of abode therein." Sir William Scott stating, "I think the words of the act are so strong, as to bind the court not to admit the article respecting residence. The libel must be reformed as to that article, and admitted."

(2) *By reason of any contract*.—*Vide post*. 1244, *Rex v. Bampton (Inhabitants of)*, 10 East, 282.

(3) *Vide* Stat. 6 & 7 Gul. 4, c. 86, s. 1; and Stat. 7 Gul. 4 & 1 Vict. c. 1, s. 1.

STAT. 4 GEO.
4, c. 76.

Persons con-
victed of
making a false
entry;
or of forging,
&c. any such
entry;
or of forging,
&c. any
licence;

or of destroy-
ing such
register;

to be trans-
ported.

This act not to
affect marriages
of royal family.
Act not to
extend to
marriages of
Quakers and
Jews.
Two printed
copies of the
act to be sent to
the ministers
of the several
parishes, &c.,
of which one to
be kept in the
parish chest.
Act only to
extend to
England.

"XXIX. And be it further enacted by the authority aforesaid, that if any person shall, from and after the said first day of November, with intent to elude the force of this act, knowingly and wilfully insert or cause to be inserted in the register book of such parish or chapelry as aforesaid any false entry of any matter or thing relating to any marriage; or falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or act or assist in falsely making, altering, forging, or counterfeiting any such entry in such register; or falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or assist in falsely making, altering, forging, or counterfeiting any such licence of marriage as aforesaid; or utter or publish as true any such false, altered, forged, or counterfeited register as aforesaid, or a copy thereof, or any such false, altered, forged, or counterfeited licence of marriage, knowing such register or licence of marriage respectively to be false, altered, forged, or counterfeited; or if any person shall, from and after the said first day of November, wilfully destroy or cause or procure to be destroyed any register book of marriages, or any part of such register book, with intent to avoid any marriage, or to subject any person to any of the penalties of this act; every person so offending, and being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall suffer the punishment of transportation for life, according to the laws in force for the transportation of felons.

"XXX. Provided always, and be it enacted, that this act or anything therein contained shall not extend to the marriages of any of the royal family.

"XXXI. Provided likewise, and be it further enacted, that nothing in this act contained shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively.

"XXXII. And be it further enacted, that two printed copies of this act shall, as soon as conveniently may be after the passing of this act, be provided by his majesty's printer, and transmitted to the officiating ministers of the several parishes and chapelries in England respectively; one of which copies shall be deposited and kept, with the book containing the marriage register of such parish or chapelry, in the chest or box provided for the custody of the same.

"XXXIII. And be it further enacted, that this act shall extend only to that part of the United Kingdom called England."

STAT. 4 GEO.
4, c. 79. [Sc.]

LXIII. STAT. 4 GEORGII 4, c. 79(1). [SCOTLAND.] A.D. 1823.

"An Act for building additional Places of Worship in the Highlands and Islands of Scotland."

STAT. 4 GEO.
4, c. 86. [Ir.]

LXIV. STAT. 4 GEORGII 4, c. 86(2). [IRELAND.] A.D. 1823.

"An Act to amend the Laws for collecting Church Rates and Money advanced by the Trustees and Commissioners of the First-fruits of Ecclesiastical Benefices, and for the Improvement of Church Lands in Ireland."

"IX. And whereas great neglect and remissness have taken place in respect of the collection and payment, to the trustees and commissioners of the first-fruits of ecclesiastical benefices in Ireland, of the several sums or instalments of loans made by the said trustees and commissioners for the building and rebuilding of churches or chapels in Ireland, on the faith of parochial assessments, and the applotments for the repayment of such loans, as well as the assessments, have been rendered invalid from want of form therein, and alleged irregularities in respect of the

(1) Repealed in part, and other provisions made, by Stat. 5 Geo. 4, c. 90, and Stat. 3 & 4 Gul. 4, c. 13.

(2) Amended by Stat. 5 Geo. 4, c. 8; re-

pealed, and other provisions made, by Stat. 7 Geo. 4, c. 72; Stat. 3 & 4 Gul. 4, c. 37; Stat. 4 & 5 Gul. 4, c. 90; and Stat. 6 & 7 Gul. 4, c. 99.

changing the sites of churches and chapels; be it therefore declared and enacted, that all churches and chapels already erected and consecrated, or in which divine service is and has been celebrated with the consent of the incumbents or curates of such churches and chapels, and of the archbishops and bishops of the dioceses respectively, are and have been and shall be and be deemed and taken to be the churches and chapels of the respective parishes and districts in which they are respectively situate, notwithstanding that the consent of the lord lieutenant, or other chief governor or governors of Ireland, may not have been obtained to the changing the sites of such churches and chapels, and although the same may have been erected and built before the districts which should form the cures or parishes of such churches and chapels were described and ascertained.

“X. And be it further enacted, that all lands and grounds which have been or shall be granted and conveyed as and for the sites of such churches and chapels, or the churchyards belonging to the same, under the provisions of any act or acts for that purpose, or which shall have been or shall be granted or conveyed for the building of any school house, or for the endowment or in trust or for the use of any schoolmaster in Ireland, under the provisions of an act made in the fiftieth year of the reign of his late majesty King George the Third, intituled, ‘An Act for enabling Tenants in tail and for life, and also Ecclesiastical Persons, to grant Land for the Purpose of endowing Schools in Ireland;’ shall become and be and remain absolutely vested in the person or persons, bodies corporate or politic, to whom such lands or grounds was or were or shall be conveyed for any of the purposes aforesaid, free from all demands or claims of any body politic or corporate, or person or persons whatever, and without being at any time subject to any question as to any right, title, or claim thereto, or in any manner affecting the same.”

STAT. 4 GEO.
4, c. 86. [IR.]
Churches built before the site or district were duly ascertained, declared to be churches of their respective parishes.

Lands granted for sites of churches, &c. or for building schools under 50 Geo. 3, c. 33, shall remain vested in the persons, &c. to whom the same were conveyed.

LXV. STAT. 4 GEORGII 4, CAP. LXXXIX. A.D. 1823.

“An Act to repeal an Act passed in the fifty-fourth year of His late Majesty, for building a new Church within the Town and Parish of Liverpool, in the County Palatine of Lancaster, to vest the said Church and the Ground thereunto belonging in the Mayor, Bailiffs, and Burgesses of the Town of Liverpool; to authorize the Purchase of Land in the said Town to be appropriated to the Use of Public Cemeteries; and to restrict the Burial of Corpses in the present Cemeteries of the Parish Church and Parochial Chapel there.”

STAT. 4 GEO.
4, CAP.
LXXXIX.

LXVI. STAT. 4 GEORGII 4, c. 91. A.D. 1823.

“An Act to relieve His Majesty's Subjects from all Doubt concerning the Validity of certain Marriages solemnized Abroad (1).”

STAT. 4 GEO.
4, c. 91.

“Whereas it is expedient to relieve the minds of all his majesty's subjects from any doubt concerning the validity of marriages solemnized by a minister of the

(1) *Marriages solemnized Abroad*.—The validity of a marriage, celebrated in a foreign country, must be determined in an English court, by the *lex loci* where the marriage is solemnized. *Lacon v. Higgins*, D. & R. N. P. C. 38. 3 Stark. N. P. C. 178.

Thus, the articles of the law of France, which prescribe the forms essential to marriage, but which do not annul a marriage in fact, for non-observance of such forms, are, to be considered as merely directory. But parol evidence is admissible to show, that by the law of France, a marriage in fact, without observance of the requisites prescribed by the law of France, is void. *Ibid*.

A marriage between two protestant British subjects, solemnized by a Portuguese Roman catholic priest at Madras, according to the rites of the Roman catholic church, followed by cohabitation, but without the licence of the

governor, which it had been uniformly the custom to obtain, was in *Lautour v. Teesdale*, (8 Taunt. 830,) held to be a valid marriage.

A marriage between an Englishman and a domiciled French lady at the house of the British ambassador at Paris, by the chaplain to the embassy, is a valid marriage under Stat. 4 Geo. 4, c. 91. Thus, in *Lloyd v. Petitjean*, (2 Curt. 259,) Dr. Lushington observed, “In considering the admissibility of this libel, I think it most convenient to direct my attention, in the first instance, to the second marriage, pleaded to have taken place in the house of the British ambassador at Paris.

“The validity of this marriage must be supported, either by the law as it existed previous to the act of 1823, or by the law as affected by that statute. With respect to this act, I am not aware, that it has re-

STAT. 4 GEO.
4, c. 91.

church of England in the chapel or house of any British ambassador or minister residing within the country to the court of which he is accredited, or in the chapel

ceived, after discussion and deliberation, any judicial construction. I have taken some pains to ascertain, whether, in any court, this question has been judicially determined, namely, whether a marriage in the house of a British ambassador, one of the parties so married only being a British subject, is or is not excluded from the operation of the act? All I can find is, that a case (that of *O'Connor v. Ommamney*), occurred in the court of Chancery in 1837, in which the payment of a sum of money depended upon the validity of a marriage between a British subject and a native of Switzerland, solemnized in the house of the British ambassador at Naples, and the master reported, that a valid marriage had taken place; which report was not objected to, and being confirmed by the court, a decree passed accordingly. But I do not find that the point of law underwent any discussion or consideration, and I cannot, therefore, regard this case as a ruling decision. I begin by considering the words of the statute itself, without reference to any other *in pari materid*, and I may first observe, that it is a remedial statute, intended for the redress of what, in the judgment of the legislature, was a grievance and hardship, and according to all rules of legal construction, it is to receive such an interpretation as will meet the evil intended to be remedied; such a statute must have an extended, not a restricted construction. It is to relieve the minds of all her majesty's subjects from any doubt concerning the validity of these marriages; words which must be construed in an ample, not a confined sense. The statute certainly is not expressed in very satisfactory terms, because not a word is said as to whether it applies to marriages between British subjects alone, or in which one party only is British, or whether it comprehends all marriages solemnized in a British ambassador's chapel. On the other hand, there are no words of exclusion showing it was the intention of the legislature to confine the act exclusively to British subjects; it declares, that all marriages shall be valid, without exception, and I cannot see on what principle I can put a construction upon the act, which should exclude a marriage where one of the parties is a British subject, and the other a foreigner. If I were to do so, I should not carry the act into full effect, for I should not relieve the minds of all her majesty's subjects from doubt. I am, therefore, clearly of opinion, that, provided one of the parties be a British subject, a marriage under the circumstances of the present case, is valid under the act. This is the conclusion I have formed, from the statute itself; but another statute had been passed *in pari materid* that very year, (Stat. 4 Geo. 4, c. 67,) to render valid, marriages had at St. Petersburg, in the chapel of the Russia company, and in private houses, in which it is expressly enacted, that such marriages shall be good, whether both or one of the parties be British subjects; and it has been strongly and fairly contended, that if

the legislature had intended the same thing in the subsequent act, *in pari materid*, it would have used the same terms. But although it be undoubtedly a principle of law, that, in the construction of an act of parliament, you are to look at other statutes *in pari materid*, yet it is a dangerous doctrine to push too far, especially on the subject of marriage. I find, for instance, in a statute passed in the late reign, (Stat. 3 & 4 Gul. 4, c. 45,) 'to declare valid marriages solemnized at Hamburg, since the abolition of the British factory there;' the same purpose is intended, as in the St. Petersburg act, but the wording is not the same. I am not unaware of the very great danger that may arise from legalizing in England, marriages had in foreign countries; that the consequences may be these: you may have the *status* of the parties different in different countries; you may have the issue of a marriage legitimate in one country and illegitimate in another; and cohabitation prohibited in one country, and in another allowed. But these are considerations which fall within the province of the legislature, which has thought fit to pass this act, and it is my duty only to administer the law.

"I am of opinion, that the validity of this marriage cannot be impeached, and, consequently, that the libel must be rejected. It is unnecessary that I should enter into a consideration of the law of France, as pleaded, with reference to the first marriage, being of opinion that the second marriage is legal by virtue of the statute."

In *Res. v. Brampton (Inhabitants of)*, (10 East, 282,) it appeared, that British subjects in a foreign country, being desirous of intermarrying, went to a chapel for that purpose, where a service in the language of the country was read by a person habited like a priest, and interpreted into English by the officiating clerk; which service the parties understood to be the marriage service of the church of England; and they received a certificate of the marriage, which was afterwards lost:—it was held to be sufficient evidence whereon to found a presumption, (nothing appearing to the contrary,) that the marriage was duly celebrated according to the law of that country, particularly after eleven years' cohabitation as man and wife, till the period of the husband's death; and such British subjects being attached at the time to the British army, on service in such foreign country, and having military possession of the place, it seems that such marriage solemnized by a priest in holy orders, (of which this would be reasonable evidence,) would be a good marriage by the law of England, as a marriage contract *per verba de presenti* before the Marriage Act, marriages beyond sea being excepted out of that act; and it would make no difference, if solemnized by a Roman catholic priest.

A marriage in Ireland, performed by a clergyman of the established church of England, was in *Smith v. Maxwell*, (1 C. & P.

belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well as from any possibility of doubt concerning the *validity of marriages solemnized within the British lines* (1) by any chaplain or officer, or other person officiating under the orders of the commanding officer of a British army serving abroad; be it declared and enacted, and it is hereby declared and enacted, by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all such marriages as aforesaid shall be deemed and held to be as valid in law as if the same had been solemnized within his majesty's dominions, with a due observance of all forms required by law.

"II. Provided always, and be it further enacted, that nothing in this act contained shall confirm or impair or anywise affect, or be construed to confirm or to impair or anywise to affect, the validity in law of any marriages solemnized beyond the seas, save and except such as have been or shall be solemnized in the places, form, and manner, herein specified and recited."

STAT. 4 GEO.
4, c. 91.

Marriages solemnized abroad by ministers of the church of England, &c. declared as valid as if solemnized in his majesty's dominions. Not to affect the validity of marriages solemnized beyond seas.

LXVII. STAT. 4 GEORGH II 4, c. 96(2). A.D. 1823.

"An Act to provide, until the first day of July, One thousand eight hundred and twenty-seven, and until the end of the next Session of Parliament, for the better Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof; and for other Purposes relating thereto."

STAT. 4 GEO.
4, c. 96.

[Supreme courts to be courts of ecclesiastical jurisdiction.]

LXVIII. STAT. 4 GEORGH II 4, c. 99(3). [IRELAND.] A.D. 1823.

"An Act to provide for the establishing of Compositions for Tithes in Ireland for a limited Time."

STAT. 4 GEO.
4, c. 99. [Ir.]

271.) held to be valid, though it was celebrated in a room of a private house, and without any special licence having been granted to the parties.

A marriage celebrated in Scotland without banns or licence, has been held to be good. *Ex parte Hall*, 1 Rose, 30. *Dalrymple v. Dalrymple*, 2 Consist. 64. *Harford v. Morris*, *Ibid.* 430.

A marriage in Scotland by an infant who was an English subject, without consent, was held good by the court of Delegates. *Compton v. Bearcroft*, Bull. N.P. 113. And in *Ederton v. Iderton*, (2 Black. Hen. 145,) it was holden, that a marriage celebrated in Scotland, (but not between persons who go thither for the purpose of evading the laws of England,) will entitle the woman to dower in England. And that the lawfulness of such a marriage may be tried by a jury.

In *Robertson v. Crawford*, (3 Beav. 103,) it appeared, that A. B., a widow, who was entitled to a pension *durante viduitate*, cohabited with C. D. in Scotland. In regard to society, they held themselves out as man and wife; but with respect to the pension, they acted, as if they were unmarried; and A. B. half yearly, made solemn declarations of widowhood for the purpose of obtaining the pension: it was held, on exceptions, to the master's report, that, on the whole, he was right in finding, that no valid marriage had taken place.

(1) *Validity of marriages solemnized within the British lines*.—The marriage of an officer celebrated by a chaplain of the British army within the lines of the army

when serving abroad, is valid under Stat. 9 Geo. 4, c. 91, though such army is not serving in a country in a state of actual hostility, and though no authority for the marriage was previously obtained from the officer's superior in command. *Waldegrave Peerage*, 4 C. & F. 649.

If the marriage be not in accordance with the *lex loci* where celebrated, it will be invalid. *Scrimshire v. Scrimshire*, 2 Consist. 395; *Stephens on Nisi Prius*, 18, tit. MARRIAGES IN A FOREIGN COUNTRY. Where a marriage was solemnized at Antwerp, between two English persons, in the British church, by a protestant clergyman appointed by the English government, but without performance of the Belgian ceremonies: it was held to be void, as being contrary to the *lex loci*, and not coming within the provisions of the Marriage Act, which permits marriages abroad at an ambassador's, or at a factory chapel. *Kent v. Burgess*, 5 Jurist, 166.

A marriage celebrated at Rome between two persons, protestants, but who, it was alleged, had, in accordance with the law of Rome, abjured the protestant faith, and had been admitted into the Roman catholic church, was declared null and void, on the ground, that such abjuration was fraudulent and colourable, and that the parties never were, nor intended to become Roman catholics. *Swift v. Swift*, 3 Knapp, 303.

(2) Repealed by Stat. 9 Geo. 4, c. 83.

(3) *Vide* Stat. 5 Geo. 4, c. 63; Stat. 7 & 8 Geo. 4, c. 60; Stat. 2 & 3 Gul. 4, c. 119; Stat. 3 & 4 Gul. 4, c. 37; Stat. 3 & 4 Gul. 4, c. 100; and Stat. 1 & 2 Vict. c. 109.

STAT. 4 GEO.
4, CAP. CVI.

LXIX. STAT. 4 GEORGH II 4, CAP. CVI. A.D. 1823.

"An Act for more effectually repairing and improving the Roads leading from Whitechapel Church, in the County of Middlesex, unto Passingford Bridge, and through and to the end of the several Parishes or Places of Shenfield and Woodford, in the County of Essex, and for other Purposes relating thereto."

STAT. 4 GEO.
4, CAP. CXVII.

LXX. STAT. 4 GEORGH II 4, CAP. CXVII. A.D. 1823.

"An Act for building a Church or Chapel of Ease in the Hamlet of Far Town and Parish of Huddersfield, in the West Riding of the County of York."

STAT. 4 GEO.
4, CAP. CXVIII.

LXXI. STAT. 4 GEORGH II 4, CAP. CXVIII. A.D. 1823.

"An Act for extinguishing Tithes and Customary Payments in lieu of Tithes, and all Demands for Easter Offerings, within the London or City Liberty of Saint Andrew, Holborn, in the City of London, and for making Compensation in lieu thereof."

STAT. 5 GEO.
4, CAP. IV.

LXXII. STAT. 5 GEORGH II 4, CAP. IV. A.D. 1824.

"An Act to amend an Act made in the fourteenth year of the Reign of His late Majesty, for confirming certain Sales and Purchases made by the Governors of the Possessions, Revenues, and Goods of the Free Grammar School of King Edward the Sixth in Macclesfield, in the County of Chester, and to enable them to grant Building Leases of certain of their Estates, and to improve and extend the Benefits of the Foundation of the said School, and for other Purposes therein mentioned."

STAT. 5 GEO.
4, CAP. V.

LXXIII. STAT. 5 GEORGH II 4, CAP. V. A.D. 1824.

"An Act to amend and render more effectual an Act of His late Majesty, relative to the Asylum for Female Orphans."

STAT. 5 GEO.
4, C. 8. [IR.]

LXXIV. STAT. 5 GEORGH II 4, C. 8(1). [IRELAND.] A.D. 1824.

"An Act to amend an Act of the last Session of Parliament, for amending the Laws for the Improvement of Church Lands in Ireland."

4 Geo. 4, c. 86.

"Whereas by an act made in the last session of parliament, intituled, 'An Act to amend the Laws for collecting Church Rates, and Money advanced by the Trustees and Commissioners of the First-fruits of Ecclesiastical Benefices, and for the Improvement of Church Lands in Ireland,' it is among other things enacted and declared, that the several powers, provisions, and regulations, contained in an act made in the fifty-fifth year of the reign of his late majesty King George the Third, intituled, 'An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands belonging to their Benefices, for others of greater Value, or more conveniently situated for their Residence (2) and Occupation, and for annexing such Houses and Lands so taken in Exchange to such Benefices, as Parsonage or Glebe Houses and Glebe Lands, to become Glebe in certain Cases; and for other Purposes;' or such of the powers, regulations, and provisions, contained in the said act, as are applicable or shall be necessary to be applied to benefices in Ireland, shall and may be applied and put in execution for the carrying into effect the purposes of the said recited act with respect to benefices in Ireland, as fully and effectually, to all intents and purposes, as if all the clauses, powers, provisions, and regulations, in the said recited act contained, were repeated and inserted in the

85 Geo. 3,
c. 147.

(1) Other provisions have been made by 6 & 7 Gul. 4, c. 99.
Stat. 7 Geo. 4, c. 72; Stat. 3 & 4 Gul. 4, (2) Residence:—Vide Stat. 7 Geo. 4, c.
c. 37; Stat. 4 & 5 Gul. 4, c. 90; and Stat. 66.

body of the said act of last session of parliament, and as if the said clauses, powers, provisions, and regulations, of the said recited act of the said fifty-fifth year, had by the said act been expressly extended and referred to benefices in Ireland: and whereas doubts have arisen as to the application of certain powers contained in the said act of the fifty-fifth year of his late majesty's reign to the execution of the said act in Ireland; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in all cases where, in and by the said recited act of the said fifty-fifth year, any act, matter, or thing, is required to be done with relation to any number of acres of land in the said act mentioned, such acres shall be considered and interpreted to be Irish acres; and that where any act, matter, or thing, is by the said recited act required to be done by or with relation to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, every such act, matter, and thing shall be done in Ireland by and with relation to the trustees and commissioners of the first-fruits of ecclesiastical benefices in Ireland; and that where any act, matter, or thing, is by the said act required to be done by or with relation to the bank of England, or the high court of Chancery, or the lord high chancellor, lord keeper, or lords commissioners of the great seal, or the accountant-general of the court of Chancery in England, every such act, matter, and thing, shall be done in Ireland by and with relation to the bank of Ireland, and the high court of Chancery, and the lord high chancellor, lord keeper, or lords commissioners of the great seal, and the accountant-general of the court of Chancery in Ireland; anything in the said recited acts, or either of them, to the contrary thereof in anywise notwithstanding."

STAT. 5 GEO.
4, c. 8. [1a.]

Certain matters required to be done under 55 Geo. 3, c. 147, to be considered as referring to certain matters and officers in Ireland.

LXXXV. STAT. 5 GEORGII 4, cap. viii. A.D. 1824.

"An Act for abolishing certain Vicarial Tithes and Easter Offerings within the Parish of Leeds, in the County of York, and for making Compensation in lieu thereof."

STAT. 5 GEO.
4, cap. viii.

LXXXVI. STAT. 5 GEORGII 4, cap. xi. A.D. 1824.

"An Act for building a Chapel in the Eastern Parts of the Town of Brighthelmston, in the County of Sussex."

STAT. 5 GEO.
4, cap. xi.

[Proviso for right to tithes, &c. of the Vicar of Brighton; s. 11; and for the right of the Bishop of Chichester. s. 12.]

LXXXVII. STAT. 5 GEORGII 4, cap. xviii. A.D. 1824.

"An Act for vesting certain Parts of the Entailed Estates of Sir Thomas Smyth, Baronet, situate in the County of Essex, in Trustees for Sale, and for investing the Proceeds thereof in the Purchase of Lands lying intermixed with other Estates in the said County, standing settled to the like Uses; and also for effectuating the Exchange of part of such last mentioned Estates for certain Glebe Lands belonging to the United Rectories of Thoydon Mount and Stapleford Tawney, in the said County, and for other Purposes."

STAT. 5 GEO.
4, cap. xviii.

LXXXVIII. STAT. 5 GEORGII 4, CAP. XX. A.D. 1824.

"An Act to revive and amend an Act of the forty-ninth year of His late Majesty, for building a Chapel of Ease in the Town of Worthing, in the County of Sussex."

STAT. 5 GEO.
4, cap. xx.

LXXXIX. STAT. 5 GEORGII 4, cap. xx. A.D. 1824.

"An Act to enable the Vicar, for the time being, of the Parish and Town of Eavescliffe, in the County Palatine of Lancaster, to grant Building Leases of the Glebe Lands belonging to the said Vicarage."

STAT. 5 GEO.
4, cap. xx.

STAT. 5 GEO.
4, CAP. XXI.

LXXX. STAT. 5 GEORGII 4, CAP. XXI. A.D. 1824

"An Act for building a Church or Chapel of Ease, in the Township of Roundhay, and Parish of Barwick in Elmet, in the West Riding of the County of York."

STAT. 5 GEO.
4, CAP. XXIII.

LXXXI. STAT. 5 GEORGII 4, CAP. XXIII. A.D. 1824.

"An Act for uniting the Rectory of Clifton Maybank, otherwise Clifton, in the County of Dorset, with the Vicarage of Bradford Abbas, otherwise Bradford, in the same County; and for an Exchange of part of the Glebe Lands of the said Vicarage for Lands of the Most Honourable Henry William, Marquess of Anglesey, and the Right Honourable Henry Paget, commonly called Earl of Uzbridge, his eldest Son, in the same Parish; and for apportioning the Rectorial and Vicarial Tithes of the said Parish of Milborne Port; and for an Exchange between the Warden and Scholars, Clerks of Saint Mary College of Winchester, near Winchester, and the said Marquess and Earl, of the Manor and Improprate Rectory and Advowson of the Vicarage of Milborne Port, in the County of Somerset, and divers Lands and Hereditaments in the Parish of Milborne Port, for the Manor of Sherborne Wyke, and divers Farms and Lands and Improprate Tithes in the Parishes of Sherborne, Bradford Abbas, and Thornford, in the County of Dorset, and for the Advowsons of the said Rectory of Clifton Maybank and Vicarage of Bradford Abbas."

STAT. 5 GEO.
4, C. 25. [Ire.]

LXXXII. STAT. 5 GEORGII 4, C. 25. [IRELAND.] A.D. 1824.

"An Act to repeal so much of an Act passed in the ninth year of the Reign of King William the Third, as relates to Burials in Suppressed Monasteries, Abbeys, or Convents in Ireland; and to make further Provision with respect to the Burial in Ireland, of Persons dissenting from the Established Church."

Irish act,
9 Gul. 3.

"Whereas by an act of the parliament of Ireland, passed in the ninth year of the reign of King William the Third, intituled, 'An Act for banishing all Papists exercising any Ecclesiastical Jurisdiction, and all Regulars of the Popish Clergy, out of the Kingdom;' it is amongst other things enacted, that no person whatsoever should, from and after the twenty-ninth of December, one thousand six hundred and ninety-seven, bury any dead in any suppressed monastery, abbey, or convent, not made use of for celebrating divine service according to the liturgy of the church of Ireland by law established, or within the precincts thereof, under pain of forfeiting ten pounds, to be recovered as therein mentioned: and whereas it is expedient that the said provision should be repealed; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said provision shall, from and after the passing of this act, stand and be repealed; provided always, that nothing herein contained shall authorize the burying any dead in any suppressed monastery, abbey, or convent, or within the precincts thereof, where the same have not been within ten years usually employed for such purposes, unless with the permission of the proprietor of the place on which the suppressed monastery, abbey, or convent is situated.

Provision in
recited act as
to burying in
monasteries,
&c. repealed.
Not to author-
ize burying
in such places
where not so
used for ten
years, &c.

"II. And whereas the easement of burial in the churchyards of protestant churches has been long enjoyed by all classes of his majesty's subjects; but such burial may not by law be allowed, unless the burial service ordained by the Liturgy of the church of Ireland as by law established, shall be celebrated thereat by the rector, vicar, curate, or other officiating minister of the church of Ireland, in whose churchyard such burial shall be had, or by some person in holy orders of the church of Ireland, duly authorized by him: and whereas such minister of the church of Ireland may not by law dispense with the celebration of such service, or permit the substitution of any other service in lieu thereof; to the end thereof that all classes of his majesty's subjects may be permitted to have the said easement of

burial according to the rites of the several religions professed by them; be it enacted, that from and after the passing of this act it shall and may be lawful for the officiating minister of the church of Ireland by law established, in each and every parish in Ireland, upon application being made to him in writing, by any clergyman or minister of any church or congregation not being of the established church of Ireland, duly authorized by law to officiate in such church or congregation, stating the death of any member or members of such church or congregation, for permission to perform the burial service at the grave of such person or persons in the churchyard of such parish, according to the rites of such church or congregation, to grant permission accordingly; provided always, that such permission for the performance of such burial service at the grave, according to the rites of such church or congregation, shall be in writing; and that in order to prevent any interruption of, or interference with the celebration of any of the rites of the church of Ireland by law established, such interment and service shall be had and celebrated at such time only as shall be appointed in such permission by such officiating minister of the church of Ireland.

“III. And be it further enacted, that if such permission shall in any case be withheld, the cause of withholding the same shall be specially and distinctly declared, in writing, by such officiating minister of the church of Ireland, one part of which written declaration shall forthwith be delivered to the person making such application as aforesaid, and one other part thereof shall be forthwith transmitted to the bishop of the diocese in which such churchyard shall be situated, and shall be by him transmitted forthwith, signed by the register of such diocese, to the lord lieutenant or other chief governor or governors of Ireland.

“IV. And be it further enacted, that it shall not be necessary for such officiating minister of the church of Ireland to celebrate, nor shall he celebrate the burial service ordained by the liturgy of the church of Ireland as by law established, at the interment of any person not being of the established church of Ireland, unless at the desire of the person so applying, at the interment of such person, specified in the application and permission; any law, canon, or usage to the contrary notwithstanding.

“V. And be it further enacted, that if after such permission granted as aforesaid, any person or persons shall obstruct or interrupt the performance of the said burial service at the grave of the person specified in such permission, such person or persons so obstructing or interrupting shall be deemed guilty of a misdemeanor, and shall be liable to be prosecuted therefor.”

STAT. 5 GEO. 4, c. 25. [Ire.]

Officiating parish ministers may grant permission to clergymen not of the church of Ireland duly authorized to perform burial service.

Permission for performance of burial service to be in writing; and interment and service had at time appointed. If permission withheld, cause declared by officiating minister in writing.

Officiating minister not to celebrate burial service unless required.

Obstructing burial service deemed a misdemeanor.

LXXXIII. STAT. 5 GEORGII 4, c. 27. [IRELAND.] A.D. 1824.

“An Act to explain and amend an Act of the Parliament of Ireland passed in the thirty-eighth year of the Reign of His Majesty King George the Third, for the better ascertaining the Amount and securing the Payment of the Bills of Costs of Proctors, employed in carrying on and defending Suits and transacting Business in the High Court of Admiralty, in His Majesty’s Court of Prerogative, in the Court of Delegates, and in all Ecclesiastical Courts within the Kingdom of Ireland.”

“Whereas by an act passed in the parliament of Ireland, in the thirty-eighth year of his majesty King George the Third, intituled, ‘An Act for the better ascertaining the Amount, and securing the Payment of the Bills of Cost of Proctors employed in carrying on and defending Suits and transacting Business in the High Court of Admiralty, in His Majesty’s Court of Prerogative, in the Court of Delegates, and in all Ecclesiastical Courts within the Kingdom of Ireland,’ it was amongst other things provided, that from and after the first day of June, one thousand seven hundred and ninety-eight, no proctor of his majesty’s court of Prerogative, or of his majesty’s high court of Admiralty, court of Delegates, or of any ecclesiastical court in this kingdom, should commence or maintain any action or suit at law or otherwise, for the recovery of any fees, charges, or disbursements, which should on or before the first day of June, one thousand seven hundred and ninety-eight, or

STAT. 5 GEO. 4, c. 27. [Ire.]

Irish act, 38 Geo. 3.

STAT. 5 GEO.
4, c. 27. [Ire.]

Proctors of
courts in Ire-
land to write
their bills of
costs, &c. in
the English
language.

at any time after the said day, be or become due or owing to him, in any proceedings in any of the said courts, until the expiration of one month or more after such proctor should have delivered unto the party or parties to be charged therewith, or left for him, her, or them, at his, her, or their dwelling-house or last place of abode, a bill of such fees, charges, and disbursements, written in a common legible hand, and in the English tongue, (except law terms or names of such proceedings in such courts as are usually expressed in other languages,) and in words at length, (except times and sums :) and whereas the said provision hath been found inconvenient, and it is just and reasonable that the law of Ireland should, with respect to the mode of writing such bills of costs, be assimilated to the law of England; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, it shall and may be lawful to and for every proctor of the aforesaid courts in Ireland, to write his bills of fees, charges, and disbursements, with such abbreviations as are now commonly used, in the English language; anything in any former law to the contrary notwithstanding."

STAT. 5 GEO.
4, cap. xxviii.

LXXXIV. STAT. 5 GEORGII 4, cap. xxviii. A.D. 1824.

"An Act to commute, for a Corn Rent, certain Tithes and Dues payable to the Vicar of the Parish of Lancaster, in the County of Lancaster."

[Corn rents to be in satisfaction of tithes and dues, except tithes of fish. ss. 22, 25, 29.]

STAT. 5 GEO.
4, c. 32.

LXXXV. STAT. 5 GEORGII 4, c. 32 (1). A.D. 1824.

"An Act to amend an Act passed in the last Session of Parliament, intituled, An Act for amending the Laws respecting the Solemnization of Marriages in England."

4 Geo. 4, c. 76.

"Whereas by an act passed in the fourth year of the reign of his present majesty, intituled, 'An Act for amending the Laws respecting the Solemnization of Marriages in England,' it is provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid; but it is not provided that marriages may be solemnized in such place so licensed: and whereas it is further provided, that where no such place shall be so licensed, then during such period as aforesaid the marriage may be solemnized in the adjoining church or chapel wherein the banns have been proclaimed; but it is not provided that marriages may be solemnized by licence in such adjoining church or chapel as aforesaid: and whereas it is provided that all marriages theretofore, but it is not provided that marriages thereafter solemnized in other places within the said parishes or chapelries, than the said churches or chapels, on account of their being under repair, or taken down in order to be rebuilt, shall not be liable to have their validity questioned on that account: and whereas it is provided, that the ministers who have so solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceeding or penalty whatsoever; but it is not provided that the ministers who shall thereafter solemnize such marriages shall not be liable to such censure or other proceeding or penalty: and whereas it is expedient that marriages heretofore and hereafter solemnized in such place as

licensed as aforesaid, during the repair or rebuilding of any church or chapel, or if no such place shall be so licensed, then in a church or chapel of some adjoining parish or chapelry, whether by banns lawfully proclaimed, or by licence lawfully granted, should not have their validity questioned on account of their being so solemnized: and whereas it is expedient that the ministers who shall have so solemnized the same should not be liable to any ecclesiastical censure, or to any other proceeding whatsoever: therefore be it enacted, and it is hereby enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, all marriages which have been heretofore solemnized or which shall be hereafter solemnized in any place within the limits of such parish or chapelry so licensed as aforesaid for the performance of divine service during the repair or rebuilding of the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, or if no such place shall be so licensed, then in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, whether by banns lawfully published in such church or chapel, or by licence lawfully granted, shall not have their validity questioned on account of their having been so solemnized: nor shall the ministers who have so solemnized the same be liable to any ecclesiastical censure, or to any other proceeding whatsoever.

"II. And be it further enacted, that all licences granted by any archbishop, bishop, or other ordinary or person having authority to grant such licences for the solemnization of marriages in the church of any parish or chapel of any chapelry wherein marriages have been usually solemnized, shall be deemed and taken to be licences for the solemnization of marriages in any place within the limits of such parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of any such church or chapel, or if no such place shall be so licensed, then in the church or chapel of any adjoining parish or chapelry wherein marriages have been usually solemnized.

"III. And be it further enacted, that all banns of marriage proclaimed, and all marriages solemnized according to the provisions of this act, in any place licensed as aforesaid, within the limits of any parish or chapelry, during the repair or rebuilding of the church or chapel of such parish or chapelry, shall be considered as proclaimed and solemnized in the church or chapel of such parish or chapelry, and shall be so registered accordingly."

STAT. 5 GEO.
4, c. 32.

Validity of
marriages
solemnized in
certain places
where churches
or chapels are
under repair,
&c. not to be
questioned.

Licences for
solemnization
of marriages in
churches, &c.
deemed to
extend to any
place within
the limits of
the parish,
licensed for the
performance of
divine service
while church
is under repair,
&c.
Banns pro-
claimed and
marriages
solemnized in
such licensed
places shall be
considered as
done in the
church of the
parish.

LXXXVI. STAT. 5 GEORGII 4, cap. xxxvii. A.D. 1824.

"An Act for extending to other Estates belonging to the See of Canterbury the Powers of an Act passed in the forty-seventh year of the Reign of His Majesty King George the Third, and of an Act passed in the first year of the Reign of His present Majesty, for enabling the Archbishop of Canterbury to grant Building Leases and Repairing Leases."

STAT. 5 GEO.
4, cap. xxxvii.

LXXXVII. STAT. 5 GEORGII 4, cap. xxxviii. A.D. 1824.

"An Act to empower the Governors and Corporation of Etwall Hospital and Repton Free School, in the County of Derby, to extend and increase the Objects of that Charity, and to make Sales, and for other Purposes therein mentioned."

STAT. 5 GEO.
4, cap. xxxviii.

LXXXVIII. STAT. 5 GEORGII 4, CAP. XL. A.D. 1824.

"An Act for taking down, rebuilding, and enlarging Maidenhead Chapel, in the County of Berks."

STAT. 5 GEO.
4, CAP. XL.

STAT. 5 GEO.
4, c. 41.

LXXXIX. STAT. 5 GEORGH II 4, c. 41 (1). A.D. 1824.

"An Act to repeal certain Duties on Law Proceedings in the Courts in Great Britain and Ireland respectively, and for better protecting the Duties payable upon Stamped Vellum, Parchment, or Paper."

From October 10, 1824, duties mentioned in schedule annexed to cease; as also the duties on bonds on commissions of bankrupt; on bonds on replevy of goods; and also on copy of wills or power of attorney, deposited in any ecclesiastical court.

Arrears excepted.

Stamps rendered useless may be sent to the stamp office to be exchanged for others within six months after October 10, 1824, and if necessary commissioners may pay the difference.

How suits for the protection of stamp duties may be brought.

‘Whereas it is expedient to repeal the several stamp duties payable for or in respect of the several instruments hereinafter mentioned; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the tenth day of October, one thousand eight hundred and twenty-four, the several stamp duties or sums of money now payable in Great Britain and Ireland respectively, upon or for or in respect of the several instruments, matters, or things mentioned, described, and set forth in the schedule to this act annexed; and also upon or for or in respect of any bond to be given to the lord chancellor, lord keeper, or commissioners of the great seal of Great Britain or Ireland respectively, for the time being, by any creditor or creditors petitioning for a commission of bankrupt; and also upon or for or in respect of any bond to be given in Great Britain or Ireland to any sheriff or other person upon the replevy of any goods or chattels; and also for or upon or in respect of the assignment of any of such bonds; and also for or upon or in respect of any copy or extract of any will or codicil deposited in any ecclesiastical court in Great Britain or Ireland; and also for or upon or in respect of any letter or power of attorney or proxy filed in any such ecclesiastical court; and also for or in respect of the vellum, parchment, or paper upon which any such instrument, matter, or thing, bond, assignment, copy or extract, letter or power of attorney or proxy, shall be written or printed, shall cease and determine; save and except such of the said respective duties or sums of money, or so much and such part or parts thereof, as shall have become or shall or may be payable or become due before or upon the said tenth day of October, one thousand eight hundred and twenty-four, and remain in arrear or unpaid afterwards; all which duties and sums of money, or any part or parts which shall remain so in arrear or unpaid as aforesaid, shall be recoverable by the same ways and means, and with such and the same penalties, and in such and the same manner in all respects, as if this act had not been made.

“II. And be it further enacted, that it shall be lawful for all persons having in their possession any stamped vellum, parchment, or paper, not made use of, and which by the operation of this act shall have been or shall be rendered unfit for the instruments, proceedings, matters, or things for which the same was originally intended, to send such stamped vellum, parchment, or paper to the head office of stamps in England, Scotland, or Ireland respectively, at any time within six calendar months from and after the said tenth day of October, one thousand eight hundred and twenty-four; and it shall be lawful for the commissioners of stamps in Great Britain and Ireland respectively to cause the stamps upon such vellum, parchment, or paper to be cancelled, and to deliver out in lieu thereof other stamps as near as may be of equal value in the whole with the stamps so cancelled, and, if necessary, to pay the difference out of any monies in the hands of the receiver general of the stamp duties in Great Britain or Ireland respectively.

“III. And whereas it is expedient to make provision for the better protecting the duties payable to his majesty, his heirs and successors, upon stamped vellum, parchment, or paper; be it therefore further enacted, that in any suit, prosecution, or proceeding to be brought against any person or persons, or body or bodies politic or corporate, for the taking or detaining, or for the losing, damaging, or destroying of any vellum, parchment, or paper upon which any stamp or stamped mark or

(1) Under Stat. 55 Geo. 3, c. 184, sched. pt. 1, and Stat. 5 Geo. 4, c. 41, sched. pt. 2, a protocol of appeal, being a notarial act, requires a 5s. stamp; and the court of Arches having decided on that ground, against

the validity of an appeal from the Consistory, the defect is not cured by a stamp affixed previous to the hearing in the court of Delegates, on an appeal from that decision. *Smyth v. Smyth*, 4 Hag. 72.

marks denoting any duty or duties imposed by law hath been impressed or put, or for any other cause of action or proceeding relating to the same respectively, such suit, prosecution, or proceeding shall and may be commenced, instituted, and proceeded in in the name of his majesty, his heirs and successors, or in the name of the attorney or solicitor general in England or Ireland, or of the advocate or solicitor general in Scotland respectively for the time being, for and on behalf of his said majesty, his heirs and successors; and that in all such suits, prosecutions, or proceedings, the property in such vellum, parchment, or paper so stamped, marked, and impressed as aforesaid, shall be described to be and shall be deemed and taken to be in his majesty, his heirs and successors, and that the value of the same respectively shall be deemed and taken to be the amount of the value of the vellum, parchment, and paper, and of the stamp duty or stamp duties denoted by the stamp or stamps, mark or marks, so impressed and put upon the same respectively; and further, that in every prosecution for embezzling or stealing such vellum, parchment, or paper so stamped, marked, and impressed as aforesaid, or for any other offence for or relating to the same respectively, it shall be sufficient in the indictment or information to state and describe the property in the same to be in his majesty, his heirs and successors, which property shall be deemed and taken to be vested in his said majesty, his heirs and successors, accordingly.”

“ THE SCHEDULE TO WHICH THIS ACT REFERS.

“ II. *Proceedings in the Ecclesiastical Courts, and in the High Court of Delegates in Ecclesiastical Matters in England.*

	Duty.		
	£	s.	d.
Affidavit...to be filed, read, or used in any suit in any of the said courts	0	5	0
Allegation...in any of the said courts	0	5	0
Answer... in any of the said courts	0	5	0
Appeal...from any definitive sentence or final decree, or from any interlocutory decree, or order of the court of Arches, or the Prerogative court of Canterbury or York	15	0	0
Citation...issuing out of any of the said courts	0	5	0
Commission...issuing out of the said courts in any suit	0	5	0
Copy (i.e. office copy)...of any affidavit filed, read, or used in any of the said courts	0	5	0
Copy (i.e. office copy)...of any citation or monition issued out of any of the said courts	0	5	0
Copy (i.e. office copy)...of any libel, allegation, answer, interrogatories, depositions, or inventory, filed or exhibited in any of the said courts	0	5	0
Copy (i.e. office copy)...of any interlocutory decree or order, or of any definitive sentence or final decree of any of the said courts	0	5	0
Decree...final or definitive sentence in any of the said courts	0	5	0
Depositions...taken in any of the said courts, or by commission from the same...	0	5	0
Inhibition...issuing out of any of the said courts	0	5	0
Interrogatories...filed or exhibited in any of the said courts	0	5	0
Inventory...filed or exhibited in any suit in any of the said courts	0	5	0
Libel...filed or exhibited in any of the said courts	0	5	0
Monition...issuing out of any of the said courts	0	5	0
Sentence...definitive or final decree of any of the said courts	0	5	0
Warrant, mandate or authority...given to any proctor to commence, carry on, or defend any suit or prosecution in any of the said courts, for the memorandum or minutes thereof to be entered or filed of record	0	5	6

STAT. 5 GEO.
4, c. 41.

II. *Proceedings in the Ecclesiastical Courts, and in the High Court of Delegates in Ecclesiastical Matters, in Ireland.*

	Duty.		
	£	s.	d.
Affidavit...to be filed, read, or used in any suit in any of the said courts	0	2	0
Allegation...in any of the said courts	0	4	0
Answer...in any of the said courts	0	4	0
Appearance...on the entry of each appearance in the court of Prerogative, and in the Consistorial court in Dublin, for each and every defendant named in such entry.....	0	4	0
Appearance...in any other ecclesiastical court in Ireland; on the sheet or piece of paper on which the appearance of each defendant shall be entered, and not on the entry thereof	0	2	0
Appeal...from any definitive sentence or final decree, or from any interlocutory decree or order of the Prerogative court, or from the metropolitan side of any archiepiscopal court	10	0	0
Appeal...from any diocesan court, or from the consistorial side of any archiepiscopal court	5	0	0
Citation...primary, issuing out of any of the said courts, not otherwise charged	0	7	6
Citation...not primary, issuing out of any of the said courts, not otherwise charged	0	5	0
Citation...in any suit for tithes	0	1	0
Copy...attested or otherwise, issuing out of the said courts, of any affidavit filed, read, or used in any suit in any of the said courts	0	0	3
Copy...attested or otherwise, issuing out of the said courts, of any inventory filed or exhibited in any suit in any of the said courts, for each sheet containing any quantity of words	0	5	0
Copy...of any citation, monition, mandate, prohibition, summons, or requisition, issuing out of the said courts, for service on any party impugnant or other party, or any proctor or other person on behalf of such party.....	0	5	0
Copy...of every citation in suits for tithes	0	1	0
Copy...attested or otherwise, issuing out of the said courts, of any other process, of what nature or kind soever	0	5	0
Copy...attested or otherwise, issuing out of the said courts, of any libel, allegation, answer, interrogations, or depositions, filed or exhibited in any of the said courts, for each and every skin of parchment or sheet of paper containing any quantity of words	0	1	0
Copy...attested or otherwise, issuing out of any of the said courts, of any interlocutory decree or order, or of any definitive sentence or final decree of any of the said courts	0	5	0
Copy...attested or otherwise, issuing out of any of the said courts, of any rule or order made or given on any petition or motion, or otherwise, in any suit, whether such rule or order shall be made in open court or otherwise, and not otherwise charged	0	1	0
Decree...final or definitive sentence, or any other interlocutory, having the force of a definitive sentence, in any of the said courts, not otherwise charged	0	10	0
Decree...final or definitive sentence, or any other interlocutory, having the force of a definitive sentence, in any of the said courts, in suits for recovery of tithes	0	1	0
Depositions...taken in any of the said courts, or by commission from the same....	0	5	0
Dismiss	0	7	6
Exception...to allegation, libel, answer, deposition, report, or other pleading, upon each and every sheet of paper or skin of parchment containing such exception or exceptions	0	5	0
Interrogatories...filed or exhibited in any of the said courts	0	4	0
Inventory...filed or exhibited in any suit in any of the said courts	0	5	0
Libel...filed or exhibited in any of the said courts	0	4	0
Mandate...issuing out of the said courts	0	5	0
Monition...issuing out of any of the said courts	0	5	0
Petition...on the entry of any rule or order in any suit in the high court of Delegates, in the courts of Prerogative, and Consistorial courts in Dublin, except in suits for tithes, or otherwise	0	3	0

	Duty. £ s. d.	STAT. 5 GEO. 4, c. 41.
Petition...in any suit in any other ecclesiastical court, on the sheet or piece of paper on which the same shall be written	0 3 0	
Petition...in any ecclesiastical court in any suit for tithes	0 1 0	
Process...of contempt for not appearing or for not answering, upon each	0 5 0	
Process...of whatsoever other nature or kind, not otherwise charged, that shall issue out of the said courts	0 5 0	
Release...of any kind, relating to any proceeding carrying on in the said courts, and not otherwise charged	0 10 0	
Renunciation...in any suit in the said courts	0 10 0	
Requisition...in any suit in the said courts	0 7 6	
Rule...or order, on the entry thereof, made or given on any petition or motion in any suit in the high court of Delegates and in the court of Prerogative and Consistorial court in Dublin, whether such rule or order shall be made in open court or otherwise	0 1 0	
Rule...or order made in any suit in any other ecclesiastical court, on each sheet or piece of paper on which the same shall be written	0 1 0	
Sentence...interlocutory	0 10 0	
Sentence...definitive, or final decree or order, having the force thereof, of any of the said courts	0 10 0	

XC. STAT. 5 GEORGII 4, CAP. L. A.D. 1824.

STAT. 5 GEO.
4, CAP. L.

"An Act for enlarging the Powers and Provisions of an Act of His late Majesty, intituled, An Act for taking down and rebuilding the Parish Church of Blackburn, in the County Palatine of Lancaster, and for providing additional Burial Ground, and for equalizing the Church Rates in the said Parish, and other Purposes."

XCI. STAT. 5 GEORGII 4, c. 58 (1). A.D. 1824.

STAT. 5 GEO.
4, c. 58.

"An Act to continue for four years, and from thence until the end of the then next Session of Parliament, the Powers of the Commissioners for inquiring concerning Charities in England and Wales."

XCII. STAT. 5 GEORGII 4, c. 63 (2). [IRELAND.] A.D. 1824.

STAT. 5 GEO.
4, c. 63. [IR.]

"An Act to amend an Act of the last Session of Parliament, for providing for the establishing of Compositions for Tithes in Ireland."

XCIII. STAT. 5 GEORGII 4, CAP. LXIII. A.D. 1824.

STAT. 5 GEO.
4, CAP. LXIII.

"An Act for raising a further Sum of Money for carrying into execution an Act passed in the fifty-ninth year of the Reign of His late Majesty King George the Third, intituled, An Act for repairing and improving, or rebuilding, the Church at Barnsley, in the West Riding of the County of York, and for improving and enlarging the Churchyard and Burial Grounds thereof; and for amending the said Act."

XCIV. STAT. 5 GEORGII 4, CAP. LXIV. A.D. 1824.

STAT. 5 GEO.
4, CAP. LXIV.

"An Act for taking down and rebuilding the Body of the Church or Ancient Parochial Chapel of Ease of Oldham, within the Parish of Prestwich-cum-Oldham, in the County Palatine of Lancaster, for providing additional Burial Ground, and for equalizing the Church Rates, and other Purposes."

(1) Vide Stat. 10 Geo. 4, c. 57; Stat. 1 2 & 3 Gul. 4, c. 119; Stat. 3 & 4 Gul. 4, & 2 Gul. 4, c. 34; and Stat. 5 & 6 Gul. 4, c. 37; Stat. 3 & 4 Gul. 4, c. 100; and Stat. c. 71. 1 & 2 Vict. c. 109.

(2) Vide Stat. 7 & 8 Geo. 4, c. 60; Stat.

STAT. 5 GEO.
4, c. 68.

XCV. STAT. 5 GEORGII 4, c. 68 (1). A.D. 1824.

"An Act to repeal an Act passed in the fifty-seventh year of the Reign of His late Majesty King George the Third, intituled, An Act to regulate the Celebration of Marriages in Newfoundland; and to make further Provision for the Celebration of Marriages in the said Colony and its Dependencies."

57 Geo. 3, c. 51,
repealed.

Marriages that
have taken
place, not
adjudged to be
void, declared
to be valid.

Marriages
hereafter to be
celebrated by
persons in or-
ders, except,
&c.

Power to se-
cretary of state
or governor,
&c. to grant
licences to
persons em-
ployed in the
duties of a
teacher or
preacher of
religion to
celebrate mar-
riages within
the colony.
Such persons
to take the
oath prescribed
by 52 Geo. 3,
c. 155.

Such licensed
persons em-
powered to
celebrate mar-
riages in cases
where the wo-

"Whereas it is expedient that an act made in the fifty-seventh year of the reign of his late majesty King George the Third, intituled, 'An Act to regulate the Celebration of Marriages in Newfoundland,' should be repealed, and that further and more effectual provision should be made for the celebration of marriages in Newfoundland; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fifth day of March, in the year one thousand eight hundred and twenty-five, the said recited act of the fifty-seventh year of the reign of his said late majesty shall be and the same is hereby repealed: provided always, that all marriages which have taken place at any time before the passing of this act in Newfoundland, and which have not been declared and adjudged to be void or invalid by any court of competent jurisdiction, and all marriages which shall take place in Newfoundland previously to the twenty-fifth day of March, in the year one thousand eight hundred and twenty-five, shall be and the same are hereby declared to be as good and valid as if the said recited act had not been passed or made; anything in the said recited act to the contrary in anywise notwithstanding.

"II. And be it further enacted, that all marriages which may hereafter be had in Newfoundland shall be celebrated by persons in holy orders, except in the cases hereinafter specially excepted and provided for.

"III. And whereas by reason of the great extent of the said island of Newfoundland, and the want of internal communication between the different parts of the said island during the greater part of the year, difficulties have arisen with respect to the solemnization of marriages in various settlements and stations there; and it is expedient that temporary provision be made for the legal solemnization of marriages in such settlements or stations as aforesaid; be it therefore enacted, that it shall and may be lawful for one of his majesty's principal secretaries of state, or for the governor or acting governor for the time being of the colony of Newfoundland, to grant licences or a licence to celebrate marriages within the said colony or its dependencies, to any person or persons who shall employ themselves or himself solely in the duties of a teacher or preacher of religion in the said colony, and who shall not follow or engage in any trade or business, or other profession, occupation, or employment, for their or his livelihood, except that of a schoolmaster: provided always, that no such licence as aforesaid shall be granted to any such persons or person as aforesaid, unless they or he shall first have taken the oath and subscribed the declaration specified in an act passed in the fifty-second year of the reign of his late majesty King George the Third, intituled, 'An Act to repeal certain Acts and amend other Acts relating to Religious Worship and Assemblies, and Persons teaching or preaching therein,' and shall have produced a certificate thereof to his majesty's said principal secretary of state, or to the governor or acting governor of Newfoundland, as the case may be; or unless such persons or person shall take the said oath and subscribe the said declaration before the governor or acting governor of the said colony, who is hereby authorized and required to administer such oath and to tender such declaration to the persons or person requiring to take and make and subscribe the same.

"IV. And be it further enacted, that it shall and may be lawful for any person, to whom any such licence as aforesaid shall be granted in manner aforesaid, to celebrate marriages between any persons resident in the said colony of Newfoundland or its dependencies, in any case where, by reason of the difficulty of the internal communication between different parts of the said colony or its

STAT. 5 GEO. 4, c. 68. book or register of marriages, attested by him, in the form following; (that is to say,)

“ ‘ A true copy, extracted from the public register of marriages of the secretary's office, or of the church or chapel of _____ in Newfoundland, by me, _____ K. L., Government Secretary, or Incumbent, or Officiating Minister of such church or chapel.’

“ And the said government secretary, or the said incumbent or officiating minister of such church or chapel, shall carefully preserve and file all the original certificates of marriage, so that reference may be had to the same in like manner as to the said register.

Book of register or attested copy to be evidence.

“ VIII. And be it further enacted, that any such public book or register of marriages in Newfoundland, or such attested copy as aforesaid of any entry in any such public book or register of marriages, the handwriting of the said government secretary, or of the attesting minister being duly proved, shall be deemed and taken to be, and shall for all purposes be received as good and sufficient evidence of the due celebration of any marriage in Newfoundland, which by such book or register, or by such attested copy, shall appear or purport to have been celebrated; and every such marriage shall, upon the production of such book or register, or of such attested copy, and proof as aforesaid, be deemed and taken to have been duly performed and celebrated.

Not to extend to the marriages of quakers, &c.

“ IX. Provided always, and be it enacted, that nothing in this act contained relating to marriages in Newfoundland shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers or persons professing the Jewish religion respectively.

Continuance of act.

“ X. And be it further enacted, that this act shall continue and be in force for five years from the passing thereof, and no longer.”

STAT. 5 GEO. 4, c. 72. [Sc.]

XCVII. STAT. 5 GEORGII 4, c. 72. [SCOTLAND.] A.D. 1824.

“An Act for amending and rendering more effectual an Act for augmenting Parochial Stipends, in certain Cases, in Scotland.”

STAT. 5 GEO. 4, CAP. LXXIV.

XCVIII. STAT. 5 GEORGII 4, CAP. LXXIV. A.D. 1824.

“An Act to amend and enlarge the Powers of several Acts, so far as the same relate to the Right of Voting at Vestries of the Parish of Saint John Southwark, in the County of Surrey, and to establish a Select Vestry within the said Parish.”

STAT. 5 GEO. 4, c. 79.

XCIX. STAT. 5 GEORGII 4, c. 79. A.D. 1824.

“An Act to enable certain Persons to receive and hold Offices in the Management, Collection, and Receipt of the Revenue, without taking or subscribing certain Oaths and Declarations.”

[All subjects may take and enjoy any offices in the revenue, without previously taking the oath of supremacy.]

STAT. 5 GEO. 4, c. 80. [Ir.]

C. STAT. 5 GEORGII 4, c. 80. [IRELAND.] A.D. 1824.

“An Act for disappropriating, disuniting, and divesting from and out of the Chancellors, Archdeacons, and Precentors of the Diocese of Connor, in the County of Antrim, in Ireland, (after the Decease or Removal of the present Incumbents,) certain Rectories and the Rectorial Tithes thereof, parts of the Corps of the said respective Dignities; and for annexing and uniting the said respective Rectories when so disappropriated, and the Rectorial Tithes thereof, to the respective Vicarages of the said several Rectories, whereby the Incumbent of each Parish and Rectory shall have the actual Cure of Souls, and for other Purposes.”

Corps of which the chancellor-

“ Whereas the corps of the chancellorship of the cathedral church of Connor, in the diocese of Connor, consists of the rectories of Milltown otherwise Bally-

wellan, Saint Johnstown otherwise Siginstown otherwise Ballyrashane, Calfeightron otherwise Cufaghtrin, Ramoan, Loughgale otherwise Loughgeel, and Teckmacrevan otherwise Glenarm, all situate, lying, and being in the county of Antrim, and to the said chancellorship perpetually annexed and appropriated; and that the chancellors for the time being have received the rectorial tithes of the said parishes and rectories, the present income whereof, taken together, as leased by the Reverend William Trail, D.D., the present chancellor of the said diocese of Connor, during his incumbency, is eight hundred and fifty pounds per year or thereabouts, but which are of considerable greater annual value, as hereinafter is mentioned: and whereas the corps of the archdeaconry of the said diocese of Connor consists of the rectories of Billy, Ballyclug, Armoy, Donegore, and Kilbride, all situate, lying, and being in the said county of Antrim, to the said archdeaconry perpetually annexed and appropriated; and that the Archdeacons of Connor for the time being have received the rectorial tithes of the said last-mentioned parishes or rectories, the present income whereof, taken together, as received by the Reverend Anthony Trail, D.D., the present archdeacon of the said diocese of Connor, during his incumbency, is six hundred pounds per year or thereabouts, but which are of considerably greater annual value, as hereinafter is also mentioned: and whereas the corps of the precentorship of the cathedral church of the diocese of Connor consists of the rectories of Ballymoney and Dunluce, both in the said county of Antrim, thereto perpetually annexed and appropriated; and that the Reverend Richard Symes, clerk, the present precentor of the said cathedral church of Connor, and his predecessors, precentors, have uniformly received the tithes, great and small, of the said parish of Ballymoney, and the rectorial tithes of the said parish or rectory of Dunluce; the present income whereof, taken together, as received by the said Richard Symes, the present precentor, is eight hundred pounds yearly or thereabouts, but which are of greater annual value, as hereinafter is mentioned: and whereas each of the said several and respective rectories or parishes so appropriated as aforesaid to the chancellor, archdeacon, and precentor of the said diocese of Connor respectively, save the said parish of Ballymoney, have within them vicarages endowed, and the chancellor and archdeacon have not either of them the actual cure of souls within the said parishes or rectories so appropriated to their dignities, or any of them, except in the parish of Ballymoney, the actual cure being in the respective vicars; but the precentor has the actual cure of souls in the said parish of Ballymoney, the same being an entire rectory: and whereas the vicarial tithes of the before-named several and respective parishes, in which it is hereinbefore stated that there are vicarages endowed, belong to and are received by their respective vicars; but several of the same vicarages being of inconsiderable yearly value, the predecessors of the Right Reverend Richard Mant, doctor in divinity, the present Lord Bishop of Down and Connor, in order to provide for the suitable maintenance of the vicars having the actual cure of souls, have been under the necessity from time to time of forming episcopal unions of some of those vicarages; and accordingly the vicarages of Milltown otherwise Ballywellan, and of Saint Johnstown otherwise Siginstown otherwise Ballyrashane, are at present so united under one incumbent, who receives the vicarial tithes of such union, the present value whereof is less than one hundred pounds a year; and the vicarages of Calfeightron otherwise Cufaghtrin and Ramoan, are in like manner united under one incumbent, who receives the vicarial tithes of the union, the present value whereof is seventy-five pounds per year or thereabouts; and the vicarages of Loughgale otherwise Loughgeel and Armoy, are in like manner united under one incumbent, who receives the vicarial tithes of such union, the present value whereof is one hundred and fifty pounds a year or thereabouts, but the said vicarage of Loughgale is of very inconsiderable value, and the vicarage of Teckmacrevan otherwise Glenarm, being of very small value, it was found necessary to unite it episcopally with another vicarage in the said diocese called Templeoughter, and the same are now united under one incumbent; and the said last-mentioned union, although augmented from Primate Boulter's fund, does not amount in present value to more than one hundred pounds a year; and the vicarial tithes of the aforesaid parish of

STAT. 5 GEO.
4, c. 80. [1R.]
ship of the
cathedral
church of Con-
nor consists.

Corps of the
archdeaconry.

Corps of the
precentorship.

STAT. 5 GEO.
4, c. 80. [18.]

Patron.

Expedient that
the rectorial
tithes should
be vested in
the vicars.

Also expedient

Billy are of the present annual value of two hundred pounds or thereabouts; and the said vicarage of Ballyclug, the vicarial tithes whereof do not exceed in value twenty-two pounds yearly, has been and is episcopally united to the impropriate curacy of Ballynnessa, in the said county of Antrim, under one incumbent, the yearly value of which last-mentioned union, including an augmentation from Primate Boulter's fund, does not now exceed eighty-four pounds yearly; and the vicarages of the said parishes of Donegore and Kilbride are episcopally united under one incumbent, and the value of the said last-mentioned union does not exceed three hundred pounds a year; and the annual value of the vicarage of the said parish of Dunluce is one hundred pounds or thereabouts; and the annual value of the said several and respective rectories of Milltown otherwise Ballywellan, Saint Johnstown otherwise Siginstown otherwise Ballyrashane, Calfeightron, Loughgule, Ramoan, Teckmacrean otherwise Glenarm, Armoy, Billy, Ballyclug, Donegore, Kilbride, Ballymoney, and Dunluce, are as follows; that is to say, Milltown otherwise Ballywellan, three hundred pounds or thereabouts; Saint Johnstown otherwise Siginstown otherwise Ballyrashane, three hundred and fifty pounds or thereabouts; Calfeightron, four hundred pounds or thereabouts; Loughgule, four hundred pounds or thereabouts; Ramoan, four hundred pounds or thereabouts; Teckmacrean otherwise Glenarm, from seventy pounds to one hundred pounds or thereabouts; Armoy, one hundred and sixty pounds or thereabouts; Billy, three hundred and thirty pounds or thereabouts; Ballyclug, one hundred pounds or thereabouts; Donegore, two hundred and fifty pounds or thereabouts; Kilbride, two hundred and fifty pounds or thereabouts; Ballymoney, one thousand two hundred pounds or thereabouts; and Dunluce, two hundred pounds or thereabouts: and whereas the Lord Bishop of Down and Connor for the time being is the patron, not only of the aforesaid chancellorship, archdeaconry, and precentorship, but of all and every the vicarages hereinbefore mentioned: and whereas it will be highly beneficial to the church establishment of that part of the United Kingdom called Ireland, that the rectorial tithes of all the said several and respective parishes or rectories, so as aforesaid appropriated to the chancellorship of the said cathedral church of Connor, save and except the said rectory or parish of Ramoan, shall be vested in the respective vicars of the said parishes (save as aforesaid) from and after the death or removal of the said William Trail, the present chancellor; and for that purpose, that the said last-mentioned rectories and rectorial tithes, save as aforesaid, shall be disappropriated, disunited, and divested from and out of the chancellors of the said cathedral church, and annexed and united to the vicarages of the said respective last mentioned to be disappropriated parishes or rectories, from and after the death or removal of the said William Trail, the present chancellor; and that in like manner the rectorial tithes of all and singular the said parishes or rectories so as aforesaid appropriate and belonging to the said archdeaconry (save and except the said parish of Billy) shall be vested in the respective vicars of and within the said respective last-mentioned parishes (except as aforesaid), from and after the death or removal of the said Anthony Trail, the present archdeacon of the said diocese; and for that purpose that all the said rectories and rectorial tithes, so as aforesaid appropriated and belonging to the said archdeaconry (save the said parish of Billy), shall be disappropriated, disunited, and divested from and out of the archdeacons of the said diocese of Connor, and for ever annexed and united to the vicarages of and within the said last mentioned to be disappropriated parishes or rectories, from and after the death or removal of the said Anthony Trail, the present archdeacon; and that the said vicarage of Ramoan shall be reunited to the rectory of the same parish, and so appropriated to the said chancellorship, and that the vicarage of Billy shall be reunited to the rectory of the same parish of Billy, and be so appropriated to the said archdeaconry; thus vesting in the chancellors and archdeacons respectively the actual cure of souls, from and after the death or removal of the present vicars of Ramoan and Billy respectively; and that each of the said several and respective rectories, when so disappropriated, shall, with its respective vicarage, form one parish and benefice: and whereas it will also be highly beneficial to the said church establishment, that

the said rectory of Dunluce shall be disappropriated and disunited from the said precentorship; and that from and after the death or removal of the said Richard Symes, the present precentor, the said rectory and rectorial tithes of Dunluce shall be united and annexed to the vicarage of Dunluce, and be vested in the vicars of Dunluce, so as that the rectory and vicarage of Dunluce shall together form one parish and benefice with cure of souls; leaving as the corps of the said precentorship the rectory or parish of Ballymoney only: and whereas the said Richard Mant, Lord Bishop of Down and Connor, the patron of the said chancellorship, archdeaconry, and precentorship of the diocese of Connor, and of all and every the vicarages hereinbefore mentioned, has consented that the before-mentioned objects shall be carried into effect; but the same cannot be attained or effected without the aid and authority of parliament: may it therefore please your majesty, upon the petition of the Right Reverend Richard Mant, patron, and the humble petition of the Reverend William Trail, chancellor, the Reverend Anthony Trail, archdeacon, the Reverend Richard Symes, precentor, and the several persons therein named, vicars of the said several parishes hereinbefore mentioned, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the rectory and rectorial tithes of the said parish of Milltown otherwise Ballywellan, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, the present chancellor, be and for ever afterwards shall remain vested in the vicar of the said parish of Milltown otherwise Ballywellan; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Milltown otherwise Ballywellan; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

"II. And be it further enacted, that the rectory and rectorial tithes of the said parish of Saint Johnstown otherwise Siginstown otherwise Ballyrashane, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Saint Johnstown otherwise Siginstown otherwise Ballyrashane; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Saint Johnstown otherwise Siginstown otherwise Ballyrashane; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

"III. And be it further enacted, that the rectory and rectorial tithes of the said parish of Calfeightron otherwise Cufaghtrin, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Calfeightron; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Calfeightron, otherwise Cufaghtrin; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

"IV. And be it further enacted, that the rectory and rectorial tithes of the said parish of Loughgule otherwise Loughgeel, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain

STAT. 5 GEO.
4, c. 80. [18.]
that the rectory
of Dunluce
should be dis-
appropriated
from the pre-
centorship.

Rectory of
Milltown to
become vested
in vicar.

Rectory of St.
Johnstown to
become vested
in the vicar,
&c.

Rectory of
Calfeightron to
become vested
in vicar, &c.

Rectory of
Loughgule to
become vested
in vicar.

STAT. 5 GEO.
4, c. 80. [18.]

vested in the vicar of the said parish of Loughgule otherwise Loughgeel; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Loughgule otherwise Loughgeel; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Teckmacrean
to become
vested in vicar.

“V. And be it further enacted, that the rectory and rectorial tithes of the said parish of Teckmacrean otherwise Glenarm, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Teckmacrean otherwise Glenarm; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Teckmacrean otherwise Glenarm; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Ballyclug
to become
vested in vicar.

“VI. And be it further enacted, that the rectory and rectorial tithes of the said parish of Ballyclug, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, the present archdeacon of Connor, be and for ever afterwards shall remain vested in the vicar of the said parish of Ballyclug; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the archdeacons of the said diocese of Connor, and annexed and united to the vicarage of the said parish of Ballyclug; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Armoy to
become vested
in vicar.

“VII. And be it further enacted, that the rectory and rectorial tithes of the said parish of Armoy, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Armoy; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the archdeacons of the said diocese of Connor, and annexed and united to the said parish of Armoy; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Donegore to
become vested
in vicar.

“VIII. And be it further enacted, that the rectory and rectorial tithes of the said parish of Donegore, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Donegore; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the archdeacons of the said diocese of Connor, and annexed and united to the vicarage of the said parish of Donegore; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Kilbride to
become vested
in vicar.

“IX. And be it further enacted, that the rectory and rectorial tithes of the said parish of Kilbride, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, be and for ever after shall remain vested in the vicar of the said parish of Kilbride; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested, from and out

of the archdeacons of the said diocese of Connor, and annexed and united to the vicarage of the said parish of Kilbride; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

STAT. 5 GEO.
4, c. 80. [1a.]

“X. And be it further enacted, that from and immediately after the decease or removal of the present incumbent of the said vicarage of Ramoan in the said county of Antrim, the said vicarage shall be and shall for ever thereafter continue reunited to the rectory of the said parish of Ramoan, and be from thenceforward appropriated to the chancellor of the said cathedral church for the time being, who shall for ever thereafter be vested with the actual cure of souls.

Vicarage of
Ramoan to be
reunited to the
rectory.

“XI. And be it further enacted, that from and immediately after the death or removal of the present incumbent of the said vicarage of Billy, in the said county of Antrim, the said vicarage shall be and for ever thereafter continue reunited to the rectory of the said parish of Billy, and be from thenceforward appropriated to the archdeacon of the said diocese of Connor for the time being, who shall for ever thereafter be vested with the actual cure of souls.

Vicarage of
Billy to be
reunited to the
rectory.

“XII. And be it further enacted, that the rectory and rectorial tithes of the said parish of Dunluce, in the said county of Antrim, so as aforesaid appropriated to the precentor of the said cathedral church of the said diocese of Connor, shall, from and immediately after the death or removal of the said Richard Symes, the present precentor of the said cathedral church of Connor, be and for ever afterwards shall be vested in the vicar of the said parish of Dunluce; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Richard Symes, and for ever afterwards, be disappropriated, disunited, and divested from and out of the precentors of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Dunluce; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish or benefice with cure of souls; and that from thenceforth the said rectory, and the rectorial tithes of the said parish of Ballymoney, in the said county of Antrim, shall be, remain, and for ever continue the corps of the precentor of the said cathedral church of Connor.

Rectory of
Dunluce to
become vested
in the vicar.

“XIII. Saving and reserving always to the king's most excellent majesty, and to all and every other person or persons, bodies politic and corporate, his, her, and their executors and successors, (other than the said Richard Mant, lord bishop of Down and Connor, the patron of the said chancellorship, archdeaconry, and precentorship, and of all and every the said vicarages hereinbefore mentioned consenting hereto, and every future bishop of the said diocese, and every future chancellor of the said diocese, and every future archdeacon of the said diocese, and every future precentor of the said cathedral church, and every future rector and vicar of the said several parishes,) all such estates, titles, rights, interests, claims, and demands of, into, or out of all or any of the said chancellorship, archdeaconry precentorship, rectories, and vicarages, as they, every or any of them, had before the passing of this act, or could, should, or might have had, enjoyed, claimed, or demanded, in case this act had not been made.

Saving clause.

“XIV. And whereas by an act made in the parliament of Ireland, in the second year of the reign of King George the First, intituled, ‘An Act for the real Union and Division of Parishes,’ it is among other things enacted, that all acts of parliament for the uniting or disuniting of particular parishes or parts of parishes, or erecting particular churches, shall be deemed as public and general acts, in all courts and by all persons, and that no fees shall be paid or taken by any person or persons for passing any such act of parliament: and whereas it is expedient that a like provision should be made in this case; be it therefore enacted, that this present act is and shall be deemed a public and general act, and shall be judicially taken notice of as such in all courts, and by all judges, justices, and others, without being specially pleaded; and that no fees shall be paid or taken by any person or persons for the passing the same.”

Public act.
2 Geo. 1. Ir.

STAT. 5 GEO.
4, c. 81. [Ir.]

CI. STAT. 5 GEORGII 4, c. 81. [IRELAND.] A.D. 1824.

"An Act for separating the Parish or Vicarage of Bray from the Parish of Kilternan, and for uniting the said Parish of Kilternan with the Parish of Kilgobban, situate in the Barony of Rathdown and County of Dublin, in Ireland."

Parish of Kilternan united with the parish of Bray.

"Whereas the parish of Kilternan, in the county and diocese of Dublin, has been episcopally united to and forms a part of the parish or union of Bray, in the county of Wicklow, and is situated at a considerable and inconvenient distance, the nearest part being four miles, and other parts six miles, from the parish church of Bray, the only church of the said union; and it is therefore expedient that the said parish should be separated and disunited from the parish or vicarage of Bray; and whereas the said parish of Kilternan adjoins to the parish of Kilgobban, in the county and diocese of Dublin, and the glebe lands and glebe house of the perpetual curate or minister of the said parish of Kilgobban are situated within the bounds and limits of the said parish of Kilternan: and whereas there is not any church in the said parish of Kilternan, and the church of the said parish of Kilgobban is small and inconvenient, and much out of repair, and wholly incapable of accommodating the protestant inhabitants of the parish of Kilgobban, and cannot be enlarged or repaired by reason of the decay of its walls, and of its local situation; and the inhabitants of the said parish of Kilgobban, comprehending a poor and mountainous district, are unable to contribute to the rebuilding of the said church of Kilgobban: and whereas the respective inhabitants of the said parishes of Kilternan and Kilgobban, with the consent and approbation of his grace the now Lord Archbishop of Dublin and Bishop of Glandelough, the patron of the said parish or vicarage of Kilternan; the Honourable and Reverend Charles Knox, the incumbent of the said parish or union of Bray; the Reverend Henry Kearney, perpetual curate of the said parish or cure of Kilgobban; and the Venerable John Torrens, the Archdeacon of Dublin, who is entitled in right of his archdeaconry to nominate the perpetual curate of the said parish of Kilgobban, are desirous that the said parishes of Kilternan and Kilgobban should be united and made one entire parish, to be called 'The Parish of Kilternan;' and that a new church shall be forthwith erected and built on the glebe lands aforesaid, convenient to and capable of accommodating the inhabitants of the said parishes of Kilternan and Kilgobban; the said Henry Kearney, the present curate of Kilgobban, and the said Archdeacon of Dublin, first conveying a sufficient quantity of the said glebe land for the site of a church and churchyard to the churchwardens of the said parish to be called 'The Parish of Kilternan,' and their successors, churchwardens for ever, of the said parish, for the use of the said parish: and whereas the trustees and commissioners of the first-fruits of the several benefices in Ireland have lately granted the sum of nine hundred pounds for building a church in the said parish of Kilternan, wherein there has not been any church for the performance of divine worship for upwards of twenty years last past: and whereas Elizabeth Anderson and Susan Anderson, spinsters, have proposed and agreed to grant and convey to the vicar or incumbent of the said parish, to be called 'The Parish of Kilternan,' for ever, for the use of the said vicar or incumbent and his successors, other ground equal in quality and quantity to that which may be so assigned and allowed for the site of the said intended new church: and whereas by reason that the said parish or curacy of Kilgobban is not a presentative benefice, the perpetual union of the said last-mentioned parish or cure, with the said vicarage or parish of Kilternan, cannot be effected without the aid and authority of parliament: for that purpose be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and immediately after the first day of July next, the said parish of Kilternan shall be for ever separated and disunited from the said parish, or union, or vicarage of Bray, and that the said two parishes of Kilternan and Kilgobban shall be for ever thereafter united and be and become one entire parish or vicarage and presentative benefice, to be called 'The Parish of Kilternan;' and that the Reverend Henry Kearney, the pre-

Union of the parishes of Kilternan and Kilgobban desired by the inhabitants, with a new church.

Parish of Kilternan shall be disunited from Bray, and united with Kilgobban into one parish

sent curate or incumbent of the said parish of Kilgobban, shall be the first and modern incumbent or vicar of the said hereby created union or parish of Kilternan, without any presentation, admission, institution, or induction, or any other act or title whatsoever other than this present act; and that the present churchwardens of the said parish of Kilgobban shall be the first churchwardens of the said hereby created union or parish of Kilternan, as fully as if they had been duly elected as such by the inhabitants of the said united parishes in vestry duly assembled.

"II. And be it further enacted, that it shall and may be lawful for the Archdeacon of Dublin, and the said present curate or incumbent of the now parish of Kilgobban, to convey, without licence or mortmain, to the churchwardens of the said hereby created union or parish of Kilternan, and to their successors for ever, such part of the glebe land now belonging to the said parish of Kilgobban, as may be necessary for the site of a church and of a churchyard, for the said hereby created union or parish of Kilternan, not exceeding in the whole one half acre of ground; and the same, when so conveyed, shall be vested in the said churchwardens and their successors for ever, for the purposes of this act.

"III. Provided always, that the said Elizabeth Anderson and Susan Anderson, their heirs and assigns, shall first grant and convey to the said vicar or incumbent of the said hereby created union or parish of Kilternan and his successors, a piece of land adjoining to the said glebe lands equal in quantity to the piece of land so as aforesaid to be allocated for the site of the said intended church or churchyard, for the use of the incumbent, from time to time for the time being, of the said hereby created union or parish of Kilternan, and his successors for ever; and it shall be lawful for the vicar or incumbent of the said parish of Kilternan and his successors, to have and to hold the said piece of land so to be granted and conveyed, any statute or mortmain, or any law, usage, or custom to the contrary notwithstanding, freed and discharged from the payment of all rent whatsoever, save and except that such land so granted and conveyed shall be held and deemed and taken as a part and parcel of all such glebe lands as aforesaid, and shall in common therewith be liable and subject to all and every such rent, covenants, and clauses, as such glebe lands are now liable and subject to, as if the same had been originally a part of such glebe lands, and not further or otherwise.

"IV. And be it further enacted, that the said church, when built, together with the churchyard, shall be consecrated, and shall be and shall be deemed and taken for ever to be the parish church of the said hereby created union or parish of Kilternan, to all intents and purposes whatsoever, and shall be called, 'The Parish Church of Kilternan;' and the old churchyard and place where the said old church of Kilgobban stands shall, at the charge of the parishioners of the said hereby created union or parish of Kilternan, be fenced in and preserved from profane or common uses.

"V. And whereas the right of patronage and presentation to the vicarage or parish of Kilternan hath heretofore of right belonged to the Archbishop of Dublin and Bishop of Glandelough and his successors, in right of his archbishopric; and the right of nomination or presentation to the perpetual curacy or parish of Kilgobban aforesaid, hath heretofore of right belonged to the Archdeacon of Dublin and his successors; and it is therefore proper and necessary to settle and ascertain how and by which of them the said archbishop and archdeacon, and how often and in what turns, the patronage and right of presentation to the said hereby created union or parish of Kilternan should henceforth be by them exercised and enjoyed; and whereas the tithes and profits payable and arising to the curate of Kilgobban are of considerably greater value than the tithes and profits issuing and payable out of the vicarage of Kilternan; be it therefore enacted, that from and after the first day of July next, the Archbishop of Dublin and Bishop of Glandelough, and his successors, Archbishops of Dublin and Bishops of Glandelough for ever, shall have one turn of presentation to the said hereby created union or parish of Kilternan, out of every three turns; that is to say, the said Archbishop of Dublin and Bishop of Glandelough, and his successors, Archbishops of Dublin and Bishops of Glandelough, shall present a vicar or incumbent to the said church

STAT. 5 GEO.
4, c. 81. [18.]

to be called
"Kilternan,"
of which the
present incum-
bent of Kil-
gobban shall
be vicar, and
the church-
wardens of
Kilgobban
shall be church-
wardens.

Archdeacon of
Dublin and
incumbent of
Kilgobban
empowered to
convey a piece
of glebe for
the church and
churchyard.

Provided a
like quantity is
added to the
glebe by the
proprietor of
the estate from
which former
glebe was
taken

New church
shall be con-
secrated, and
old churchyard
be fenced from
profanation.

Right of pa-
tronage to new
parish or bene-
fice of Kilter-
nan, viz. the
first turn to
Archbishop of
Dublin and
Bishop of
Glandelough,
and second and
third to Arch-
deacon of
Dublin, and so
continually.

STAT. 5 GEO.
4, c. 68.

XCV. STAT. 5 GEORGH 4, c. 68 (1). A.D. 1824.

"An Act to repeal an Act passed in the fifty-seventh year of the Reign of His late Majesty King George the Third, intituled, An Act to regulate the Celebration of Marriages in Newfoundland; and to make further Provision for the Celebration of Marriages in the said Colony and its Dependencies."

57 Geo. 3, c. 51,
repealed.

"Whereas it is expedient that an act made in the fifty-seventh year of the reign of his late majesty King George the Third, intituled, 'An Act to regulate the Celebration of Marriages in Newfoundland,' should be repealed, and that further and more effectual provision should be made for the celebration of marriages in Newfoundland; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fifth day of March, in the year one thousand eight hundred and twenty-five, the said recited act of the fifty-seventh year of the reign of his said late majesty shall be and the same is hereby repealed: provided always, that all marriages which have taken place at any time before the passing of this act in Newfoundland, and which have not been declared and adjudged to be void or invalid by any court of competent jurisdiction, and all marriages which shall take place in Newfoundland previously to the twenty-fifth day of March, in the year one thousand eight hundred and twenty-five, shall be and the same are hereby declared to be as good and valid as if the said recited act had not been passed or made; anything in the said recited act to the contrary in anywise notwithstanding.

Marriages that
have taken
place, not
adjudged to be
void, declared
to be valid.

Marriages
hereafter to be
celebrated by
persons in or-
ders, except,
&c.

Power to se-
cretary of state
or governor,
&c. to grant
licences to
persons em-
ployed in the
duties of a
teacher or
preacher of
religion to
celebrate mar-
riages within
the colony.
Such persons
to take the
oath prescribed
by 52 Geo. 3,
c. 155.

Such licensed
persons em-
powered to
celebrate mar-
riages in cases
where the wo-

"II. And be it further enacted, that all marriages which may hereafter be had in Newfoundland shall be celebrated by persons in holy orders, except in the cases hereinafter specially excepted and provided for.

"III. And whereas by reason of the great extent of the said island of Newfoundland, and the want of internal communication between the different parts of the said island during the greater part of the year, difficulties have arisen with respect to the solemnization of marriages in various settlements and stations there; and it is expedient that temporary provision be made for the legal solemnization of marriages in such settlements or stations as aforesaid; be it therefore enacted, that it shall and may be lawful for one of his majesty's principal secretaries of state, or for the governor or acting governor for the time being of the colony of Newfoundland, to grant licences or a licence to celebrate marriages within the said colony or its dependencies, to any person or persons who shall employ themselves or himself solely in the duties of a teacher or preacher of religion in the said colony, and who shall not follow or engage in any trade or business, or other profession, occupation, or employment, for their or his livelihood, except that of a schoolmaster: provided always, that no such licence as aforesaid shall be granted to any such persons or person as aforesaid, unless they or he shall first have taken the oath and subscribed the declaration specified in an act passed in the fifty-second year of the reign of his late majesty King George the Third, intituled, 'An Act to repeal certain Acts and amend other Acts relating to Religious Worship and Assemblies, and Persons teaching or preaching therein,' and shall have produced a certificate thereof to his majesty's said principal secretary of state, or to the governor or acting governor of Newfoundland, as the case may be; or unless such persons or person shall take the said oath and subscribe the said declaration before the governor or acting governor of the said colony, who is hereby authorized and required to administer such oath and to tender such declaration to the persons or person requiring to take and make and subscribe the same.

"IV. And be it further enacted, that it shall and may be lawful for any person, to whom any such licence as aforesaid shall be granted in manner aforesaid, to celebrate marriages between any persons resident in the said colony of Newfoundland or its dependencies, in any case where, by reason of the difficulty of the internal communication between different parts of the said colony or its

dependencies, the woman about to be married could not, without inconvenience, repair from her ordinary place of abode, for the purpose of contracting such marriage, to some church or chapel of or belonging to the established church of England wherein divine service is regularly performed; and if any such person as aforesaid shall celebrate any marriage by virtue of any such licence as aforesaid, in any case wherein such inconvenience as aforesaid shall not exist, the person so offending shall incur and become liable to the payment of a fine not less than ten pounds, nor more than fifty pounds British sterling money, and shall forfeit and be deprived of such his licence: provided nevertheless, that every marriage actually celebrated within the said colony or its dependencies by any person having any such licence as aforesaid shall be good and valid to all intents and purposes, and shall not be rendered invalid by reason of any such illegality as aforesaid on the part of the person celebrating the same.

“V. And be it further enacted, that no such person to whom any such licence may be so granted as aforesaid shall celebrate or perform marriage between any persons in Newfoundland, except in the presence of two credible witnesses; and if any such person shall celebrate or perform any marriage between any persons in Newfoundland, except in the presence of two credible witnesses, he shall incur and become liable to the payment of a fine not less than ten pounds, nor more than fifty pounds British sterling money; but the want of such witnesses shall not invalidate the marriage.

“VI. And be it further enacted, that every person by whom any marriage shall be celebrated or performed in Newfoundland at any time after the twenty-fifth day of March in the year one thousand eight hundred and twenty-five, shall, under the penalty of five pounds British sterling money, within twelve calendar months next following such marriage, deliver or cause to be delivered to the secretary of the governor or acting governor of the said island, or to the incumbent or officiating minister of some church or chapel of the established church of England, in the towns of Saint John's Harbour, Grace in Conception Bay, or Trinity Harbour in Trinity Bay, in the said island, a certificate thereof in writing, subscribed with his own name, and with the names or marks of the parties married, together with the names of two credible witnesses present at such marriages; and every such certificate shall be made in form following; (that is to say),

“‘ Marriage solemnized at _____ in the Island of Newfoundland:
 “‘ This is to certify, that *A. B.* [the man married], of _____ and
C. D. [the woman married], of _____, were married at
 this _____ in the year of our Lord _____, by me,
E. F. { Clergyman in holy orders, or preacher
 licensed to celebrate marriages.
 “‘ This marriage was solemnized between us, { *A. B.*
 and
C. D.
 in the presence of us, { *G. H.* of _____ } Witnesses present at the said
I. K. of _____ } marriage.’

“VII. And be it further enacted, that whenever any such certificate of marriage as aforesaid shall be delivered to the secretary of the governor, or to the incumbent or officiating minister of any such church or chapel of the established church of England as aforesaid, he shall, within seven days next after the receipt of every such certificate, and upon the payment or tender to him of one shilling and no more, enter or cause to be entered a true and correct copy thereof in a public book or register of marriages, to be by him kept for that purpose; and such public book or register shall be kept and remain at the office of the said secretary, or at such church or chapel of the established church of England as aforesaid, and shall be open to the inspection of any person or persons requiring to consult or examine the same, at all convenient hours; and the said secretary, or the said incumbent or officiating minister shall make and deliver to any and every person who shall demand the same, a true copy of any entry contained in the said public

STAT. 5 Geo. 4, c. 68.

man could not repair without inconvenience to some established church or chapel. Penalty if they celebrate marriage where such case does not exist.

Marriage valid notwithstanding.

Such marriages to be in presence of two witnesses.

Penalty.

Certificate of marriages celebrated by licensed persons to be delivered to the minister of some established church in the towns herein mentioned within twelve months, on penalty of 5*l.*

Form of certificate.

Such certificates to be entered in the register book of marriages.

A copy of the entry to be given.

STAT. 5 GEO. 4, c. 68. book or register of marriages, attested by him, in the form following; (that is to say,)

“A true copy, extracted from the public register of marriages of the secretary's office, or of the church or chapel of _____ in Newfoundland, by me, _____ K. L., Government Secretary, or Incumbent, or Officiating Minister of such church or chapel.”

“And the said government secretary, or the said incumbent or officiating minister of such church or chapel, shall carefully preserve and file all the original certificates of marriage, so that reference may be had to the same in like manner as to the said register.”

Book of register or attested copy to be evidence.

“VIII. And be it further enacted, that any such public book or register of marriages in Newfoundland, or such attested copy as aforesaid of any entry in any such public book or register of marriages, the handwriting of the said government secretary, or of the attesting minister being duly proved, shall be deemed and taken to be, and shall for all purposes be received as good and sufficient evidence of the due celebration of any marriage in Newfoundland, which by such book or register, or by such attested copy, shall appear or purport to have been celebrated; and every such marriage shall, upon the production of such book or register, or of such attested copy, and proof as aforesaid, be deemed and taken to have been duly performed and celebrated.”

Not to extend to the marriages of quakers, &c.

“IX. Provided always, and be it enacted, that nothing in this act contained relating to marriages in Newfoundland shall extend to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both the parties to any such marriage shall be of the people called Quakers or persons professing the Jewish religion respectively.”

Continuance of act.

“X. And be it further enacted, that this act shall continue and be in force for five years from the passing thereof, and no longer.”

STAT. 5 GEO. 4, c. 72. [Sc.]

XCVII. STAT. 5 GEORGII 4, c. 72. [SCOTLAND.] A.D. 1824.

“An Act for amending and rendering more effectual an Act for augmenting Parochial Stipends, in certain Cases, in Scotland.”

STAT. 5 GEO. 4, CAP. LXXIV.

XCVIII. STAT. 5 GEORGII 4, CAP. LXXIV. A.D. 1824.

“An Act to amend and enlarge the Powers of several Acts, so far as the same relate to the Right of Voting at Vestries of the Parish of Saint John South-west, in the County of Surrey, and to establish a Select Vestry within the said Parish.”

STAT. 5 GEO. 4, c. 79.

XCIX. STAT. 5 GEORGII 4, c. 79. A.D. 1824.

“An Act to enable certain Persons to receive and hold Offices in the Management, Collection, and Receipt of the Revenue, without taking or subscribing certain Oaths and Declarations.”

[All subjects may take and enjoy any offices in the revenue, without previously taking the oath of supremacy.]

STAT. 5 GEO. 4, c. 80. [Ir.]

C. STAT. 5 GEORGII 4, c. 80. [IRELAND.] A.D. 1824.

“An Act for disappropriating, disuniting, and divesting from and out of the Chancellors, Archdeacons, and Precentors of the Diocese of Connor, in the County of Antrim, in Ireland, (after the Decease or Removal of the present Incumbent,) certain Rectories and the Rectorial Tithes thereof, parts of the Corps of the said respective Dignities; and for annexing and uniting the said respective Rectories when so disappropriated, and the Rectorial Tithes thereof, to the respective Vicarages of the said several Rectories, whereby the Incumbent of each Parish and Rectory shall have the actual Cure of Souls, and for other Purposes.”

Corps of which the chancellor-

“Whereas the corps of the chancellorship of the cathedral church of Connor, in the diocese of Connor, consists of the rectories of Milltown otherwise Ball-”

wellan, Saint Johnstown otherwise Siginstown otherwise Ballyrashane, Calfeightron otherwise Cufaghtrin, Ramoan, Loughgale otherwise Loughgeel, and Teckmacrevan otherwise Glenarm, all situate, lying, and being in the county of Antrim, and to the said chancellorship perpetually annexed and appropriated; and that the chancellors for the time being have received the rectorial tithes of the said parishes and rectories, the present income whereof, taken together, as leased by the Reverend William Trail, D.D., the present chancellor of the said diocese of Connor, during his incumbency, is eight hundred and fifty pounds per year or thereabouts, but which are of considerable greater annual value, as hereinafter is mentioned: and whereas the corps of the archdeaconry of the said diocese of Connor consists of the rectories of Billy, Ballyclug, Armoy, Donegore, and Kilbride, all situate, lying, and being in the said county of Antrim, to the said archdeaconry perpetually annexed and appropriated; and that the Archdeacons of Connor for the time being have received the rectorial tithes of the said last-mentioned parishes or rectories, the present income whereof, taken together, as received by the Reverend Anthony Trail, D.D., the present archdeacon of the said diocese of Connor, during his incumbency, is six hundred pounds per year or thereabouts, but which are of considerably greater annual value, as hereinafter is also mentioned: and whereas the corps of the precentorship of the cathedral church of the diocese of Connor consists of the rectories of Ballymoney and Dunluce, both in the said county of Antrim, thereto perpetually annexed and appropriated; and that the Reverend Richard Symes, clerk, the present precentor of the said cathedral church of Connor, and his predecessors, precentors, have uniformly received the tithes, great and small, of the said parish of Ballymoney, and the rectorial tithes of the said parish or rectory of Dunluce; the present income whereof, taken together, as received by the said Richard Symes, the present precentor, is eight hundred pounds yearly or thereabouts, but which are of greater annual value, as hereinafter is mentioned: and whereas each of the said several and respective rectories or parishes so appropriated as aforesaid to the chancellor, archdeacon, and precentor of the said diocese of Connor respectively, save the said parish of Ballymoney, have within them vicarages endowed, and the chancellor and archdeacon have not either of them the actual cure of souls within the said parishes or rectories so appropriated to their dignities, or any of them, except in the parish of Ballymoney, the actual cure being in the respective vicars; but the precentor has the actual cure of souls in the said parish of Ballymoney, the same being an entire rectory: and whereas the vicarial tithes of the before-named several and respective parishes, in which it is hereinbefore stated that there are vicarages endowed, belong to and are received by their respective vicars; but several of the same vicarages being of inconsiderable yearly value, the predecessors of the Right Reverend Richard Mant, doctor in divinity, the present Lord Bishop of Down and Connor, in order to provide for the suitable maintenance of the vicars having the actual cure of souls, have been under the necessity from time to time of forming episcopal unions of some of those vicarages; and accordingly the vicarages of Milltown otherwise Ballywellan, and of Saint Johnstown otherwise Siginstown otherwise Ballyrashane, are at present so united under one incumbent, who receives the vicarial tithes of such union, the present value whereof is less than one hundred pounds a year; and the vicarages of Calfeightron otherwise Cufaghtrin and Ramoan, are in like manner united under one incumbent, who receives the vicarial tithes of the union, the present value whereof is seventy-five pounds per year or thereabouts; and the vicarages of Loughgale otherwise Loughgeel and Armoy, are in like manner united under one incumbent, who receives the vicarial tithes of such union, the present value whereof is one hundred and fifty pounds a year or thereabouts, but the said vicarage of Loughgale is of very inconsiderable value, and the vicarage of Teckmacrevan otherwise Glenarm, being of very small value, it was found necessary to unite it episcopally with another vicarage in the said diocese called Templeoughter, and the same are now united under one incumbent; and the said last-mentioned union, although augmented from Primate Boulter's fund, does not amount in present value to more than one hundred pounds a year; and the vicarial tithes of the aforesaid parish of

STAT. 5 GEO.
4, c. 80. [12.]
ship of the
cathedral
church of Con-
nor consists.

Corps of the
archdeaconry.

Corps of the
precentorship.

STAT. 5 GEO.
4, c. 80. [Ire.]

Patron.

Expedient that
the rectorial
tithes should
be vested in
the vicars.

Also expedient

Billy are of the present annual value of two hundred pounds or thereabouts; and the said vicarage of Ballyclug, the vicarial tithes whereof do not exceed in value twenty-two pounds yearly, has been and is episcopally united to the impropriate curacy of Ballynnena, in the said county of Antrim, under one incumbent, the yearly value of which last-mentioned union, including an augmentation from Primate Boulter's fund, does not now exceed eighty-four pounds yearly; and the vicarages of the said parishes of Donegore and Kilbride are episcopally united under one incumbent, and the value of the said last-mentioned union does not exceed three hundred pounds a year; and the annual value of the vicarage of the said parish of Dunluce is one hundred pounds or thereabouts; and the annual value of the said several and respective rectories of Milltown otherwise Ballywellan, Saint Johnstown otherwise Siginstown otherwise Ballyrashane, Calfeightron, Loughgule, Ramoan, Teckmacrevan otherwise Glenarm, Armoy, Billy, Ballyclug, Donegore, Kilbride, Ballymoney, and Dunluce, are as follows; that is to say, Milltown otherwise Ballywellan, three hundred pounds or thereabouts; Saint Johnstown otherwise Siginstown otherwise Ballyrashane, three hundred and fifty pounds or thereabouts; Calfeightron, four hundred pounds or thereabouts; Loughgule, four hundred pounds or thereabouts; Ramoan, four hundred pounds or thereabouts; Teckmacrevan otherwise Glenarm, from seventy pounds to one hundred pounds or thereabouts; Armoy, one hundred and sixty pounds or thereabouts; Billy, three hundred and thirty pounds or thereabouts; Ballyclug, one hundred pounds or thereabouts; Donegore, two hundred and fifty pounds or thereabouts; Kilbride, two hundred and fifty pounds or thereabouts; Ballymoney, one thousand two hundred pounds or thereabouts; and Dunluce, two hundred pounds or thereabouts: and whereas the Lord Bishop of Down and Connor for the time being is the patron, not only of the aforesaid chancellorship, archdeaconry, and precentorship, but of all and every the vicarages hereinbefore mentioned: and whereas it will be highly beneficial to the church establishment of that part of the United Kingdom called Ireland, that the rectorial tithes of all the said several and respective parishes or rectories, so as aforesaid appropriated to the chancellorship of the said cathedral church of Connor, save and except the said rectory or parish of Ramoan, shall be vested in the respective vicars of the said parishes (save as aforesaid) from and after the death or removal of the said William Trail, the present chancellor; and for that purpose, that the said last-mentioned rectories and rectorial tithes, save as aforesaid, shall be disappropriated, disunited, and divested from and out of the chancellors of the said cathedral church, and annexed and united to the vicarages of the said respective last mentioned to be disappropriated parishes or rectories, from and after the death or removal of the said William Trail, the present chancellor; and that in like manner the rectorial tithes of all and singular the said parishes or rectories so as aforesaid appropriate and belonging to the said archdeaconry (save and except the said parish of Billy) shall be vested in the respective vicars of and within the said respective last-mentioned parishes (except as aforesaid), from and after the death or removal of the said Anthony Trail, the present archdeacon of the said diocese; and for that purpose that all the said rectories and rectorial tithes, so as aforesaid appropriated and belonging to the said archdeaconry (save the said parish of Billy), shall be disappropriated, disunited, and divested from and out of the archdeacons of the said diocese of Connor, and for ever annexed and united to the vicarages of and within the said last mentioned to be disappropriated parishes or rectories, from and after the death or removal of the said Anthony Trail, the present archdeacon; and that the said vicarage of Ramoan shall be reunited to the rectory of the same parish, and so appropriated to the said chancellorship, and that the vicarage of Billy shall be reunited to the rectory of the same parish of Billy, and be so appropriated to the said archdeaconry; thus vesting in the chancellors and archdeacons respectively the actual cure of souls, from and after the death or removal of the present vicars of Ramoan and Billy respectively; and that each of the said several and respective rectories, when so disappropriated, shall, with its respective vicarage, form one parish and benefice: and whereas it will also be highly beneficial to the said church establishment, that

the said rectory of Dunluce shall be disappropriated and disunited from the said precentorship; and that from and after the death or removal of the said Richard Symes, the present precentor, the said rectory and rectorial tithes of Dunluce shall be united and annexed to the vicarage of Dunluce, and be vested in the vicars of Dunluce, so as that the rectory and vicarage of Dunluce shall together form one parish and benefice with cure of souls; leaving as the corps of the said precentorship the rectory or parish of Ballymoney only: and whereas the said Richard Mant, Lord Bishop of Down and Connor, the patron of the said chancellorship, archdeaconry, and precentorship of the diocese of Connor, and of all and every the vicarages hereinbefore mentioned, has consented that the before-mentioned objects shall be carried into effect; but the same cannot be attained or effected without the aid and authority of parliament: may it therefore please your majesty, upon the petition of the Right Reverend Richard Mant, patron, and the humble petition of the Reverend William Trail, chancellor, the Reverend Anthony Trail, archdeacon, the Reverend Richard Symes, precentor, and the several persons therein named, vicars of the said several parishes hereinbefore mentioned, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the rectory and rectorial tithes of the said parish of Milltown otherwise Ballywellan, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, the present chancellor, be and for ever afterwards shall remain vested in the vicar of the said parish of Milltown otherwise Ballywellan; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Milltown otherwise Ballywellan; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

"II. And be it further enacted, that the rectory and rectorial tithes of the said parish of Saint Johnstown otherwise Siginstown otherwise Ballyrashane, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Saint Johnstown otherwise Siginstown otherwise Ballyrashane; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Saint Johnstown otherwise Siginstown otherwise Ballyrashane; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

"III. And be it further enacted, that the rectory and rectorial tithes of the said parish of Calfeightron otherwise Cufaghtrin, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Calfeightron; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Calfeightron, otherwise Cufaghtrin; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

"IV. And be it further enacted, that the rectory and rectorial tithes of the said parish of Loughgule otherwise Loughgeel, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain

STAT. 5 GEO.
4, c. 80. [In.]
that the rectory
of Dunluce
should be dis-
appropriated
from the pre-
centorship.

Rectory of
Milltown to
become vested
in vicar.

Rectory of St.
Johnstown to
become vested
in the vicar,
&c.

Rectory of
Calfeightron to
become vested
in vicar, &c.

Rectory of
Loughgule to
become vested
in vicar.

STAT. 3 GEO.
4, C. 30. [18.]

Rectory of
Teckmacrean to
become
vested in vicar.

vested in the vicar of the said parish of Loughgule otherwise Loughgeel; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Loughgule otherwise Loughgeel; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

"V. And be it further enacted, that the rectory and rectorial tithes of the said parish of Teckmacrean otherwise Glenarm, so as aforesaid appropriated to the chancellor of the said diocese of Connor, shall, from and immediately after the death or removal of the said William Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Teckmacrean otherwise Glenarm; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said William Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the chancellorship of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Teckmacrean otherwise Glenarm; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Ballyclug to
become
vested in vicar.

"VI. And be it further enacted, that the rectory and rectorial tithes of the said parish of Ballyclug, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, the present archdeacon of Connor, be and for ever afterwards shall remain vested in the vicar of the said parish of Ballyclug; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the archdeaconry of the said diocese of Connor, and annexed and united to the vicarage of the said parish of Ballyclug; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Armoir to
become vested
in vicar.

"VII. And be it further enacted, that the rectory and rectorial tithes of the said parish of Armoir, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Armoir; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the archdeaconry of the said diocese of Connor, and annexed and united to the vicarage of the said parish of Armoir; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Downore to
become vested
in vicar.

"VIII. And be it further enacted, that the rectory and rectorial tithes of the said parish of Downore, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Downore; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out of the archdeaconry of the said diocese of Connor, and annexed and united to the vicarage of the said parish of Downore; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

Rectory of
Kilbride to
become vested
in vicar.

"IX. And be it further enacted, that the rectory and rectorial tithes of the said parish of Kilbride, so as aforesaid appropriated to the archdeacon of the said diocese of Connor, shall, from and immediately after the death or removal of the said Anthony Trail, be and for ever afterwards shall remain vested in the vicar of the said parish of Kilbride; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Anthony Trail, and for ever afterwards, be disappropriated, disunited, and divested from and out

of the archdeacons of the said diocese of Connor, and annexed and united to the vicarage of the said parish of Kilbride; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish and benefice.

STAT. 5 GEO.
4, c. 80. [1a.]

“X. And be it further enacted, that from and immediately after the decease or removal of the present incumbent of the said vicarage of Ramoan in the said county of Antrim, the said vicarage shall be and shall for ever thereafter continue reunited to the rectory of the said parish of Ramoan, and be from thenceforward appropriated to the chancellor of the said cathedral church for the time being, who shall for ever thereafter be vested with the actual cure of souls.

Vicarage of
Ramoan to be
reunited to the
rectory.

“XI. And be it further enacted, that from and immediately after the death or removal of the present incumbent of the said vicarage of Billy, in the said county of Antrim, the said vicarage shall be and for ever thereafter continue reunited to the rectory of the said parish of Billy, and be from thenceforward appropriated to the archdeacon of the said diocese of Connor for the time being, who shall for ever thereafter be vested with the actual cure of souls.

Vicarage of
Billy to be
reunited to the
rectory.

“XII. And be it further enacted, that the rectory and rectorial tithes of the said parish of Dunluce, in the said county of Antrim, so as aforesaid appropriated to the precentor of the said cathedral church of the said diocese of Connor, shall, from and immediately after the death or removal of the said Richard Symes, the present precentor of the said cathedral church of Connor, be and for ever afterwards shall be vested in the vicar of the said parish of Dunluce; and that the said last-mentioned rectory, and the rectorial tithes thereof, shall, from such the death or removal of the said Richard Symes, and for ever afterwards, be disappropriated, disunited, and divested from and out of the precentors of the said cathedral church of Connor, and annexed and united to the vicarage of the said parish of Dunluce; and that the said last-mentioned rectory, when so disappropriated, shall with its vicarage form one parish or benefice with cure of souls; and that from thenceforth the said rectory, and the rectorial tithes of the said parish of Ballymoney, in the said county of Antrim, shall be, remain, and for ever continue the corps of the precentor of the said cathedral church of Connor.

Rectory of
Dunluce to
become vested
in the vicar.

“XIII. Saving and reserving always to the king's most excellent majesty, and to all and every other person or persons, bodies politic and corporate, his, her, and their executors and successors, (other than the said Richard Mant, lord bishop of Down and Connor, the patron of the said chancellorship, archdeaconry, and precentorship, and of all and every the said vicarages hereinbefore mentioned consenting hereto, and every future bishop of the said diocese, and every future chancellor of the said diocese, and every future archdeacon of the said diocese, and every future precentor of the said cathedral church, and every future rector and vicar of the said several parishes,) all such estates, titles, rights, interests, claims, and demands of, into, or out of all or any of the said chancellorship, archdeaconry precentorship, rectories, and vicarages, as they, every or any of them, had before the passing of this act, or could, should, or might have had, enjoyed, claimed, or demanded, in case this act had not been made.

Saving clause.

“XIV. And whereas by an act made in the parliament of Ireland, in the second year of the reign of King George the First, intituled, ‘An Act for the real Union and Division of Parishes,’ it is among other things enacted, that all acts of parliament for the uniting or disuniting of particular parishes or parts of parishes, or erecting particular churches, shall be deemed as public and general acts, in all courts and by all persons, and that no fees shall be paid or taken by any person or persons for passing any such act of parliament: and whereas it is expedient that a like provision should be made in this case; be it therefore enacted, that this present act is and shall be deemed a public and general act, and shall be judicially taken notice of as such in all courts, and by all judges, justices, and others, without being specially pleaded; and that no fees shall be paid or taken by any person or persons for the passing the same.”

Public act.
2 Geo. 1. Ir.

STAT. 5 GEO.
4, c. 81. [12.]

CI. STAT. 5 GEORGII 4, c. 81. [IRELAND.] A.D. 1824.

"An Act for separating the Parish or Vicarage of Bray from the Parish of Kilternan, and for uniting the said Parish of Kilternan with the Parish of Kilgobban, situate in the Barony of Rathdown and County of Dublin, in Ireland."

Parish of Kilternan united with the parish of Bray.

"Whereas the parish of Kilternan, in the county and diocese of Dublin, has been episcopally united to and forms a part of the parish or union of Bray, in the county of Wicklow, and is situated at a considerable and inconvenient distance, the nearest part being four miles, and other parts six miles, from the parish church of Bray, the only church of the said union; and it is therefore expedient that the said parish should be separated and disunited from the parish or vicarage of Bray: and whereas the said parish of Kilternan adjoins to the parish of Kilgobban, in the county and diocese of Dublin, and the glebe lands and glebe house of the perpetual curate or minister of the said parish of Kilgobban are situated within the bounds and limits of the said parish of Kilternan: and whereas there is not any church in the said parish of Kilternan, and the church of the said parish of Kilgobban is small and inconvenient, and much out of repair, and wholly incapable of accommodating the protestant inhabitants of the parish of Kilgobban, and cannot be enlarged or repaired by reason of the decay of its walls, and of its local situation; and the inhabitants of the said parish of Kilgobban, comprehending a poor and mountainous district, are unable to contribute to the rebuilding of the said church of Kilgobban: and whereas the respective inhabitants of the said parishes of Kilternan and Kilgobban, with the consent and approbation of his grace the now Lord Archbishop of Dublin and Bishop of Glandelough, the patron of the said parish or vicarage of Kilternan; the Honourable and Reverend Charles Knox, the incumbent of the said parish or union of Bray; the Reverend Henry Kearney, perpetual curate of the said parish or cure of Kilgobban; and the Venerable John Torrens, the Archdeacon of Dublin, who is entitled in right of his archdeaconry to nominate the perpetual curate of the said parish of Kilgobban, are desirous that the said parishes of Kilternan and Kilgobban should be united and made one entire parish, to be called 'The Parish of Kilternan;' and that a new church shall be forthwith erected and built on the glebe lands aforesaid, convenient to and capable of accommodating the inhabitants of the said parishes of Kilternan and Kilgobban; the said Henry Kearney, the present curate of Kilgobban, and the said Archdeacon of Dublin, first conveying a sufficient quantity of the said glebe land for the site of a church and churchyard to the churchwardens of the said parish to be called 'The Parish of Kilternan,' and their successors, churchwardens for ever, of the said parish, for the use of the said parish: and whereas the trustees and commissioners of the first-fruits of the several benefices in Ireland have lately granted the sum of nine hundred pounds for building a church in the said parish of Kilternan, wherein there has not been any church for the performance of divine worship for upwards of twenty years last past: and whereas Elizabeth Anderson and Susan Anderson, spinsters, have proposed and agreed to grant and convey to the vicar or incumbent of the said parish, to be called 'The Parish of Kilternan,' for ever, for the use of the said vicar or incumbent and his successors, other ground equal in quality and quantity to that which may be so assigned and allowed for the site of the said intended new church: and whereas by reason that the said parish or curacy of Kilgobban is not a presentative benefice, the perpetual union of the said last-mentioned parish or cure, with the said vicarage or parish of Kilternan, cannot be effected without the aid and authority of parliament: for that purpose be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and immediately after the first day of July next, the said parish of Kilternan shall be for ever separated and disunited from the said parish, or union, or vicarage of Bray, and that the said two parishes of Kilternan and Kilgobban shall be for ever thereafter united and be and become one entire parish or vicarage and presentative benefice, to be called 'The Parish of Kilternan;' and that the Reverend Henry Kearney, the pre-

Union of the parishes of Kilternan and Kilgobban desired by the inhabitants, with a new church.

Parish of Kilternan shall be disunited from Bray, and united with Kilgobban into one parish

sent curate or incumbent of the said parish of Kilgobban, shall be the first and modern incumbent or vicar of the said hereby created union or parish of Kilternan, without any presentation, admission, institution, or induction, or any other act or title whatsoever other than this present act; and that the present churchwardens of the said parish of Kilgobban shall be the first churchwardens of the said hereby created union or parish of Kilternan, as fully as if they had been duly elected as such by the inhabitants of the said united parishes in vestry duly assembled.

“II. And be it further enacted, that it shall and may be lawful for the Archdeacon of Dublin, and the said present curate or incumbent of the now parish of Kilgobban, to convey, without licence or mortmain, to the churchwardens of the said hereby created union or parish of Kilternan, and to their successors for ever, such part of the glebe land now belonging to the said parish of Kilgobban, as may be necessary for the site of a church and of a churchyard, for the said hereby created union or parish of Kilternan, not exceeding in the whole one half acre of ground; and the same, when so conveyed, shall be vested in the said churchwardens and their successors for ever, for the purposes of this act.

“III. Provided always, that the said Elizabeth Anderson and Susan Anderson, their heirs and assigns, shall first grant and convey to the said vicar or incumbent of the said hereby created union or parish of Kilternan and his successors, a piece of land adjoining to the said glebe lands equal in quantity to the piece of land so as aforesaid to be allocated for the site of the said intended church or churchyard, for the use of the incumbent, from time to time for the time being, of the said hereby created union or parish of Kilternan, and his successors for ever; and it shall be lawful for the vicar or incumbent of the said parish of Kilternan and his successors, to have and to hold the said piece of land so to be granted and conveyed, any statute or mortmain, or any law, usage, or custom to the contrary notwithstanding, freed and discharged from the payment of all rent whatsoever, save and except that such land so granted and conveyed shall be held and deemed and taken as a part and parcel of all such glebe lands as aforesaid, and shall in common therewith be liable and subject to all and every such rent, covenants, and clauses, as such glebe lands are now liable and subject to, as if the same had been originally a part of such glebe lands, and not further or otherwise.

“IV. And be it further enacted, that the said church, when built, together with the churchyard, shall be consecrated, and shall be and shall be deemed and taken for ever to be the parish church of the said hereby created union or parish of Kilternan, to all intents and purposes whatsoever, and shall be called, ‘The Parish Church of Kilternan;’ and the old churchyard and place where the said old church of Kilgobban stands shall, at the charge of the parishioners of the said hereby created union or parish of Kilternan, be fenced in and preserved from profane or common uses.

“V. And whereas the right of patronage and presentation to the vicarage or parish of Kilternan hath heretofore of right belonged to the Archbishop of Dublin and Bishop of Glandelough and his successors, in right of his archbishopric; and the right of nomination or presentation to the perpetual curacy or parish of Kilgobban aforesaid, hath heretofore of right belonged to the Archdeacon of Dublin and his successors; and it is therefore proper and necessary to settle and ascertain how and by which of them the said archbishop and archdeacon, and how often and in what turns, the patronage and right of presentation to the said hereby created union or parish of Kilternan should henceforth be by them exercised and enjoyed; and whereas the tithes and profits payable and arising to the curate of Kilgobban are of considerably greater value than the tithes and profits issuing and payable out of the vicarage of Kilternan; be it therefore enacted, that from and after the first day of July next, the Archbishop of Dublin and Bishop of Glandelough, and his successors, Archbishops of Dublin and Bishops of Glandelough for ever, shall have one turn of presentation to the said hereby created union or parish of Kilternan, out of every three turns; that is to say, the said Archbishop of Dublin and Bishop of Glandelough, and his successors, Archbishops of Dublin and Bishops of Glandelough, shall present a vicar or incumbent to the said church

STAT. 5 GEO.
4, c. 81. [12.]

to be called
“Kilternan,”
of which the
present incum-
bent of Kil-
gobban shall
be vicar, and
the church-
wardens of
Kilgobban
shall be church-
wardens.

Archdeacon of
Dublin and
incumbent of
Kilgobban
empowered to
convey a piece
of glebe for
the church and
churchyard.

Provided a
like quantity is
added to the
glebe by the
proprietor of
the estate from
which former
glebe was
taken

New church
shall be con-
secrated, and
old churchyard
be fenced from
profanation.

Right of pa-
tronage to new
parish or bene-
fice of Kilter-
nan, viz. the
first turn to
Archbishop of
Dublin and
Bishop of
Glandelough,
and second and
third to Arch-
deacon of
Dublin, and so
continually.

STAT. 5 GEO.
4, c. 81. [In.]

Churchwardens of Bray may levy arrears of church rates now due on parish of Kilternan.

This act a public act, pursuant to Irish act, 2 Geo. 1.

of Kilternan, on the first vacancy that shall occur after the first day of July next; and afterwards, on the two vacancies which shall next occur, that is, on the second and third vacancies, the said archdeacon and his successors for the time being shall present to the said united church, and so on for ever thereafter.

“VI. Provided always, and be it enacted, that it shall and may be lawful for the churchwardens of the parish of Bray, at any time after the first day of July next, to collect, sue for, levy, recover, and receive all church cesses and rates which shall have been duly assessed and apportioned on the said parish of Kilternan at any time before the passing of this act, and which shall remain due and unpaid at the time of the passing of this act, in like manner, and with all such powers and authorities, as if this act had not been made; anything in this act contained to the contrary thereof in anywise notwithstanding.

“VII. And whereas by an act made in the parliament of Ireland, in the second year of the reign of King George the First, intituled, ‘An Act for the real Union and Division of Parishes,’ it is (among other things) enacted, that all acts of parliament for the uniting or disuniting of particular parishes or parts of parishes, or erecting particular churches, shall be deemed as public and general acts in all courts, and by all persons; and that no fees shall be paid or taken by any person or persons for passing any such act of parliament: and whereas it is expedient that a like provision should be made in this case; be it therefore enacted, that this present act is and shall be deemed a public and general act, and shall be judicially taken notice of as such in all courts, and by all judges, justices, and others, without being specially pleaded; and that no fees shall be paid or taken by any person or persons for the passing the same.”

STAT. 5 GEO.
4, c. 89.

CII. STAT. 5 GEORGII 4, c. 89(1). A.D. 1824.

“An Act for the Relief in certain cases of the Incumbents of Ecclesiastical Livings or Benefices mortgaged for building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for such Benefices.”

17 Geo. 3, c. 53.

21 Geo. 3, c. 66.

“Whereas under and by virtue of an act of parliament made in the seventeenth year of the reign of his majesty King George the Third, intituled, ‘An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices;’ and another act made in the twenty-first year of his said majesty’s reign, to explain and amend the said act; many mortgages of ecclesiastical livings and benefices have been made, and are still remaining in force, as securities for monies borrowed for building, rebuilding, repairing, or purchasing houses and other necessary buildings and tenements for such benefices; and in most cases the sums of money borrowed on such mortgages have been to the full amount authorized by the said acts, that is to say, two years’ net income and produce of the said respective livings or benefices, estimated at or previous to the execution of such several mortgages in the manner by the said acts directed; and the incumbents of the said respective livings or benefices are liable, according to the directions of the said acts, to pay five pounds per centum per annum of the principal monies so borrowed; or in case such incumbents shall not reside twenty weeks in each year upon such livings or benefices, then instead of five pounds per cent. to pay ten pounds per cent. per annum of the said principal monies, over and above the interest arising upon such mortgages, until the whole principal monies and interest shall be fully paid and discharged: and whereas great reduction has taken place in the income and produce of many livings or benefices mortgaged by virtue of the said acts since the respective mortgages thereof were made, whereby it happens that the yearly payments in discharge of the monies borrowed on such mortgages, which the incumbents of the said livings or benefices are liable to pay, amount to a larger proportion of the present income and produce thereof than it was contemplated or intended

(1) *Vide* Stat. 1 & 2 Vict. c. 23 & 29; Stat. 2 & 3 Vict. c. 49, ss. 14 & 17; and Stat. 5 & 6 Vict. c. 26.

that they should be liable to pay according to the directions of the said acts; and it is just and expedient that such provision be made for the relief of incumbents of livings or benefices already mortgaged by virtue of the said acts as hereinafter is expressed: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the incumbent of every living or benefice mortgaged before the passing of this act, under or by virtue of the said former acts, for the amount of two years' net income and produce thereof, to lay before the ordinary of such living or benefice a just and particular account in writing, signed by such incumbent, and verified upon his oath, taken before some justice of the peace or master in Chancery, ordinary or extraordinary, (which oath every justice of the peace and every master in Chancery is hereby empowered to administer,) of the income or produce of such living or benefice at the time of stating such account thereof, and of all rents, stipends, taxes, and other outgoings therefrom, excepting only the salary to the assistant curate, where such a curate is necessary; and it shall and may be lawful for the ordinary thereupon to cause an inquiry to be made by the archdeacon, chancellor of the diocese, or other proper persons resident within or near the limits of such living or benefice, of the truth of the said account, and the result of the said inquiry to be certified by such archdeacon, chancellor, or other persons; and the incumbent of such living or benefice, and the mortgagee or mortgagees thereof, may and they are hereby empowered, with the consent of the ordinary and patron of such living or benefice, to agree that the yearly payments in discharge of the principal money secured by the mortgage of such living or benefice, and to become due after such agreement, shall be made at the rate of five pounds per centum or ten pounds per centum per annum, as the case may require, according to the directions of the said former acts and this act, of the sum which two years' net income and produce of the said living or benefice shall appear to amount unto according to the account thereof laid before and the certificate returned to the ordinary as herein mentioned; and every such agreement shall be valid and effectual; and the mortgage made of every such living or benefice shall be and remain in force as a security for the yearly payments thereby agreed to be made, as well as for the payment of the interest arising on such mortgage, and with all the powers and remedies for enforcing the same given by the said former acts, until the money borrowed and all interest for the same, and also all costs and charges which shall be occasioned by the nonpayment thereof, shall be fully paid and discharged, in like manner as if such yearly payments had been expressly mentioned in and secured by the said mortgage, the expiration of the term of years granted by the said mortgage or any other cause or matter whatsoever notwithstanding.

"II. And be it further enacted, that every agreement which shall be entered into by virtue of this act shall be in writing, in the form in the schedule to this act set forth, or to that effect, under the hands of the ordinary, patron, incumbent, and mortgagee or mortgagees of the living or benefice to which the same shall relate, or the common seal of such of them as shall be a body corporate aggregate; and in case the patronage of any such living or benefice shall be in the crown, or the patron of any such living or benefice shall happen to be a minor, idiot, lunatic, or feme covert, such agreement shall be signed by such persons as by the said former acts are empowered in the like case to consent to the proceedings thereby authorized; and in case any such agreement shall relate to any chapelry or perpetual cure, the incumbent whereof shall be nominated by the rector or vicar of the parish, in every such case such rector or vicar shall be required to be a party to the agreement so to be made, together with the patron of the rectory or vicarage.

"III. And be it further enacted, that it shall and may be lawful for the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, to make and enter into such agreements as hereinbefore are authorized, with respect to all or any of the mortgages made to the said governors by virtue of the said former acts, if it shall appear to the said governors to be fit

STAT. 5 GEO.
4, c. 89.

Incumbents of mortgaged livings for the amount of two years' income may lay before the ordinary an account of the value of such living, who shall cause inquiry to be made of the truth thereof.

Mortgagees empowered to agree to make yearly payments in discharge of the mortgage after the rate of 5 per cent. or 10 per cent. as the case may require, according to the directions of recited acts.

Agreements to be in form prescribed by the schedule.

Governors of Queen Anne's bounty empowered to enter into agreements

STAT. 5 GEO.
4, c. 89.

with respect
to mortgages,
as are also
the colleges
and halls of
the universities
of Oxford and
Cambridge.

Agreements to
be registered.

Fee to regis-
trar.

No proceeding
under this act
to be charged
with stamp
duty.

Non-residents
by licence
liable to pay
mortgages in
manner herein
mentioned.

Governors of
Queen Anne's
bounty em-
powered to
reduce the rate
of interest of
mortgages.

and proper so to do; and it shall and may also be lawful for all colleges and halls within the universities of Oxford and Cambridge, and for all other corporate bodies possessed of the patronage of any ecclesiastical livings or benefices, to make and enter into such agreements as hereinbefore are authorized, with respect to all or any of the mortgages made to them respectively, for any sums of money advanced under the powers of the said former acts, if it shall appear to them respectively fit and proper so to do.

"IV. And be it further enacted, that a copy of every agreement made by virtue of this act shall be registered in the office of the registrar of the bishop, or other ordinary of the living or benefice to which such agreement shall relate, after having been first examined by him; and such registrar shall register such copy, and make and sign a certificate on the original agreement, that a copy thereof is so registered, and shall be entitled to demand and receive the sum of five shillings and no more for such registrar; and every such copy shall be inspected upon all necessary occasions, the person who requires such inspection paying to the said registrar the sum of one shilling for the same; and the registered copy of such agreement, or a copy thereof certified under the hand of the registrar to be correct, shall be allowed as legal evidence in case any such agreement shall happen to be lost or destroyed.

"V. And be it further enacted, that no affidavit, certificate, agreement, instrument, or proceeding made, had, or done, under the authority or directions of this act, shall be charged or chargeable with any stamp duty.

"VI. And be it further enacted, that in case any incumbent of any living or benefice mortgaged or to be mortgaged by virtue of the said former acts, who shall not reside twenty weeks in any year upon such living or benefice, shall have been non-resident in the same year by licence of the bishop of the diocese within which such living or benefice shall be locally situate, granted by reason or on account of any actual illness or infirmity of mind or body of such incumbent, or of his wife or child, making part of and residing with him as part of his family, such incumbent shall for every year in which he shall be non-resident by such licence, pay to the mortgagee or mortgagees of his living or benefice the like sum as he would have been liable to pay by virtue of the said former acts, or any agreement made under the powers of this act, in case he had resided twenty weeks in the same year upon his said living or benefice, and no other or greater sum; provided that every such incumbent at the time of making such payment, or some person on his behalf, shall deliver to the mortgagee or mortgagees a certificate under the hand of such bishop, that such incumbent was non-resident, in the year for which such payment shall be made, by the licence of the said bishop, granted for some or one of the causes hereinbefore mentioned, to be specified in the said certificate.

"VII. And be it further enacted, that it shall and may be lawful to and for the said governors of the bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy, at any time or times after the passing of this act, to reduce the rate of the interest secured to them by any mortgage or mortgages heretofore made to them under the authority of the said former acts, and thereafter to become due to such rate or rates, as to them shall appear just and reasonable."

"THE SCHEDULE TO WHICH THE ACT REFERS.

"Form of Agreement.

"Whereas in the year _____ the Rev. A. B., clerk, rector [vicar or curate] of the parish church [or curacy or chapelry] of _____ in the county of _____ and the diocese of the Bishop of _____ and under the jurisdiction of the said bishop [or such other ecclesiastical person or corporation as shall be ordinary], as ordinary, by virtue and pursuant to the directions of an act of parliament passed in the seventeenth year of the reign of his majesty King George the Third, intituled, 'An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices,' obtained the consent of the said ordinary, and of the

patron of the said church [or curacy or chapelry], to borrow and take up at interest, on mortgage of the glebe, tithes, and emoluments of the said living, the sum of pounds, being the amount of two years' net income and produce of the said living, as then estimated and proved in the manner by the said act directed : and the said sum of pounds was advanced by *C. D.*, and a mortgage of the glebe, tithes, and emoluments of the said living, by indenture bearing date the day of was duly made and executed to him for securing the repayment thereof, with interest at the rate of pounds per centum per annum, by yearly payments, according to the directions of the said act, and of another act passed in the twenty-first year of his said majesty's reign, to explain and amend the same : and whereas the several yearly payments which have become due upon the said mortgage, up to and including the day of last, together with all interest arising upon the said mortgage to that time, have been discharged, and there now remains due on the security of the said mortgage, the principal sum of pounds, with interest thereon, from the said day of [If the incumbent entering into the agreement is a successor of him who made the mortgage, or the mortgagee is representative or assignee of him to whom the mortgage was made, the facts are to be here stated in proper recitals, and the proper parties are to be named in the subsequent parts of the agreement instead of the parties to the mortgage]: and whereas the said *A. B.*, pursuant to the directions of an act passed in the fifth year of the reign of his majesty King George the Fourth, intituled [set forth the title of this act], has laid before the ordinary of the said living a just and particular account in writing, signed by him, and verified as by the said last-mentioned act is required, of the present income or produce of the said living, and of the outgoings therefrom ; and the said ordinary has caused inquiry to be made of the truth of the said account, and the result of the said inquiry to be certified to him as by the said act required ; and according to the said account and the certificate returned to the said ordinary, the net income and produce of the said living appears now to amount to the sum of pounds, and therefore two years' net income and produce thereof will amount to the sum of and no more : and whereas the said *C. D.* is willing to accept such reduced yearly payments in discharge of the principal money remaining due on the said mortgage, as by the said last-mentioned act authorized and hereinafter mentioned : now it is hereby agreed by and between the said *A. B.* and *C. D.*, with the consent of the said ordinary and of the patron [or patrons] of the said church, [or of the rector or vicar of the parish church of who is entitled to the nomination of the curate of the said curacy or chapelry of and the patron of the said parish church ; or if any other person or persons shall according to the act be required to act for the patron, such person or persons shall be named, with a proper description], testified by the said ordinary and patron signing this agreement ; [or if either of them shall be a body corporate aggregate, then by the said ordinary (or patron) signing, and the said patrons (or ordinary) causing their common seal to be affixed to this agreement]; and by virtue of the powers of the said last-mentioned act of parliament, that the yearly payments in discharge of the said sum of pounds remaining due on the said mortgage as aforesaid, shall be made at the rate of five pounds per cent. or ten pounds per cent. as the case may require, according to the directions of the said several acts of parliament, of the said sum of pounds, the amount of two years' net income and produce of the said living, according to the late account and certificate hereinbefore mentioned ; and the said mortgage of the said living is, pursuant to and by virtue of the said last-mentioned act, to be and remain in force as a security for the yearly payments hereby agreed to be made, as well as for payment of the interest arising on the said mortgage, and with all the powers and remedies for enforcing the same given by the said first-mentioned act, until the money borrowed on the said mortgage, and all interest for the same, and also all costs and charges which shall be occasioned by the non-payment thereof, shall be fully paid and discharged. Dated the day of in the year one thousand eight hundred .”

STAT. 5 Geo.
4, c. 89.

STAT. 5 GEO.
4, c. 90. [Sc.]

CIII. STAT. 5 GEORGH II. 4, c. 90. [SCOTLAND.] A.D. 1824.

"An Act to amend an Act for building additional Places of Worship in the Highlands and Islands of Scotland."

STAT. 5 GEO.
4, c. 91. [Ir.]

CIV. STAT. 5 GEORGH II. 4, c. 91 (1). [IRELAND.] A.D. 1824.

"An Act to consolidate and amend the Laws for enforcing the Residence of Spiritual Persons on their Benefices; to restrain Spiritual Persons from carrying on Trade or Merchandise, and for the Support and Maintenance of Stipendiary Curates in Ireland."

Irish acts:

36 Hen. 6, c. 1,

10 & 11 Car. 1,
c. 2,

6 Geo. 1, c. 13,

1 Geo. 2, c. 22,

40 Geo. 3, c. 27,

48 Geo. 3, c. 66.

Recited acts of
36 Hen. 6,
10 & 11 Car. 1,
as to alienation,
&c. by the
clergy;
so much of 6
Geo. 1, 1 Geo.
2, and 40 Geo.
3, as relates to
maintenance
of curates;
and the whole
of 48 Geo. 3,
c. 66, repealed.

No spiritual
person bene-
ficed, or per-
forming eccle-
siastical duty,
shall engage in
trade, or buy
to sell again
for profit or
gain.

"Whereas several acts were passed in the parliament of Ireland, that is to say; one act in the thirty-sixth year of the reign of his majesty King Henry the Sixth, intituled, 'An Act that beneficed Persons shall keep Residence;' one other act in the tenth and eleventh years of the reign of his majesty King Charles the First, intituled, 'An Act to enable Restitutions of Improvements and Tithes, and other Rights Ecclesiastical, to the Clergy, with a Restraint of aliening the same, and Directions for Presentation to the Churches;' one other act in the sixth year of the reign of his late majesty King George the First, intituled, 'An Act for the better Maintenance of Curates within the Church of Ireland;' one other act in the first year of the reign of his majesty King George the Second, for explaining and amending the said act of the sixth year of King George the First, for the better maintenance of curates within the church of Ireland; and one other act in the fortieth year of the reign of his late majesty King George the Third, intituled, 'An Act for the further Support and Maintenance of Curates within the Church of Ireland:' and whereas an act was passed in the parliament of the United Kingdom of Great Britain and Ireland, in the forty-eighth year of the reign of his said late majesty, intituled, 'An Act for enforcing the Residence of Spiritual Persons on their Benefices in Ireland;' and whereas doubts have arisen upon the construction of some of the provisions of the said acts, and it is therefore necessary that such provisions of the said acts should be explained, and other provisions made, and that the several laws for enforcing of residence, and the maintenance of stipendiary curates, in Ireland, should be amended; and that spiritual persons in Ireland should in certain cases be restrained from buying and selling: may it therefore please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, the said recited act passed in the reign of his majesty King Henry the Sixth, and so much of the said recited act of his majesty King Charles the First, as relates to gifts, grants, alienations, forfeitures, charges, and incumbrances, imposed, laid, or suffered, by any minister or other beneficer therein mentioned, or by any person, vicar, or other beneficer having cure of souls, and to residence of spiritual persons on their benefices; and also so much of the said recited acts of the parliament of Ireland, made in the sixth year of King George the First, and in the first year of King George the Second, and in the fortieth year of King George the Third, as relates to the maintenance of curates within the church of Ireland, and making provisions for appointing stipends for such curates; and the whole of the said recited act passed in the forty-eighth year of the reign of King George the Third, shall be and the same are respectively hereby repealed.

"II. And be it further enacted, that no spiritual person having or holding any dignity, prebend, canonry, benefice, stipendiary, perpetual or impropriate curacy or lectureship, shall, by himself, or by any other for him, or to his use, act as treasurer of any county, or engage in or carry on any trade or dealing for gain or profit, or be an agent or factor for any estate, or deal in any goods, wares, or merchandize, by buying and selling for lucre, gain, or profit, in any market, fair, or other place, upon pain of forfeiting the value of the goods, wares, and merchandises by him, or by any to his use, bargained and bought to sell again, contrary to the provisions of this act; and that every bargain and contract so made by him, or by any to his

use, in any such trade, or dealing, or agency, contrary to this act, shall be utterly void and of none effect; and the one half of every such forfeiture shall go to his majesty, and the other half to him that will sue for the same.

“ III. And be it further enacted, that nothing in this act contained, in relation to being engaged in trade or dealing, or buying or selling, shall extend or be construed to extend to, or to subject to any penalty or forfeiture, any spiritual person for keeping a school or seminary, or acting as a schoolmaster, or tutor, or instructor, or being in any manner concerned or engaged in giving instruction or education for profit or reward, or for buying or selling, or doing any other act, matter, or thing in the conduct of, or carrying on, or in relation to the management of any such school, seminary, or employment; or to any spiritual person whatever for the buying of any goods, wares, or merchandizes, or articles or things of any description which shall, without fraud or covin, be bought to the intent and purpose, at the buying thereof, to be used and employed by the spiritual person buying the same for his family or in his household; and after the buying of any such goods, wares, or merchandizes, or articles or things, the selling the same again, or any parts thereof which such person may not want or choose to keep, although the same shall be sold at any advanced price beyond that which may have been given for the same, or for any buying or selling again for any lucre, gain, or profit, of any matter of cattle or corn, or other matters or things whatever, necessary, proper, or convenient to be bought, sold, kept, or maintained, by any spiritual person, or any other person for him, or to his use, for the occupation, manuring, improving, pasturage, or profit of any glebe, demesne, farms, lands, tenements, or hereditaments, which may be lawfully held and occupied, possessed and enjoyed, by such spiritual person, or any other for him or to his use: provided always, that nothing herein contained shall extend or be construed to extend to authorize any such spiritual person to sell any cattle or corn, or other matters or things as aforesaid, in person, in any market, fair, or place of public sale.

“ IV. And be it further enacted, that from and after the passing of this act, every spiritual person holding any benefice who shall, without any such licence or exemption as is in this act allowed for that purpose, wilfully absent himself therefrom for any period exceeding the space of three months together, or to be accounted at several times in any one year, and make his residence and abiding at any other place or places, except at some other benefice, donative, perpetual curacy, or parochial chapelry, of which he may be possessed, shall, when such absence shall exceed such period as aforesaid, and not exceed six months, forfeit and pay one-third of the annual value, (deducting therefrom all outgoings, except any stipend paid to any curate,) of the benefice, donative, perpetual curacy, or parochial chapelry from which he shall so absent himself as aforesaid; and when such absence shall exceed six months, and not exceed eight months, one half of such annual value; and when such absence shall exceed eight months, two thirds of such annual value; and when such absence shall have been for the whole of the year, three fourths of such annual value; to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Dublin, wherein no essoin, privilege, protection, or wager of law, or more than one imparlance, shall be allowed; and the whole of every such penalty or forfeiture shall go and be paid to the person or persons who shall inform and sue for the same, together with such costs of suit as shall be allowed, according to the practice of the court in which such action shall be brought.

“ V. And be it further enacted, that every spiritual person having any benefice, and who shall not have any house of residence thereon, and who shall have resided nine months in the year within the limits of his benefice, or within the limits of the city, town, place, or parish, in which his benefice may be situated, provided such last-mentioned residence be within the distance of two miles from the church or chapel of his benefice, shall not be liable to any penalties on account of non-residence, nor be obliged to take out any licence in respect thereof, but that the same shall be deemed a legal residence to all intents and purposes of this act; and in all returns made by the bishops, persons so residing shall be returned as resident.

STAT. 5 GEO.
4, c. 91. [In.]

Not to extend to spiritual persons engaged in keeping schools, or as tutors, &c. in respect of any thing done in such employment, or for the use of the family, or occupying any glebe, &c.

Penalty for non-residence.

Where no house belonging to the benefice, &c. residence within the limits of parish, &c. deemed legal residence.

STAT. 5 GEO.
4, c. 91. [In.]

Houses purchased by trustees of first-fruits to be deemed residences.

Rectories having vicarages endowed, residence of the vicar deemed legal. Power in the bishop to allow any fit house belonging to the preferment, to be a house of residence.

Certain persons exempted while exercising certain offices, viz. masters of hospitals and charities; vicars general, surrogates, or officials; certified chaplains of lord lieutenant; chaplains of archbishops, bishops, and peers; provost, fellows, and officers of Trinity College, Dublin, &c. Schoolmasters of endowed diocesan schools; persons exempted by special acts.

Dignitaries residing at cathedral churches for certain periods, exempted.

Provision for cases in which

"VI. And whereas the trustees and commissioners of the first-fruits of ecclesiastical benefices in Ireland, may have in some instances purchased, and may hereafter purchase, houses not situate within the parishes for which they are purchased, but so contiguous as to be sufficiently convenient and suitable for the residence of the officiating ministers thereof; be it therefore enacted, that such houses, having been previously approved by the bishop, by writing under his hand and seal, and duly registered in the registry of the diocese, shall be deemed houses of residence appertaining to such benefices, to all intents and purposes whatsoever.

"VII. And be it further enacted, that in all cases of rectories having vicarages endowed, the residence of the vicar in the rectory house shall be deemed a legal residence to all intents and purposes whatever; provided that the vicarage house be kept in proper repair, to the satisfaction of the bishop.

"VIII. And be it further enacted, that it shall be lawful for the bishop, in every case in which there shall not be a house of residence belonging to any benefice within his diocese, to allow and adjudge any fit house within the limits of such benefice and belonging thereto, or any fit house belonging thereto not within the limits, but so contiguous as to be sufficiently convenient for the purpose, to be the house of residence thereof; and such allowance and adjudication in writing under the hand and seal of such bishop, shall thereupon be registered in the registry of the diocese from time to time; and such house shall thenceforth be deemed the house of residence for the time being, to all intents and purposes whatsoever.

"IX. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to or in any manner to affect any person holding any of the offices or situations hereafter mentioned; that is to say, any master or preacher of any hospital or of any incorporated charitable foundation in Ireland, during the period for which he may be required to reside, by any charter or statute of any such hospital or incorporated charitable foundation, or by any other lawful authority in the same, and shall actually reside and perform the duties therein; or any vicar-general or principal surrogate, or official in any ecclesiastical court of any diocese, whilst they are respectively residing in the places where their respective offices are exercised; or any chaplain or chaplains of the lord lieutenant, or other chief governor or governors of Ireland for the time being, provided that every such chaplain shall have a certificate from such lord lieutenant or other chief governor or governors, or his or their chief secretary, that he is resident in Dublin, or near the person of such lord lieutenant or other chief governor or governors, and is occupied by the duty of his office as such chaplain; or any chaplain of any archbishop or bishop, or of any peer of Ireland, during such time as such chaplain shall abide and dwell, and daily attend in the performance of his duty as chaplain in the household to which he shall belong within Ireland; or the provost or any fellow of or any professor or public officer in the college of the Holy and Undivided Trinity near Dublin, or the professor of astronomy at Armagh, during the period for which any such provost, fellow, professor, or officer, may respectively be required to perform the duties of any such office, and shall actually perform the duties of the same; or any schoolmaster of any school founded and endowed by his majesty or any of his royal predecessors, or any diocesan schoolmaster during such time as such schoolmaster shall actually reside at such school and perform the duties of a schoolmaster therein; or any person who shall be specially exempted from residence under the provisions of any act or acts of parliament not repealed by this act.

"X. And be it further enacted, that it shall be lawful for any spiritual person being dean, during such time as he shall reside upon his deanery, or holding any other dignity, or being prebendary or canon in any cathedral or collegiate church or churches, who shall reside any period not exceeding four months altogether within the year upon such dignity, prebend, or canonry, to account such residence as if he had legally resided on some benefice, provided he keep a resident curate or his benefice: provided always, that it shall be lawful for any spiritual person having or holding any prebend, canonry, or dignity in any cathedral or collegiate

church, in which the year for the purposes of residence is accounted to commence at any other period than the first day of January, and who may keep the periods of residence required for two successive years at such cathedral or collegiate church in whole or in part between the first day of January and the thirty-first day of December in any one year, to account such residence, although exceeding four months in the year, as reckoned from the first day of January to the thirty-first day of December, as if he had legally resided on some benefice; anything in this act contained to the contrary, notwithstanding.

“XI. And be it further enacted, that it shall be lawful for the bishop of the diocese in which any benefice shall be locally situate, to license any longer period of non-residence upon any such benefice of any dean or person holding any other dignity in any cathedral or collegiate church, or of any prebendary or canon in any case in which it shall appear to such bishop from his own knowledge, if such cathedral or collegiate church is locally situate within his own diocese, or if not, by the certificate of the bishop of the diocese in which the cathedral or collegiate church shall be locally situate, to be required for the performance of any duties in any such cathedral or collegiate church, provided that every such spiritual person shall during such period reside on such prebend, canonry, or dignity.

“XII. Provided always, and be it further enacted, that no spiritual person appointed to any prebend, canonry, or dignity in any cathedral or collegiate church before the passing of this act, shall be subject to any penalty or forfeiture for non-residence upon any benefice during the period of his actually residing upon such prebend, canonry, or dignity.

“XIII. And be it further enacted, that every spiritual person having any house of residence upon his benefice, who shall not reside thereon, shall, during such period or periods of non-residence, whether the same shall be for the whole or part of any year, keep such house of residence in good and sufficient repair; and that every such spiritual person who shall not keep such house of residence in repair, and who shall not, upon monition issued by the bishop of the diocese in which the same shall be locally situate, put the same in repair, according to the requisition of such monition, within the time specified therein, to the satisfaction of the bishop of the diocese, and to be certified to the bishop upon such survey and report as shall be required by the bishop in that behalf, shall be liable to all penalties for non-residence, notwithstanding any exemption or licence during the period of such house of residence remaining out of repair, and until the same shall have been put in good and sufficient repair, to the satisfaction of the bishop of the diocese.

“XIV. And be it further enacted, that from and after the passing of this act, it shall be lawful for any bishop, upon application made for that purpose, by petition in writing, by any spiritual person, or by any fit and proper person, on behalf of any spiritual person, having or holding any benefice locally situated within his diocese, upon such proofs as to any facts stated in any such petition, as any such bishop may think necessary and shall require, by affidavit made before any ecclesiastical judge or his surrogate, or any justice of the peace or magistrate, or any master extraordinary in Chancery (which oath any such ecclesiastical judge or surrogate, or justice of the peace or magistrate, or master extraordinary in Chancery, is hereby authorized and required to administer), to grant, in such cases as are in this act enumerated, in which, upon due consideration of all the circumstances stated in any such application, and verified to the satisfaction of the bishop as aforesaid, such bishop shall in his discretion think it fit to grant the same, a licence in writing under his hand, expressing the cause of granting the same, to such spiritual person to reside out of the parish, or out of the proper house of residence of his benefice, for the purpose of exempting such person from any pecuniary penalty or forfeiture in respect of any non-residence thereon; (that is to say,) to any spiritual person who shall be prevented from residing in the proper house of residence, or in the parish, by any actual illness or infirmity of body, of himself or of his wife or child, making part of and residing with him as part of his family; and also to any spiritual person having or holding any benefice whereupon or

STAT. 5 GEO. 4, c. 91. [18.] the year of residence at cathedrals commences at any other period than the 1st of January.

Bishop may license for a longer period of non-residence, if the duties of a cathedral require it.

Proviso for prebendaries, &c. appointed before this act.

Persons having house of residence on their benefice to forfeit the exemption, if house not kept in repair.

Bishop may grant licences for non-residence in certain cases enumerated.

STAT. 5 GEO.
4, C. 91. [1R.]

Fee for
licences, 10s.
Persons
aggrieved may
appeal to the
archbishop.

Security to be
given for
payment of
expenses.

In cases not
enumerated,
bishops may
grant licences
and assign
salaries to
curates em-
ployed.

Reasons for
granting them
to be trans-
mitted to the
archbishop for
examination
and allowance.

wherein there shall be no house of residence, or where the house of residence shall be unfit for the residence of such spiritual person, such unfitness not being occasioned by any negligence, default, or other misconduct of such spiritual person, and such spiritual person keeping such house of residence in repair to the satisfaction of the bishop; and also to any spiritual person having or holding any benefice, and occupying, in the parish of the same respectively, any mansion or messuage, to reside in such mansion or messuage, such spiritual person keeping the house of residence and other buildings belonging thereto in good and sufficient repair and condition, and producing to the bishop proof to his satisfaction at the time of granting and renewing any such licence, of such good and sufficient state of repair; and also to any spiritual person having or holding any benefice of small value, and serving as a licensed stipendiary curate elsewhere, and providing for the serving such his benefice to the satisfaction of such bishop; and also to any usher of any endowed school duly licensed by the bishop, and actually employed in teaching therein, or to any person holding any endowed lectureship or endowed chapelry, or endowed preachship, and performing and executing the duties thereof respectively, with the licence of the bishop in whose diocese he shall so officiate: provided always, that the spiritual person obtaining any such licence shall pay to the secretary or officer of the bishop, the sum of ten shillings, exclusive of and over and above the stamp duty chargeable thereon, and no more: provided also, that if any spiritual person applying to any such bishop for any such licence shall think himself aggrieved by the refusal thereof, it shall be lawful for such spiritual person to appeal to the archbishop of the province, who shall forthwith, either by himself or some commissioner or commissioners appointed from among the other bishops of his province, under his hand, make or cause to be made inquiry into the same, and by writing signed by himself confirm such refusal, or grant a licence under this act, as shall seem just and proper: provided always, that in every such case the spiritual person so appealing shall give security to the bishop for the payment of such reasonable expenses, occasioned by the appeal, as the archbishop or his commissioner or commissioners shall award.

“XV. And be it further enacted, that it shall be lawful for any such bishop as aforesaid, in any cases not hereinbefore enumerated, in which, under all the circumstances of any such case, such bishop shall think it expedient to grant to any spiritual person possessed of any benefice, a licence to reside out of the parish, or out of the proper house of residence, as the case may be, or as the case may appear to such bishop to require, to assign in any case in which a stipendiary curate may be employed to do the duty of such spiritual person, such salary as he shall judge fit to appoint, due respect being had to the value of such benefice, and to all other circumstances of the case; and it shall also be lawful for any bishop, in case of the absence from the realm of any spiritual person, to grant any such licence, without any application made for that purpose, and from time to time, in any such case, to renew any such licence, as he shall think fit, and in every such case to appoint a stipendiary curate, in case no curate duly licensed should be then employed in serving such benefice, and to assign a salary to such curate; or if any curate shall have been and be then so employed, to assign any additional salary to such curate, or to appoint an additional curate, and in every and any of such cases, to cause such salaries to be paid by sequestration of the profits of the benefice: provided always, that in every such case respectively, the nature and special circumstances thereof, and the reasons that have induced such bishop to grant such licence as aforesaid, shall be forthwith transmitted to the archbishop of the province to which such bishop shall belong, who shall forthwith, by himself, or by some commissioner or commissioners appointed for that purpose from among the bishops of such province, by writing under his hand, which commissioner or commissioners is and are thereupon authorized to take upon himself or themselves the execution of the said commission, examine into such case, and make such inquiries as to any particulars relating thereto, as such archbishop or commissioner or commissioners so appointed as aforesaid may think necessary; and after such inquiries made by himself, or where the same shall be made by such commissioner or commissioners,

after a return of the substance thereof in writing to such archbishop, such archbishop shall thereupon allow or disallow such licence in the whole or in part, or make any alteration therein as to the period for which the same may have been granted or otherwise, and likewise as to the stipend assigned to the curate, as to such archbishop shall seem fit; and no such licence shall be good, valid, or effectual under this act, for any purpose whatever, unless it shall have been so allowed and approved by such archbishop, such allowance thereof being signified by the signing thereof by such archbishop: provided always, that it shall not be necessary in such licence to specify the cause of granting the same.

“XVI. And be it further enacted, that no licence granted under this act shall be made void by the death or removal of the bishop granting the same, but the same shall be and remain good and valid, notwithstanding any such death or removal, unless the same shall be revoked by the next or any succeeding bishop, as the case may require.

“XVII. And be it further enacted, that every application made by or on behalf of any spiritual person holding any benefice, donative, perpetual or impropriate curacy, or parochial chapelry, to the bishop of the diocese, for any licence for non-residence, shall be in writing, and shall be signed by the person making the same, and shall state whether such spiritual person intends to perform the duty himself, and if he does, where and at what distance he intends to reside, or if he intends to employ a curate, the application shall state what salary he proposes to give to his curate, and whether the curate proposes to reside, or not to reside, in the parish, and if the curate intends to reside, then whether in the parsonage house, and if he does not intend to reside in the parish, then the application shall state at what distance therefrom, and at what place such curate intends to reside, and whether such curate serves any other parish as curate or incumbent, or has any ecclesiastical preferment, or holds any donative, perpetual curacy, or parochial chapelry, or officiates in any other church or chapel; and such application shall also state the gross annual value of the benefice in respect of which any licence for non-residence shall be applied for; and it shall not be lawful for the bishop to grant any such licence, unless the application shall contain a statement of the several particulars aforesaid; and all such applications and specifications shall be kept and filed by the registrar of the diocese in a separate book, which shall be kept and preserved for that purpose; and such book shall not be open to public inspection, or disclosed, or copies thereof made, except with the leave in writing of the bishop of the diocese.

“XVIII. And be it further enacted, that during the vacancy of any see, or the absence of the bishop of the diocese from that part of the United Kingdom called Ireland, the power of granting licences under this act, subject to the regulations therein contained, shall be exercised by the vicar-general of the diocese, or in case such circumstances shall arise as shall disable the bishop from exercising in person the functions of his office, it shall be exercised by such person or persons as is or are lawfully empowered to exercise his general jurisdiction in the diocese.

“XIX. And be it further enacted, that it shall be lawful for any bishop, who shall have granted any licence for non-residence as aforesaid, or for any successor or successors of any such bishop to revoke any such licence in any case in which it may appear to him or them proper and expedient to revoke the same: provided that any spiritual person may appeal against any such revocation by the bishop in like manner as is hereinbefore directed in case of any refusal of any licence: provided also, that it shall be lawful for any archbishop to whom such appeal shall be made to order and direct such reasonable fees and charges to be paid by any spiritual person appealing as aforesaid, in respect of any such proceedings as aforesaid, as he shall in his discretion think fit: provided also, that no licence for non-residence granted under this act shall continue in force for more than three years from the granting thereof, or after the thirty-first day of December in the second year after the year in which such licence is granted.

“XX. And be it further enacted, that every bishop who shall grant or revoke any licence for non-residence under this act, shall and he is hereby required, within

STAT. 5 GEO.
4, c. 91. [18.]

Licences not to be void by the death or removal of the grantor, unless revoked by the successor.

Every application for licence shall be in writing, and shall state certain particulars.

By whom licences may be granted while a see is vacant, or the bishop absent, &c.

Licences may be revoked.

Fees may be ordered to be paid by appellants.

Limiting the time of licences.

Copies of licences or

STAT. 5 GEO.
4, c. 91. [18.]
revocations to
be filed in the
registry of the
diocese, and a
list kept for
inspection;
and copies
transmitted to
churchwardens.

Penalty on
registrar
neglecting to
enter such
licence or re-
vocation, 51.
To be publicly
read at the
first visitation.

A list of li-
cences allowed
by the arch-
bishop, or
granted in his
own diocese,
shall be annu-
ally trans-
mitted to the
lord lieutenant
in council, &c.
who may re-
voke licences,
&c.

Licence,
although re-
voked, shall be
deemed valid
between the
grant and
revocation.

On or before
25th March
annually, a
return shall be
made to his

one month after the grant or revocation of such licence, to cause a copy of every such licence or revocation to be filed in the registry of his diocese, and an alphabetical list of such licences and revocations shall be made out by the registrar of such diocese, and entered in a book, and kept for the inspection of all persons, upon payment of the sum of three shillings and no more; and a copy of every such licence with respect to any benefice, shall be transmitted by the spiritual person to whom the licence is granted, to the churchwardens of the parish, township, or place to which the same relates, or to one of them, within one month after the grant of such licence; and every bishop revoking any licence shall cause such revocation to be transmitted to the churchwardens of the parish, township, or place to which it relates, or to one of them, which copies shall be by them deposited in the parish chest; and every registrar who shall neglect to enter the same shall forfeit for every neglect of entering any such licence or revocation in any such list the sum of five pounds, to be recovered by and for the use of any person who shall sue for the same, in like manner as any penalty may be recovered under the provisions of this act; and a copy of every such licence or revocation shall likewise be produced by the churchwardens, and publicly read by the registrar or other officer at the visitation of the diocese or ecclesiastical district within which the benefice in respect whereof the licence shall have been granted or revocation made shall be locally situate, immediately next succeeding the granting or revocation thereof.

“XXI. And be it further enacted, that every archbishop who shall in his own diocese grant any licence, or who shall allow or approve, in manner directed by this act, any licence or licences in any case or cases not enumerated in this act, shall annually, on or before the thirty-first day of January in each year, transmit to the lord lieutenant, or other chief governor or governors of Ireland, a list of all such licences so granted or allowed or approved respectively as aforesaid, in the year ending on the last day of December preceding such thirty-first day of January, and shall in every such list specify the reasons which shall have induced him to grant, allow, or approve the said licences, together with the reasons transmitted to him by the bishops for granting any such licences in their respective dioceses; and it shall be lawful for the lord lieutenant or other chief governor or governors of Ireland, by and with the advice and consent of his majesty's privy council there, by an order made for that purpose, to revoke and annul any such licence, from such time as shall be mentioned in such order; and in case any such order shall be so made, the same shall be transmitted to the archbishop who shall have granted or allowed or approved such licence, who shall thereupon cause a copy of every such order made in relation to any licence so allowed or approved to be transmitted to the bishop of the diocese in which such licence shall have been granted; and such bishop shall cause a copy of the mandatory part of the order to be filed in the registry of such diocese, and a like copy to be delivered to the churchwardens of the parish to which the same relates, in manner hereinbefore directed as to revocation of licences under this act; and every such archbishop shall cause a copy of the mandatory part of every such order made in relation to any such licence as aforesaid, granted by him in his own diocese, to be in like manner filed in the registry of his diocese, and a like copy also to be delivered to the churchwarden of the parish to which such licence shall relate, in manner before mentioned: provided always, that after the time from which such licence shall have been so revoked by order in council, the same shall nevertheless, in all questions that shall have arisen or may thereafter arise, touching the non-residence of the spiritual person to whom the same shall have been granted, between the period at which the same was granted, or allowed, or approved, and the time at which the same shall be so revoked as aforesaid, be deemed and taken to be and to have been valid and effectual to all intents and purposes of this act.

“XXII. And be it further enacted, that on or before the twenty-fifth day of March in every year, a return or returns shall be made to his majesty in council by every bishop, of the names of every benefice within his diocese, or subject to his jurisdiction by virtue of this act, and the names of the several spiritual persons

holding the same respectively who shall have resided; and also the names of the several spiritual persons respectively who shall not have resided thereon by reason of any exemption under or by virtue of this act, or by reason of any licence granted by such bishop, for any and what cause enumerated by this act; and also of all spiritual persons not having any such exemption or licence, who shall not have resided on their respective benefices, so far as the bishop is informed thereof; and also the names of all curates licensed to serve any benefice on which the incumbent is not resident, and whether the gross annual value of such benefice amounts to or exceeds three hundred pounds per annum or not, the amount of the curate's salary, and the place of his residence; and every spiritual person who shall be non-resident in any year subsequent to the passing of this act, by reason of residence on any other benefice, or of any exemption under this act, and to entitle him to which it is not necessary to obtain any licence under this act, shall within six weeks from and after the first day of January in every following year, notify the same in writing under his hand, to the bishop of the diocese to whose jurisdiction he is subject by this act, or otherwise in respect of such benefice, specifying the nature of such exemption, and whether the gross annual value of the benefice on which he is non-resident amounts to or exceeds three hundred pounds per annum or not; and every spiritual person who shall have more than one benefice, and who shall reside on one of them, or who shall reside during any period of the year on any dignity, or in the performance of the duties of any office in any cathedral or collegiate church, or who shall be non-resident for any period of the year on account of any of the causes of temporary exemption specified in this act, shall in like manner and within the like period in each year notify the same.

"XXIII. And be it further enacted, that every spiritual person who shall neglect to make such notification as by this act is directed, within such period of six weeks as aforesaid, shall forfeit and pay for every such offence the sum of twenty pounds, to be levied by order of the bishop of the diocese by sequestration, if not otherwise paid, after monition to pay the same out of the profits of the benefice in respect of which he shall neglect to make such notification, by the bishop of the diocese to whom the notification ought to be made, to be applied as such bishop may direct, to useful and charitable purposes: provided always, that it shall be lawful for such bishop to remit or order the repayment of any part of any such penalty, in like manner as is allowed by this act in cases of non-compliance with an order for residence.

"XXIV. And be it further enacted, that nothing in this act contained shall extend or be construed to extend to exempt any spiritual person or persons from any canonical or ecclesiastical censures, or affect any proceedings that shall hereafter be instituted in any ecclesiastical court, in order to cause the same to be inflicted, in relation to the non-residence of any spiritual person having or holding any benefice who shall not have obtained a licence according to the provisions of this act, to be absent therefrom, nor have any other lawful cause of absence: provided always, that no proceeding be admitted in any ecclesiastical court against any spiritual person for non-residence, not exceeding three months in any one year, at the suit or instance of any person or persons other than the bishop only of the diocese within which the benefice in respect whereof such non-residence shall have taken place shall be locally situated; anything in any law or laws, or ecclesiastical canon or canons, to the contrary thereof notwithstanding.

"XXV. And be it further enacted, that in every case in which it shall appear to any such bishop as aforesaid, that any spiritual person having or holding any benefice, and not being licensed according to this act to be absent therefrom, nor having any lawful cause of absence from the same, does not sufficiently reside on the same respectively, it shall be lawful for such bishop to issue or cause to be issued, a monition to such spiritual person forthwith to proceed to and reside thereon, and perform the duties thereof, and to make a return to such monition within a certain number of days after the issuing thereof, so as that in every such case there shall be thirty days between the times of delivering such monition

STAT. 5 GEO. 4, c. 91. [I.R.] majesty in council of every benefice, and whether it exceeds the value of 300*l.* or not, with names of residents and non-residents, &c. Non-residents by exemption without licence shall yearly notify to the bishop of the diocese within a certain period.

Persons neglecting to notify cause of exemption, to forfeit 20*l.* recoverable by sequestration.

Power of mitigation or remitting by the bishop.

Act not to exempt from censure for non-residence without licence; but no censure for non-residence shall be in force, nor any proceedings be admitted, except at the suit of the bishop.

If any unlicensed person does not sufficiently reside, the bishop may issue a monition.

STAT. 5 GEO.
4, c. 91. [I.]

Returns to be made to monitions, which may be required to be upon oath.

Where return shall not be made, or shall not be satisfactory, bishop may order residence, and if disobeyed, may sequester the profits of the benefice, and direct an application of the profits.

Appeal against sequestration may be made to the archbishop.

to such spiritual person, or leaving the same at his then usual or last place of abode, or if not there to be found, with the officiating minister or one of the churchwardens, and also a copy thereof at the house of residence, (if any such there be,) belonging to such benefice, to which any such spiritual person shall be required by such monition to proceed and reside thereon, and the time specified in such monition for the return thereto; and a copy of every such monition shall, immediately on the issuing thereof, be filed in the registry of such bishop's court, and shall be open for inspection on the payment of three shillings and no more; and the spiritual person to whom any such monition shall be sent under this act, shall, within the time specified for that purpose, make a return thereto into such registry, to be there filed; and it shall be lawful for the bishop to whom any such return shall be made, to require such return, or any fact contained therein, to be verified by the oath of such spiritual person or others, to be taken before some surrogate, or justice of the peace, or master extraordinary in Chancery, which oath any such surrogate, or justice of the peace, or master extraordinary in Chancery, is hereby authorized and required to administer, on application being made for that purpose; and in every case where no such return shall be made, or where such return shall not state such reasons as shall be deemed satisfactory by such bishop for the non-residence of the spiritual person to whom such monition shall have been sent as aforesaid, or where the same or any of the facts contained therein shall not be so verified as aforesaid, when the same shall have been required, then and in such case it shall be lawful for such bishop to issue an order in writing under his hand and seal, to require such person to proceed to and reside as aforesaid, within thirty days after such order in writing or a copy thereof shall have been delivered or left in like manner as hereinbefore required as to monitions; and in case of non-compliance, it shall be lawful for such bishop to sequester the profits of such benefice of such spiritual person as aforesaid, until such order shall be complied with, or such sufficient reasons for non-residence stated and proved as aforesaid, and to direct by any order to be made for that purpose under his hand, and filed as aforesaid, the application of such profits, after deducting the necessary expenses of serving the cure, either in the whole or in such proportion as he shall think fit, in the first place, to the payment of such reasonable expenses as shall have been incurred in relation to such monition and sequestration, and in the next place, towards the augmentation or improvement of any such benefice or house of residence thereof, or any of the buildings and appurtenance thereof, or towards the improvement of any of the glebe or demesne lands thereof, or to order and direct the same or any portion thereof to be paid to the trustees and commissioners of the first-fruits in Ireland for the augmentation of the maintenance of the poor clergy, to be applied for the purposes of such augmentation as such bishop shall, in his discretion, under all circumstances think fit and expedient; and it shall also be lawful for any such bishop within six months after such order for sequestration, or within six months after any money shall have been actually levied for such sequestration, to remit to any such spiritual person any part or proportion of such sequestered profits, or cause the same or any part thereof that shall have been paid or directed to be paid to the said trustees and commissioners, to be repaid to such spiritual person, which repayment the said trustees and commissioners are hereby authorized and required, upon an order under the hand of any such bishop, to make out of any money then in their hands, or if no money shall then be in their hands, out of the next money that shall come to their hands, in any case which by reason of the subsequent obedience of any such spiritual person to any such monition or order, or the stating and proving such sufficient reasons as aforesaid, such bishop shall think the same proper: provided always, that when any such spiritual person shall think himself aggrieved by reason of any such sequestration issued by any bishop, it shall be lawful for such spiritual person, within one month after the making any order for any such sequestration as aforesaid, to appeal to the archbishop of the province to which such bishop shall belong, who shall forthwith, either by himself or some commissioner or commissioners appointed from among the bishops of his province for that purpose, under

his hand and seal, make or cause to be made due inquiry into the same, and make such order therein or relating thereto, or to the profits that shall be so sequestered as aforesaid, for the return to such spiritual person of the same or any part thereof, or otherwise, as shall, under all the circumstances of the case, appear to such archbishop (after such inquiry made by himself or by his commissioner or commissioners, and in the latter case, after the substance of such inquiry shall have been returned in writing to the said archbishop) to be just and proper: provided always, that the party so appealing shall give security to the bishop for the payment of such reasonable expenses occasioned by the appeal, as the archbishop or his commissioner or commissioners shall award: provided also, that no such order for any sequestration shall be put in force during such appeal as aforesaid, and until the same shall be determined.

“XXVI. And be it further enacted, that every spiritual person, to whom any such monition or order in writing shall be sent as aforesaid, under this act, who shall be at the time of the issuing thereof absent from residence in or upon his benefice, contrary to the provisions of this act, but who shall, in obedience to such monition or order, forthwith return to due residence, and the profits of whose benefice shall, by reason of such return, not be sequestered, shall nevertheless pay all costs, charges, and expenses incurred by reason of the issuing and serving such monition or order, to be levied as any costs may be levied upon any spiritual person by any bishop under any of the provisions of this act.

“XXVII. And to the intent effectually to enforce *bona fide* residence, according to the intent and meaning of such monition and order as aforesaid, be it further enacted, that if any spiritual person, not licensed under this act to be absent from his benefice, nor having other lawful cause of absence from the same, who after any such monition or order as aforesaid, requiring his residence, and before or after any such sequestration as aforesaid, shall, in obedience to any such monition or order, have begun to reside upon his benefice, shall afterwards, and before the expiration of six months next after the commencement of such residence, without the leave of such bishop, wilfully, in the judgment of such bishop, absent himself from such benefice, it shall be lawful for such bishop, without issuing any other monition, or making any other order, again to sequester and apply the profits of such benefice as before directed by this act, for the purpose of enforcing the residence of such spiritual person, according to the true intent of the original monition issued by such bishop as aforesaid; and it shall be lawful for the bishop so to proceed in like cases from time to time, as often as occasion may require; provided that in each and every of such cases, such spiritual person shall be entitled to appeal against such sequestration, in such manner and upon such terms as hereinbefore is and are mentioned touching appeals respecting sequestration; but nevertheless the same shall be in force during such appeal.

“XXVIII. And whereas it is expedient that bishops should be empowered summarily to punish past non-residence as well as to compel residence in future; be it therefore enacted, that in all cases in which any spiritual person shall have become subject to any penalty or forfeiture for any non-residence, it shall be lawful for the bishop within whose diocese such penalty or forfeiture shall have arisen, to proceed against such spiritual person for such past non-residence, and to levy the penalties incurred thereby by monition and sequestration, and to direct the application thereof in like manner, and subject to the same regulations, and with like powers of remitting or ordering the repayment of any part of such penalties, as is directed or allowed in cases of non-compliance with any order for residence.

“XXIX. And be it further enacted, that in every case in which any archbishop or bishop shall think proper under all circumstances, after proceeding by monition for the recovery of any penalty under this act, of more than one-third of the value of any benefice, for any non-residence exceeding six months in the year, to remit the whole or any part of any such penalty, such archbishop shall forthwith transmit to the lord lieutenant or other chief governor or governors, and to the privy council in Ireland, and such bishop shall transmit to the archbishop of the province to which he belongs, a list of such cases as have occurred in his

STAT. 5 GEO.
4, c. 91. [1a.]

Appellant to give security for payment of the expenses.

Persons who shall return to residence on monition, shall pay the costs.

If any person returning to residence on monition shall, before six months thereafter, absent himself, the bishop may, without monition, sequester the profits of the benefice.

Bishops empowered to punish past non-residence.

Penalties for the recovery of which monition has been issued, may be remitted by the bishop, and special returns made of the reasons for such remission.

STAT. 5 GEO.
4, c. 91. [1a.]

or their respective dioceses, specifying the nature and special circumstances of each case, and the reasons for the said remission, in the same manner as is directed in relation to the licences for non-residence granted in non-enumerated cases; and it shall thereupon be lawful for the lord lieutenant or other chief governor or governors of Ireland, by and with the advice and consent of his majesty's privy council in Ireland, or for the said archbishop, as the case may be, to allow or disallow such remission in whole or in part, in the same manner as is provided in this act with relation to the allowance or disallowance of licences for non-residence; provided always, that the decision of the said archbishop with respect to cases transmitted to him from any such bishop shall be final.

If any spiritual person shall continue under sequestration two years, or incur three sequestrations within that period, the benefice shall become void.

"XXX. And be it further enacted, that if the benefice of any spiritual person shall continue for the space of two years under any sequestration, and under the provisions of this act, for disobedience to the bishop's monition requiring such spiritual person to reside on his benefice, or shall under the provisions of this act incur three such sequestrations in the said space of two years, the spiritual person not being relieved with respect to any of such sequestrations upon appeal, the benefice in relation to non-residence upon which such sequestration shall have been made, shall become *ipso facto* void, and the bishop of the diocese shall thereupon give notice thereof to the patron or person entitled to present, who shall thereupon present or nominate some clerk thereto, other than the spiritual person whose benefice shall have so continued under such sequestration, or who shall have incurred such sequestrations as aforesaid, as if the same had been avoided by the natural death or resignation of such spiritual person.

Contracts for letting houses in which any spiritual persons shall by order of the bishop be required to reside shall be void.

"XXXI. And be it further enacted, that all contracts or agreements made for the letting of the house of residence, or the buildings, gardens, orchards, and appurtenances necessary for the convenient occupation of the same, belonging to any benefice, to which house of residence any spiritual person shall be required, by order of the bishop as aforesaid, to proceed and to reside therein, or which shall be assigned or appointed as a residence to any curate by the bishop, shall, upon a copy of such order, assignment, or appointment being served upon the occupier thereof, or left at the house, be null and void; and a copy of every such order, assignment, or appointment, shall immediately on the issuing thereof be transmitted to one of the churchwardens of the parish, or such other person as the bishop shall think fit, and be by him forthwith served on the occupier of such house of residence, or left at the same; and any person continuing to hold any such house of residence, or any such building, garden, orchard, or appurtenances, after the day on which the said spiritual person shall be directed by such order to reside in such house of residence, or which shall be specified in any such assignment or appointment; and after service of such copy as aforesaid, or the same being so left as aforesaid, shall forfeit the sum of forty shillings for every day he shall, without the permission of the bishop in writing for that purpose obtained, wilfully continue to hold any such house, building, garden, orchard, or appurtenances, together with the expenses of serving such order, in case it shall have been deemed necessary specially to serve such order, to be allowed by the bishop issuing the order, or making such assignment or appointment as aforesaid, and to be recovered and applied in like manner as the penalties for non-residence are directed to be recovered and applied by the provisions of this act; and it shall also be lawful for the spiritual person so directed to reside as aforesaid, or curate to whom any such residence is assigned, to apply to any justice of the peace or magistrate of the county, riding, province, city, or place, for a warrant for the taking possession thereof, and the justice of the peace to whom any such order for such possession is produced, shall and he is hereby required thereupon to give a warrant for such possession, and possession may thereupon be taken of such house under such warrant, at any time in the day-time, by entering the same by force, if necessary, without any other proceeding by ejectment or otherwise; anything in any act or acts of parliament or law or laws to the contrary notwithstanding.

Any person holding possession after the day appointed shall be subject to penalty.

Justice may grant warrant to take possession.

Not liable to penalty while the tenant shall continue to occupy.

"XXXII. Provided always, and be it further enacted, that no spiritual person shall be liable to any penalties for not residing in any such house or residence

during such time as such tenant shall continue to occupy such house of residence, or other buildings necessary to the occupation of the same.

“XXXIII. And be it further enacted, that from and after the passing of this act, no oath shall be required of or taken by any vicar, in relation to residence on his vicarage; any law, custom, constitution, or usage to the contrary thereof notwithstanding.

“XXXIV. And be it further enacted, that no penalty or forfeiture shall be recovered by any proceeding or action against any spiritual person, under the provisions of this act, other or further than those which such spiritual person may have incurred during the year ending on the thirty-first day of December immediately preceding the commencement of such proceeding or action.

“XXXV. And be it further enacted, that every penalty for non-residence under this act, in respect of which no proceeding shall have been had by monition before the first day of April next after the year in which the same shall have been incurred, may be recovered by action or suit in the manner by this act directed.

“XXXVI. And be it further enacted, that no action of debt, bill, plaint, or information against any spiritual person, for the recovery of any penalties and forfeitures under this act, shall be commenced or filed in any of his majesty's courts of record at Dublin, until the first day of May after the expiration of the year in which the alleged offence shall have taken place.

“XXXVII. And be it further enacted, that for all the purposes of this act, the year shall be deemed to commence on the first day of January, and be reckoned therefrom to the thirty-first day of December, both inclusive.

“XXXVIII. And be it further enacted, that for all the purposes of this act, the months therein named shall be taken to be calendar months, except in any case in which any month or months are to be made up of different periods less than a month, and in every such case thirty days shall be deemed a month.

“XXXIX. And whereas, notwithstanding the regulations contained in this act, spiritual persons may, through inadvertence, and in many cases from unavoidable circumstances and causes, become subject to penalties and forfeitures, and vexatious prosecutions, unless provision is made for the prevention thereof; be it therefore enacted, that from and after the passing of this act no writ shall be sued out against, nor any copy of any process at the suit of any informer be served upon any spiritual person, for any penalty or forfeiture incurred under any of the provisions of this act, until a notice in writing of such intended writ or process shall have been delivered to him, or left at the usual or last place of his abode, and also to the bishop of the diocese, by leaving the same at the registry of his diocese, by the attorney or agent for the party who intends to sue or cause the same to be sued out or served, one calendar month at the least before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party hath or claimeth to have, and the penalty or penalties for which such person intends to sue, and on the back of which notices respectively shall be indorsed the name of such attorney or agent, together with the place of his abode; and no such notice shall be given before the first day of April in the year next after any such penalty or penalties shall have been incurred.

“XL. And be it further enacted, that no plaintiff shall recover any verdict against any spiritual person for any penalty or forfeiture under the provisions of this act, unless it is proved upon the trial of such action that such notices were respectively given as aforesaid, but in default thereof such spiritual person shall recover a verdict with double costs.

“XLI. And be it further enacted, that no evidence shall be permitted to be given by the plaintiff on the trial of any such action as aforesaid of any cause of action, except such as is contained in the notices hereby directed to be given.

“XLII. And be it further enacted, that it shall be lawful for any spiritual person against whom any action shall be brought for any penalty or forfeiture under the provisions of this act, by leave of the court in which such actions shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had,

STAT. 5 GEO. 4, c. 91. [1a.]

No oath relating to residence shall be required of any vicar. Penalties not recoverable for more than one year.

Penalties not levied under monition may be recovered by action. Actions for penalties not to be commenced before 1st May after expiration of the year.

Commencement and conclusion of the year.

Calendar months to be taken for the purposes of this act.

No action to be commenced for any penalty until after one calendar month's notice given to the defendant and bishop of diocese.

Plaintiff not to recover without proof made that such notices were given.

No evidence to be given but such as is contained in the notices.

Spiritual person may, by leave, pay into court, before issue joined,

STAT. 5 GEO.
4, c. 91. [1a.]

such sum as he
shall think fit.
The court in
which any
action shall be
depending may
require the
diocesan to
certify the
reputed annual
value of bene-
fices, &c.

Licences may
be pleaded in
bar of action;
and in case of
nonsuit, &c.
the defendant
shall have
double costs.

If at the time
of filing any
monition no
action shall
have been
commenced,
none shall be
afterwards
brought, &c.

No penalty to
be levied
against the
person where
it can be reco-

made, and given in and by such court, as in other actions where the defendant is allowed to pay money into court.

“XLIII. And be it further enacted, that the court in which any action, bill, plaint, or information shall be depending, for the recovery of any penalty or forfeiture for non-residence under this act, may and shall, upon application made for that purpose, require by rule or order of the said court, or any judge thereof, the bishop of the diocese within the limits of which the benefice shall be locally situate, or to whom the same shall be subject, according to the provisions of this act, for or by reason of non-residence in, at, or upon which the penalties and forfeitures shall be sought to be recovered by such action, bill, or information, to certify in writing under his hand to the said court, and also to the party for that purpose named in the said rule or order, the reputed annual value of such benefice; and upon such rule or order being left with such bishop, or the registrar of such bishop, such bishop shall accordingly certify such reputed annual value; and such certificate shall in all subsequent proceedings upon such action, bill, plaint, or information, be received and taken as evidence of the annual value of such benefice for the purposes of this act, without prejudice nevertheless to the admissibility or effect of any such other evidence as may be offered or given respecting the actual value thereof.

“XLIV. And be it further enacted, that it shall be lawful for any spiritual person to whom any licence for non-residence shall have been granted, and against whom any action shall be brought for any penalty or forfeiture by reason of any non-residence, or any matter or thing relating whereto any such licence under this act has been granted, to plead such licence in bar of any such action; and if the plaintiff in such suit or action shall discontinue any such suit or action after any plea of licence shall have been pleaded thereto under this act, then and in such case the defendant in such suit or action shall have full costs of suit; and if in any such suit or action a verdict shall be given for the defendant, or the plaintiff shall become nonsuit, the defendant shall have double costs, and have the like remedy for the same as any defendant hath in other cases to recover costs by law; and it shall be lawful for the court, or any judge of the court in which any suit or action shall be commenced, upon any application made in that behalf, to order and direct, if such court or judge shall deem it expedient so to do, that the plaintiff in any such suit or action shall give security for the payment of such costs, and that all proceedings in any such suit or action shall be stayed until such security shall be given, as to the court or judge to whom any such application shall be made shall seem fit.

“XLV. Provided always, and be it further enacted, that if at the time of filing any monition requiring any spiritual person to reside on his benefice, or to recover the penalties incurred by past non-residence, no notice of any action for any such penalty or forfeiture shall have been already given in manner aforesaid, then and in such case no such action, suit, bill, plaint, or information shall be afterwards brought for any penalty or forfeiture incurred by reason of any non-residence of such spiritual person before the issuing of such monition, and during any proceedings that may be had under such monition; and if any such action or suit shall be so commenced, the defendant therein may plead in bar thereof that such a monition as aforesaid has issued in respect of the same benefice, and such defendant, unless upon application to the court the same shall be dispensed with, shall, upon pleading such matter, file or cause to be filed an affidavit in the said court, thereby stating the period specified in such monition, and that, according to the belief of the defendant, the bishop who has issued or caused such monition to be issued is proceeding upon the said monition, to the intent to make the same effectual to all intents and purposes of this act, otherwise such plea shall not be good or available in the law.

“XLVI. And be it further enacted, that no penalty or costs incurred by any spiritual person by reason of any non-residence on his benefice shall be levied by execution against the body of any such person whilst he shall hold the same or any other benefice out of the profits of which the same can be levied by seques-

tration within the term of three years; and in case the body of any such spiritual person shall be taken in execution for the same, the court in which the same was recovered, or any judge thereof, may and shall, upon application made for that purpose, discharge the party from such execution, in case it shall be made to appear to the satisfaction of such court or judge that such penalty and costs can be levied as aforesaid.

STAT. 5 Gmo. 4, c. 91. [In.]
vered by sequestration within three years.

“XLVII. And be it further enacted, that if any spiritual person holding any benefice, who does not or shall not actually reside thereon nine months in each year (unless such person shall do the duty of the same, having a legal exemption from residence, or a licence to reside out of the parsonage house or vicarage house, or other usual house or residence belonging to the same), shall, for a period exceeding three months, absent himself from his benefice without leaving a curate duly licensed, or other spiritual person, to perform, and who shall duly perform the ecclesiastical duties of such benefice, or shall for a period of three months after the death, resignation, or removal of any curate who has served his church or chapel, neglect to notify such death, resignation, or removal to the bishop of the diocese, or to nominate to the bishop of the diocese a proper curate, then, and in every such case, and in every case in which no curate shall be nominated to the bishop for the purpose of being licensed by him within such period as aforesaid, the bishop is hereby authorized to appoint and license a proper curate, with such salary as by this act is allowed and directed, to serve the church or chapel of the parish or place in respect of which such neglect or default shall have occurred: provided always, that the licence shall in every case specify whether the curate is required to reside within the parish or place or not, and if the curate is permitted by the bishop granting the licence to reside out of the parish or place, the grounds upon which the curate is so permitted to reside out of the parish or place shall be specified in the said licence; and the distance of the residence of any curate from any church or chapel which he shall be licensed to serve shall not exceed five statute miles, except in cases of necessity, to be approved by the bishop and specified in the licences.

Non-resident incumbents neglecting to appoint curates, bishop to appoint.

Licence to specify whether curate is to reside in the parish or not.

“XLVIII. And be it further enacted, that in every case where a curate is appointed to serve a benefice upon which the incumbent is non-resident for more than three months in the year, from exemption, licence, or otherwise, such curate shall be required by the bishop to reside within the parish, provided the gross value of such benefice amounts to three hundred pounds a year or upwards, and the population amounts to three hundred persons or upwards, or provided the population amounts to one thousand persons or upwards, whatever may be the value of such benefice: provided always, that whenever it shall be made out to the satisfaction of such bishop, that from special and peculiar circumstances great inconvenience would arise from such curate being compelled to reside within the parish, it shall be lawful for the bishop to allow such curate to reside in some near and convenient place: provided also, that the licence to be granted to such curate shall specify the special circumstances which have induced the bishop to allow such residence out of the parish, and shall be entered and filed in the registry of the diocese.

Curate to reside on all benefices above 300*l.* a year, &c. except under special circumstances.

“XLIX. And be it further enacted, that whenever it shall appear to the satisfaction of any bishop, either of his own knowledge or upon proof by affidavit laid before him, that by reason of the number of churches or chapels belonging to any benefice locally situate within his diocese, or the distance of such churches or chapels from each other, or the distance of the residence of the spiritual person serving the same from such churches or chapels, or any or either of them, or the negligence, or mental or bodily infirmity of the spiritual person holding the same, that the ecclesiastical duties of such benefice are inadequately performed, or where it shall appear to such bishop as aforesaid, that the residence of such spiritual person is at too great a distance from any parish united to the one in which he resides to admit of his performing all the ecclesiastical duties, such bishop may, by writing under his hand, require the spiritual person holding such benefice to nominate to him a fit person or persons, with sufficient stipend or stipends, to be

If duty be inadequately performed, the bishop may appoint curate.

STAT. 5 GEO.
4, c. 91. [18.]

Appeal to
archbishop.

Bishops may
enforce per-
formance of
church service
both morning
and evening.

Statement of
particulars
necessary to be
given by per-
sons applying
for a licence
for a curate.

Bishops shall
appoint salaries
to curates.
Licences to
express the
amount.

On obtaining
such licence, a
fee of 1*l.* to
bishop's secre-
tary.

Person ap-
pointed to two
or more cura-
cies to sign one
declaration.

licensed by him to perform or to assist in performing such duties, specifying therein the grounds of such proceeding; and if such spiritual person shall neglect or omit to make such nomination for the space of three months after such requisition so made as aforesaid, then and in every such case it shall be lawful for such bishop to appoint a curate or curates, as the case shall appear to such bishop to require, with such stipend or stipends as such bishop shall think fit to appoint, not exceeding in any case in the whole the stipends allowed to curates by this act, nor, except in the case of negligence, exceeding one half of the gross annual value of the benefice, although the spiritual person to whom such churches or chapels shall belong shall actually reside or serve the same: provided always, that such requisition, and any affidavit made to found the same, shall be forthwith filed by the bishop in the registry of his court: provided also, that it shall be lawful for any such spiritual person who shall think himself aggrieved by any such appointment of such curate or curates, to appeal to the archbishop of the province to which such bishop shall belong, in such and the like manner, and under such provisions and directions as are allowed to any spiritual person thinking himself aggrieved by any sequestration issued by any bishop.

“L. And be it further enacted, that in all cases where the bishop of the diocese shall deem it proper to enforce the performance of morning and evening service on Sundays, or any other service required by law in any parish church or parochial chapel, or the chapel of any extra-parochial place, it shall be lawful for such bishop to enforce the same by monition and sequestration, to be issued in the manner by this act provided.

“LII. And be it further enacted, that every bishop to whom any application shall be made for any licence for a curate to serve for any person not duly residing upon his benefice, shall, before he shall grant such licence, require a statement of all the particulars by this act required to be stated by any person applying for a licence for non-residence: and it shall not be lawful for any bishop to grant a licence to any curate to serve the church or chapel of any person as aforesaid, upon any such application as aforesaid, until a statement of all such particulars as aforesaid shall have been delivered to him; and such statement shall be kept and filed, and preserved from public inspection, and disclosed only in like manner, and in such cases, as is before directed as to statements of persons applying for licences for non-residence.

“LIII. And be it further enacted, that it shall be lawful for the bishop, and he is hereby required, subject to the several provisions and restrictions in this act contained, to appoint to every curate such salary as is allowed and specified in this act; and every licence to be granted to a stipendiary curate under this act shall contain and specify the amount of the salary allowed by the bishop to the curate, and such licence, or any copy of the registry thereof, signed by the registrar of the diocese or his deputy, shall be evidence of the amount of the salary so appointed to any curate in all courts of law or equity; and in case any difference shall arise between any rector or vicar, or person holding any benefice, and his curate, touching such stipend or allowance, or the payment thereof, or of the arrears thereof, the bishop, on complaint to him made, may and shall summarily hear and determine the same; and in case of wilful neglect or refusal to pay such stipend, salary, or allowance, or the arrears thereof, he shall be and is hereby empowered to proceed by monition and sequestration to sequester the profits of the benefice for and until payment of such stipend or allowance, or the arrears thereof: provided always, that the curate obtaining any such licence shall pay to the secretary or officer of the bishop, the sum of one pound, exclusive of any stamp duty which may be chargeable thereon, which said sum of one pound shall be in remuneration of all and every fee or fees now demandable by the said secretary or officer for obtaining such licence, or for the signature of any declaration by the said curate in consequence of such licence, or of any certificate of such curate having signed such declaration: and provided also, that from and after the passing of this act, as often as any person shall be licensed to two or more curacies within the same diocese at one and the same time, it shall be sufficient for such person to sign one declara-

tion only, appointed to be signed by an act made in the parliament of Ireland in the seventeenth and eighteenth years of the reign of King Charles the Second, intituled, 'An Act for the Uniformity of Public Prayers and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of Ireland;' and once to take the oaths of allegiance and abjuration; and also that it shall be sufficient for such person to produce one certificate only of his having so signed such declaration, and taken such oaths, before the bishop of the diocese.

"LIII. And be it further enacted, that it shall be lawful for the bishop to appoint for the curate any stipend or allowance not exceeding seventy-five pounds per annum, and also the use of the house of residence, with the gardens and stables belonging thereto, or a further sum of fifteen pounds in lieu of the use of the rectory or vicarage house, or other houses of residence in case there shall be no house, or it shall not appear to the bishop convenient to allot or assign the house to the curate, in respect of any benefice to which the spiritual person holding the same was instituted or appointed before the third day of February, one thousand eight hundred and twenty-four; but it shall not be lawful for the bishop to assign any greater stipend or allowance than aforesaid, in respect of any such benefice, during the incumbency of any such spiritual person as aforesaid, unless with the consent of the spiritual person holding the benefice, or in case of neglect to appoint or to nominate to the bishop a proper curate.

"LIV. And be it further enacted, that in every case in which any spiritual person shall have been, after the third day of February, one thousand eight hundred and twenty-four, or shall at any time after the passing of this act be instituted or inducted, or nominated or appointed to, or otherwise become incumbent or possessed of any benefice, and shall not duly reside thereon, unless such person shall do the duty of the same, having a legal exemption from residence, or a licence to reside out of the same, or to reside out of the parsonage or vicarage or other usual house of residence belonging to the same, the bishop shall appoint for the curate licensed to serve such benefice of such non-resident incumbent, or person as aforesaid in his absence, such salary as is hereinafter next mentioned; (that is to say,) such salary shall in no case be less than eighty pounds per annum, or than the annual value of the benefice, if the gross value thereof shall not amount to eighty pounds per annum; and such salary shall not be less than one hundred pounds per annum, or than the whole value as aforesaid, if the said value shall not amount to one hundred pounds per annum, in any parish or place where the population according to the returns then last made in pursuance of any act or acts of parliament, shall amount to or exceed three hundred persons; and such salary shall not be less than one hundred and twenty pounds per annum, or the whole value as aforesaid, if the said value shall not amount to one hundred and twenty pounds per annum, in any parish or place where the population shall appear as aforesaid to amount to or exceed five hundred persons; and such salary shall not be less than one hundred and fifty pounds per annum, or than the whole value as aforesaid, if the said value shall not amount to one hundred pounds per annum, in any parish or place where the population shall appear as aforesaid to amount to or to exceed one thousand persons: provided always, that the annual value of all benefices, of which the value estimated as is herein provided does not amount to one hundred and fifty pounds per annum, shall be estimated from the returns made by the bishops of the several dioceses to the trustees and commissioners of the first-fruits in Ireland, or from any future returns which may be made by the said bishops to the said trustees and commissioners respecting parishes or places omitted in the said returns, or respecting parishes or places in the actual income of which it shall be made appear to the bishops, that any considerable variation has taken place, either by augmentation made by the said trustees and commissioners, or otherwise; and that the annual value of all benefices, of which the value estimated as is herein provided does not amount to one hundred pounds or upwards, shall be estimated by the bishops of the several dioceses, in such manner as shall be satisfactory to them.

STAT. 5 GEO.
4, c. 91. [In.]

Stipends to curates of incumbents before 3rd February, 1824, not to exceed 75*l.* per annum, and the use of the residence, &c. except in cases of neglect.

The salaries payable to curates to be in proportion to the value and population of the benefices.

STAT. 5 GEO.
4, c. 91. [1a.]

Where the
benefice ex-
ceeds 400*l.* an
allowance may
be made to
curate of 100*l.*
per annum, &c.

Smaller salaries
to be allowed
to curates in
certain cases.

Salary of cu-
rate engaged
to serve inter-
changeably at
different places
belonging to
the same in-
cumbent.

Spiritual per-
sons not to
serve more
than two
churches in
one day, ex-
cept in certain
cases, and with
special licence
for that pur-
pose from the
bishop.

“LV. And be it further enacted, that in any parish or place, where it shall appear to the satisfaction of the bishop that the actual income of the benefice, clear of all deductions, exceeds the sum of four hundred pounds per annum, it shall be lawful for the bishop to assign to the curate of such parish or place, being resident within the same, and serving no other cure, a salary or allowance of one hundred pounds per annum, notwithstanding the population of such parish or place may not appear as aforesaid to amount to three hundred persons; and that in any parish or place where the actual annual income shall appear to exceed four hundred pounds as aforesaid, and where the population shall also appear as aforesaid to amount to or exceed five hundred persons, it shall be lawful for the bishop to assign to the curate of such parish or place, being resident within the same, and serving no other cure, any larger or further stipend or allowance, or to appoint an additional curate, so that the stipends or allowances to such curate or curates shall not exceed by more than fifty pounds per annum the amount of the stipend or allowance hereinbefore respectively required to be assigned to any such curate.

“LVI. And be it further enacted, that in every case in which it shall be made out to the satisfaction of the bishop of any diocese, that any spiritual person holding any benefice is or has become non-resident, or incapable, from age, sickness, or other unavoidable cause, of performing the duties thereof, and that from these or from any other special and peculiar circumstances of the case, great hardship or inconvenience would arise, if the full amount of salary specified in this act should be allowed to the curate, then and in such case it shall be lawful for such bishop to assign to the curate any such salary less than the said full amount in this act specified, as shall under all the circumstances appear to him just and reasonable: provided always, that in the licence granted in every such case, it shall be stated, that for special reasons the bishop hath not thought proper to assign to the curate the full amount of salary allowed or required to be assigned by this act: provided also, that such special reasons shall be entered fully and at large in a separate book to be kept for that purpose, and to be deposited in the registry of the diocese, which book shall not be open to inspection, unless with the leave of the bishop, or by other proper authority, as in the cases of application for licences for non-residence.

“LVII. And be it further enacted, that if any incumbent of two or more benefices, residing *bonâ fide* in different proportions of each and every year, or some or one other of such benefices, the full period specified by this act, shall employ a curate to perform ecclesiastical duty interchangeably from time to time upon such of the benefices from which he shall be absent during his own actual residence upon any other thereof, then and in such case it shall be lawful for the bishop to assign to any such curate any salary not exceeding such salary as would be allowed under this act for the largest of such benefices, nor less than would be allowed for the smallest, as to the bishop shall under all the circumstances appear just and reasonable: provided always, that if any such incumbent shall employ a curate or curates for the whole year upon each or any of such benefices, such incumbent so residing *bonâ fide* as aforesaid, then and in such case it shall be lawful for the bishop to assign to either or each of such curates any such salary, less than the amount specified in this act, as he shall think fit.

“LVIII. And be it further enacted, that from and after the passing of this act, no spiritual person shall serve more than two churches in one day, or two chapels, or one church and one chapel in one day, unless from the local situation of the churches or chapels, or from the value of the benefices to which they belong, or other special causes, it may in the judgment of the bishop be expedient or necessary for the performance of ecclesiastical duties in such places, to grant licence to any spiritual person to serve three churches or chapels, then and in such case it shall be lawful for the bishop to grant such licence to any spiritual person to serve three churches or chapels, not being distant from each other more than four measured miles: provided always, that in every such case the reasons for granting such licence shall be stated by the bishop in the licence granted for serving the third of such churches or chapels held by such spiritual persons, and such licence

shall not be valid or effectual unless the reasons for granting the same are inserted therein as aforesaid: provided always, that the residence of such curate or spiritual person shall be so placed as that it shall not be necessary for him to travel more than sixteen measured miles in one day for the performance of the duties of such churches or chapels.

STAT. 5 GEO.
4, c. 91. [18.]

“LIX. And be it further enacted, that in every such case where any bishop shall find it necessary or expedient, for the obtaining any proper performance of ecclesiastical duties, to licence any person holding any benefice to serve as curate of any adjoining or other parish or place, it shall be lawful for such bishop to appoint, for such spiritual person so licensed, a salary less by a sum not exceeding thirty pounds per annum than the salary which in the several cases in this act specified, the bishop is required to assign and appoint; and in every case where the bishop shall find it necessary or expedient as aforesaid to license one and the same person to serve as curate for more than one parish or place, it shall be lawful for such bishop to direct that, during such time as such curate shall serve such churches or chapels, the salary to be received by him for serving each of the said churches or chapels, shall be less by a sum not exceeding thirty pounds per annum than the salary which, in the several cases hereinbefore mentioned, the bishop is required by this act to assign and appoint.

How the salaries shall be adjusted where the curate is permitted to serve in an adjoining parish.

“LX. And be it further enacted, that all agreements and contracts made or to be made between persons holding benefices and their curates, in fraud or derogation of the provisions of this act, and all agreements and contracts whereby any curate shall undertake or in any manner bind himself to accept, or be content with any stipend or salary less than that which shall be stated to be allowed in any licence of such curate, shall be void to all intents and purposes in the law whatsoever, and shall not be set up, pleaded, or given in evidence in any court of law or equity, and notwithstanding the payment and acceptance in pursuance of any such contract or agreement, of any sum less than the sum specified in the licence of such curate, or any receipt, discharge, or acquittance that may be given in cases of such payment and acceptance, the curate or his personal representatives shall be and remain entitled to the full amount of what shall remain unpaid of the stipend, salary, or allowance specified in his licence; and the payment of what shall so remain unpaid, shall, together with treble costs of recovering the same, be enforced by monition, on proof of what shall so remain unpaid to the satisfaction of the bishop, and by sequestration of profits of the benefice, to be issued by the bishop for that purpose; provided that the application of the curate shall in every such case be made to the bishop within twelve months after he shall have acquitted his curacy, or by the representative of any curate within twelve months after his death; and provided also, that no sequestration shall, by virtue of this act, affect the profits of any benefice beyond the time during which the benefice shall be held by the person liable to make the payment in respect of which such profits shall be sequestered.

Agreements for salaries to curates contrary to this act, void.

“LXI. And be it further enacted, that in every case in which any bishop shall appoint for any curate a salary equal to the whole annual value of such benefice, such salary shall be subject to deduction in respect of all such charges and outgoings as may legally affect the value of such benefice, and to any loss or diminution which may lessen such value, without the wilful default or neglect of the spiritual person holding the benefice.

Curate's salary, if of the value of the benefice, shall be liable to certain charges.

“LXII. And be it further enacted, that it shall be lawful for the bishop, upon the application of any rector, vicar, or spiritual person holding any benefice, the whole profit or income of which shall have been allotted to the curate, to allow such rector, vicar, or spiritual person to deduct and retain therefrom, in any or each year, so much money, not exceeding in any case one-fourth part of such profits or income, or of the salary assigned to the curate, as shall have been actually laid out and expended during the year in the repair of the chancel, parsonage, vicarage, or other house of residence, and premises and appurtenances thereto belonging, in respect of which such rector, vicar, or person as aforesaid, or his executors, administrators, or assigns, would be liable for dilapidations to the successors; and it shall also be lawful for the bishop, in like manner, to allow any rector,

The bishop to allow the rector, &c. to deduct from curate's salary, for repairs to a limited amount, in certain cases.

STAT. 5 GEO.
4, c. 91. [12.]

vicar, or spiritual person aforesaid, having or holding any benefice, the profits or income of which shall not exceed one hundred and fifty pounds per annum, to deduct and retain from the salary allotted to the curate, in each or any year, so much money as shall have been actually laid out and expended in such repairs as aforesaid, over and above the amount of the surplus remaining of such profits or income, after payment of the salary allotted to the curate, so that the sum so deducted, after laying out such surplus, shall not in any year exceed one-fourth part of the salary allotted to the curate.

Curates may be directed to reside in parsonage house, in case of non-residence of incumbents.

“LXIII. And be it further enacted, that it shall be lawful for the bishop who shall grant any licence to the curate to serve any church or chapel where the rector or vicar or person holding any benefice is not resident for four months in each year, to allot, if he shall think fit, for the residence of such curate, the parsonage or vicarage house, or usual house of residence of the person holding the benefice, with the offices, stables, gardens, and appurtenances thereto belonging, if there shall be any such house of residence belonging thereto, or any part or parts thereof, together with any portion of the glebe land of such benefice, not exceeding ten acres in the whole, during the time of such curate's serving the cure, or during the non-residence of such rector or vicar, or spiritual person; and it shall be lawful for the bishop assigning any such house or residence to any curate, to sequester the profits of the benefice to which the house shall belong, in any case in which possession shall not be given up to the curate, and until such possession shall be given, and to apply or direct the application of the profits arising from such sequestration, or to remit the same or any part thereof, as the bishop shall in his discretion think fit.

Curates to pay taxes of parsonage houses in certain cases.

“LXIV. And be it further enacted, that in every case where the bishop shall appoint, for the curate licensed to serve any benefice, a salary not less than the whole gross annual value of the same, and shall, in addition to such salary, direct that such curate shall reside in the parsonage or vicarage house, or usual house of residence of the spiritual person holding such benefice, such curate shall be liable during his serving such cure to the same taxes and parochial rates and assessments in respect of such house and the appendages thereof of which he may be so in occupation, and for the repairs of such house, and for any payments to the commissioners and trustees of the first-fruits of any sums payable out of or in respect of such benefice, as if he had been instituted or inducted, or nominated or appointed to the said benefice.

Bishop may direct the curate to give up possession of parsonage.

“LXV. And be it further enacted, that it shall be lawful for the bishop at any time, upon three months' notice in writing, to direct any such curate to deliver up any such parsonage or vicarage house or usual house of residence, and the offices, stables, gardens, and appurtenances thereto belonging, and such curate shall thereupon peaceably deliver up the possession of the said premises, pursuant to such notice; and in case any such curate shall refuse to deliver up such premises, he shall forfeit and pay to the rector or vicar, or spiritual person holding the benefice, the sum of forty shillings for every day of such wrongful possession, to be recovered by such rector or vicar or spiritual person by action of debt in any court of record at Dublin, as any penalties may be recovered for non-residence under this act.

Rector, &c. shall not dispossess curate of house without order of the bishop, and three months' notice to curate; curate to quit in one month after institution to a vacant benefice, &c.

“LXVI. And be it further enacted, that it shall not be lawful for the rector or vicar or other person holding any benefice, in any case in which the parsonage or vicarage or usual house of residence shall have been assigned to the curate as a residence, to dispossess such curate or take possession thereof, until the permission of the bishop shall have been given in writing for that purpose, and three months' notice of such his intention to the curate, who shall thereupon quit the same according to such notice; and every curate who shall reside in the house of residence of any benefice which shall become vacant, shall quit such house of residence within three months after the institution or appointment of any spiritual person thereto, upon being required so to do by the spiritual person instituted or appointed, and having one month's previous notice at the least given him to quit such house of residence.

"LXVII. And be it further enacted, that no curate shall quit any benefice to which he shall be licensed, until after three months' notice of his intention to quit given to the person holding such benefice, and to the bishop of the diocese, unless with the consent of the bishop of the diocese, upon pain of forfeiting to the spiritual person holding the benefice, a sum not exceeding the amount of his stipend for six months, at the discretion of the bishop, which sum may in such case be retained out of the stipend, if the same or any part thereof shall remain unpaid, or if the same cannot be retained out of the stipend, may be recovered by the spiritual person holding the benefice, as any penalty or forfeiture under this act may be recovered.

STAT. 5 GEO. 4, c. 91. [1a.] Curate not to quit curacy assigned him without three months' notice to the incumbent and bishop, under a certain penalty.

"LXVIII. And be it further enacted, that it shall be lawful for the bishop of the diocese to license any curate who is or shall be actually employed by the rector, vicar, or other incumbent of any church or chapel, although no express nomination of such curate shall have been made to such bishop by the said rector, vicar, or other incumbent; and that the bishop shall have power to revoke summarily and without process any licence granted to any curate employed in his diocese, or subject to his jurisdiction by virtue of this act, and to remove such curate for any cause which shall appear to such bishop to be good and reasonable, subject nevertheless to an appeal to the archbishop of the province, and to be determined in a summary manner.

Bishop may license curates employed without nomination, revoke any licence, and remove curate, subject to appeal to the archbishop.

"LXIX. And be it further enacted, that every bishop who shall grant or revoke any licence to any curate under this act, shall and he is hereby required to cause a copy of such licence or revocation to be entered in the registry of the diocese within which the benefice in respect whereof any such licence shall be granted or revocation made shall be locally situate; and an alphabetical list of such licences and revocations shall be made out by the registrar of each diocese, and entered in a book, and kept for the inspection of all persons, upon payment of the sum of three shillings and no more; and a copy of every such licence and revocation, with respect to any benefice, shall be transmitted by the said registrar to the churchwardens or chapelwardens of the parish, township, or place to which the same relates, within one month after the grant of such licence or revocation thereof, to be by them deposited in the parish chest; and every registrar who shall refuse or neglect or omit to make any such entry, or to transmit any such copy, shall forfeit for every such offence or neglect the sum of five pounds, to be recovered as any penalty or forfeiture may be recovered under this act: provided always, that every such registrar shall, for every such copy transmitted to such churchwardens or chapelwardens as aforesaid, be entitled to demand and have from such churchwardens or chapelwardens, a fee of ten shillings, and no more, and such fee shall be allowed in the accounts of such churchwardens or chapelwardens.

Licences to curates, and revocations of such licences, to be entered in the registry of the diocese.

Fee for inspection, 3s.

Copy of licences and revocation to be transmitted to churchwardens.

Fee, 10s.

"LXX. And be it further enacted, that all the powers, authorities, provisions, regulations, penalties, forfeitures, clauses, matters, and things in this act contained, in relation to bishops in their dioceses, shall extend and be construed to extend to the archbishops in the respective dioceses of which they are bishops, and also in their own peculiar jurisdictions, as fully and effectually as if the archbishops were named with the bishops in every such case.

Clauses relating to bishops to apply to archbishops in their dioceses.

"LXXI. And be it further enacted, that in all cases wherein the term benefice is used in this act, the said term shall be understood and taken to mean benefices with cure, and no others, and to comprehend therein, for the purposes of this act, all donatives, perpetual and impropriate curacies, and parochial chapelries.

Definition of the term benefice.

"LXXII. And be it further enacted, that every archbishop and bishop within the limits of whose province or diocese respectively any benefice respectively exempt or peculiar shall be locally situate, shall have, use, and exercise, all the powers and authorities necessary for the due execution by them respectively, of the provisions and purposes of this act, and for enforcing the same with regard thereto respectively, as such archbishop and bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop; and where any benefice

Power of archbishops and bishops as to benefices exempt or peculiar, locally situate within their provinces; and also as to

STAT. 5 GEO.
4, c. 91. [1a.]

such benefices
situate in more
than one pro-
vince, or be-
tween the limits
of two.

Peculiars shall
be subject to
the archbishop
or bishop to
whom they
belong.

In every case
in which juri-
sdiction is given
to bishop, &c.
all concurrent
jurisdiction to
cease.

Monitions and
sequestrations.

Penalties to be
recovered by
monition and
sequestration.

Recovery of
fees. &c.

Act not to
invalidate li-
cences before
31st Decem-
ber, 1824, nor
to require any
licence before
that time.
Commission to
administer

exempt or peculiar shall be locally situate within the limits of more than one province or diocese, or where the same or any of them shall be locally situate between the limits of the two provinces, or between the limits of any two or more such dioceses, the archbishop or bishop of the cathedral church to whose province or diocese the parish church of the same respectively shall be nearest in local situation, shall have, use, and exercise, all the powers and authorities which are necessary for the due execution of the provisions of this act, and enforcing the same with regard thereto respectively, as such archbishop or bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively; and the same, for all the purposes of this act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; provided that the peculiars belonging to any archbishopric or bishopric, though locally situate in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this act as for all other purposes of ecclesiastical jurisdiction.

“LXXIII. And be it further enacted, that in every case in which jurisdiction is given to the bishop of the diocese, or to any archbishop, under the provisions of this act, and for the purposes thereof, and the enforcing the due execution of the provisions thereof, all other and concurrent jurisdiction in respect thereof shall wholly cease, and no other jurisdiction in relation to the provisions of this act shall be used, exercised, or enforced, save and except such jurisdiction of the bishop and archbishop under this act; anything in any act or acts of parliament, or law or laws, or usage or custom, to the contrary notwithstanding.

“LXXIV. And be it further enacted, that in all cases where proceedings under this act are directed by monition and sequestration, such monition shall issue under the hand and seal of the bishop, and being duly served shall be returned, with a certificate of service, into the registry of the consistorial court of such bishop; and thereupon it shall be competent for the party monished to show cause, by affidavit or otherwise, as the case may require, against the sequestration issuing; and unless sufficient cause be shown to the contrary, the sequestration shall issue under the seal of the said bishop, and in such form as is commonly used on that behalf.

“LXXV. And be it further enacted, that it shall be lawful for the bishop of any diocese, in which any spiritual person shall hold any dignity or benefice, or shall serve as stipendary curate, to recover any penalty incurred under this act in a summary way, by monition and sequestration, to be issued in the manner by this act directed, with the like powers and authorities, and subject to the like restrictions in respect to the remission and repayment of such penalty as are by this act particularly provided, in respect to penalties for non-residence: provided always, that no spiritual person against whom any such proceeding shall have been had by any bishop for the recovery of any penalty, shall thereafter be subject to any action at law by any informer or other person, for the recovery of any penalty for the same offence, in respect of which such proceeding shall have been so had by the bishop as provided.

“LXXVI. And be it further enacted, that any fees, charges, costs, or expenses, incurred or directed to be paid by any spiritual person under the provisions of this act, which shall remain unpaid for the period of twenty-one days, after demand thereof in writing, delivered to or left at the usual or last place of abode of the spiritual person liable to the payment thereof, may be recovered by monition and sequestration, to be issued in the manner directed by this act.

“LXXVII. Provided always, and be it further enacted, that none of the provisions of this act shall extend or be construed to extend to render void or invalid, before the thirty-first day of December next after the passing of this act, any licence or exemption which would have been otherwise valid and effectual, nor to require any licence to be taken before the said thirty-first day of December, which would not have been required by law before the passing of this act.

“LXXVIII. And be it further enacted, that no commission issued by any bishop to any commissary or commissaries appointed to administer the oaths

required to be taken by any curate for the purpose of any licence or licences granted under the provisions of this act, shall be subject to any stamp duty; anything contained in any act or acts of parliament to the contrary notwithstanding.

“LXXIX. And be it further enacted, that nothing in this act contained shall extend or be construed to extend to alter or affect his majesty's royal prerogative in the granting of dispensations for non-residence upon benefices, as the same now exists by law.

“LXXX. And be it further enacted, that no parsonage that hath a vicar endowed, or that hath a perpetual curate, and having no cure of souls, shall be deemed or taken to be a benefice within the intent and meaning of this act.

“LXXXI. And be it further enacted, that no archbishop or bishop having, or who shall have any benefice, shall, by reason of non-residence upon the same, be subject or liable to any penalties or forfeitures: provided always, that any archbishop or bishop, who shall hold any benefice *in commendam* with his archbishopric or bishopric, shall nominate and appoint a resident curate, according to the provisions of this act.

“LXXXII. And be it further enacted, that nothing in this act contained shall be deemed, construed, or taken to derogate from, diminish, prejudice, alter, or affect, otherwise than is expressly provided, any powers, authorities, rights, or jurisdiction, already vested in or belonging to any archbishop or bishop, under or by virtue of any statute, patent, canon, usage, or otherwise, howsoever.

“LXXXIII. And be it further enacted, that nothing in this act contained shall extend or be construed to extend to repeal or alter the provisions contained in any act of parliament, or any other provision of law, for the due celebration of divine service in any church or chapel, or for the discharge of any other duty of any rector or vicar, or person holding any benefice by himself or his curate.

“LXXXIV. And be it further enacted, that this act shall extend and be construed to extend and relate only to that part of the United Kingdom called Ireland.”

STAT. 5 GEO.
4, c. 91. [Ia.]

Oaths not to be subject to stamp duty.

Act not to affect his majesty's prerogative in granting dispensations.

Parsonage without cure of souls not deemed a benefice.

No archbishop or bishop shall be liable to the penalties for non-residence.

Not to affect powers of bishops;

nor the due celebration of divine service.

Act not to extend beyond Ireland.

CV. STAT. 5 GEORGII 4, c. 101. [Wales.] A.D. 1824.

“*An Act to enable His Majesty to grant certain Advowsons, Rectories, and Vicarage, in the several Counties of Carmarthen, Cardigan, and Pembroke, in the Principality of Wales, to a College to be incorporated by Charter, to be called Saint David's College.*”

“Whereas certain edifices and premises, situate in the county of Cardigan and diocese of Saint David's, intended for a college, to be incorporated by royal charter, for the education of persons destined for holy orders, and to be called Saint David's College, are now in progress, and will shortly be completed: and whereas his majesty hath been graciously pleased to consent to the annexation in perpetuity to the said college, as an endowment thereof, of the advowson, right of nomination, presentation, collation, donation, patronage, and free disposition of, in, and to the rectory, parsonage, or parish church of Llangoedmawr *alias* Llangoedmore in the county of Cardigan, and of, in, and to the rectory, parsonage, or parish church of Llanedi in the county of Carmarthen, and of, in, and to the vicarage of Saint Peter's, in the town of Carmarthen in the said county of Carmarthen; and of, in, and to the sinecure rectory or parsonage of Llangeler in the county of Carmarthen; and also the sinecure rectory or parsonage of Llanddewiwlfridi *alias* Llandde wi Wilfridi in the county of Pembroke; and of, in, and to the sinecure rectory or parsonage of Angulo *alias* Angle *alias* Nangle in the said county of Pembroke; and all manner of rectorial tithes, dues, profits, and emoluments to the said several sinecure rectories appertaining, all of or belonging to his majesty, his heirs and successors; and that the same should be vested in the said college so to be incorporated, upon such trusts, for the benefit of the said college, as shall be declared thereof in and by his majesty's charter, under the great seal of the United Kingdom of Great Britain and Ireland, for the erection and incorporation of the said

STAT. 5 GEO.
4, c. 101.
[Wa.]

STAT. 5 GEO.
4, c. 101.

[WA.]

Power for his
majesty to
grant certain
advowsons to
St. David's
college, and
for vesting the
same.

college; therefore, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in case his majesty shall be pleased to grant his charter under the great seal of the United Kingdom of Great Britain and Ireland, for the erection and incorporation of the said college, to be called Saint David's College, it shall be lawful for his majesty, his heirs and successors, in and by the said charter, to grant the advowson, right of nomination, presentation, collation, donation, patronage, and free disposition of, and in, and to the several rectories, parsonages, and parish churches of Llangoed-mawr *alias* Llangoedmore in the said county of Cardigan, and of Llanedi in the said county of Carmarthen, and of, in, and to the vicarage of Saint Peter's, in the town of Carmarthen in the said county of Carmarthen, and together with all houses, glebe lands, tithes, portions of tithes, tenths, oblations, fruits, dues, perquisites, and emoluments, rights, members, and appurtenances to such advowsons, rectories, and vicarage in anywise belonging, to the said college so to be incorporated as aforesaid, and the same shall by such grant become and be absolutely vested in the said college, upon such trusts, for the benefit of the said college, as shall be declared thereof in and by the said charter.

Power for his
majesty to
grant the sine-
cure rectories
to the said
college, and
for vesting the
same.

"II. And be it further enacted, that it shall be lawful for his majesty, his heirs and successors, in and by his said charter, to grant the sinecure rectory or parsonage of Llangeler in the county of Carmarthen, the sinecure rectory or parsonage of Llanddewiwlfrei *alias* Llandde wi Wilfrei in the said county of Pembroke, and the sinecure rectory or parsonage of Angulo *alias* Angle *alias* Nangle in the same county of Pembroke, and all and all manner of rectorial lands, tithes, hereditaments, dues, profits, emoluments, rights, members, and appurtenances to the said sinecure rectories in anywise belonging, to the said college; and the same respectively shall, by such grant, become and be absolutely vested in the said college, upon such trusts, for the benefit of the said college, as shall be declared thereof by the said charter."

STAT. 5 GEO.
4, c. 103.

CVI. STAT. 5 GEORGII 4, c. 103 (1). A.D. 1824.

"An Act to make further Provision, and to amend and render more effectual three Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, and in the third year of His present Majesty, for building and promoting the building of additional Churches in populous Parishes."

58Geo. 3, c. 45.

"Whereas an act passed in the fifty-eighth year of the reign of his late majesty, intituled, 'An Act for building and promoting the building of additional Churches in populous Parishes:' and whereas another act passed in the fifty-ninth year of

59 Geo. 3
c. 134.

the reign of his late majesty, intituled, 'An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes:' and whereas another

3 Geo. 4, c. 72.

act passed in the third year of the reign of his present majesty, intituled, 'An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, for building and promoting the building of additional Churches in populous Parishes:' and whereas the sums issued and applied under the provisions of the said recited acts have been found inadequate; and it is therefore expedient that a further sum should be issued for the purposes of the said acts, and that further and additional provisions should be made for rendering the said recited acts more effectual: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for the king's most excellent majesty, by warrant or warrants under his royal sign manual, to authorize and empower the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, now or for the time

His majesty
may authorize
commissioners
of treasury to
issue exchequer

(1) *Vide* Stat. 1 & 2 Gul. 4, c. 38; Stat. c. 107; Stat. 2 & 3 Vict. c. 49; and Stat. 3 7 Gul. 4 & 1 Vict. c. 75; Stat. 1 & 2 Vict. & 4 Vict. c. 60.

being, or any three or more of them, or the lord high treasurer of the United Kingdom of Great Britain and Ireland for the time being, to cause or direct any number of exchequer bills to be made out at his majesty's exchequer at Westminster, not exceeding in the whole the sum of five hundred thousand pounds, in the same or like manner, form, and order, and according to the same or like rules and directions, (except where other directions for making out the same are contained and particularly expressed in the said recited acts or either of them, or this act,) as in and by an act made in the forty-eighth year of his late majesty, intituled, 'An Act for regulating the issuing and paying off of Exchequer Bills,' are enacted and prescribed.

STAT. 5 GEO.
4, c. 103.
bills to the
amount of
500,000*l*.

48 Geo. 3, c. 1.

"II. And be it further enacted, that all and every the clauses, powers, authorities, provisions, regulations, privileges, advantages, penalties, and forfeitures contained in the said recited acts of the forty-eighth and fifty-eighth and fifty-ninth years of his late majesty's reign, shall be applied and extended to the exchequer bills to be made out in pursuance of this act, (except so far as the same or any of them may be altered by this act,) as fully and effectually to all intents and purposes as if the said clauses, powers, authorities, provisions, regulations, privileges, advantages, penalties, and forfeitures had been particularly repeated and re-enacted in the body of this act.

Powers of
recited acts to
extend to ex-
chequer bills
made out
under this act.

"III. Provided always, and be it further enacted, that the exchequer bills to be made out in pursuance of this act shall and may bear such interest as may be directed by the lord high treasurer, or lords commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, not exceeding the rate of two-pence *per centum per diem* upon or in respect of the whole of the monies respectively contained therein; and that all such bills as shall be advanced for the purposes of carrying the said acts or this act into execution shall be made payable at such periods, and together with the interest that shall be due thereon shall be paid off and discharged out of such aids and supplies granted by parliament for the service of any year, as in each and every exchequer bill so made forth shall be particularly specified and expressed, pursuant to such directions as shall be given in that behalf to the auditor of the receipt of exchequer, by warrant or warrants from the said commissioners of his majesty's treasury, or any three or more of them, for the time being.

Exchequer
bills issued in
pursuance of
this act to bear
a certain rate
of interest.

"IV. And be it further enacted, that from time to time, as the commissioners appointed for the execution of the said recited acts shall find it necessary to apply to the purposes thereof and of this act any amount of such bills to be advanced under the provisions of the said recited acts or of this act, the said commissioners shall forthwith represent the same to the said commissioners of the treasury of the United Kingdom of Great Britain and Ireland, and the said commissioners, or any three or more of them for the time being, shall thereupon, if satisfied of such necessity, direct the said commissioners to issue a certificate, to be signed by any three or more of them, to such person or persons as may be authorized to receive the same, containing the amount so by the said commissioners intended to be advanced by exchequer bills; which certificate shall and may be presented to the auditor at the receipt of exchequer at Westminster, and the said auditor shall, immediately upon the receipt of such certificate, deliver to the bearer thereof a like amount in exchequer bills, to be made out in pursuance of the said recited act or of this act, and payable at such period as shall in such exchequer bills be specified and expressed, provided that the total amount so to be issued by virtue of such certificates shall not at any time exceed the amount directed to be advanced under the provisions of this act; and every such exchequer bill shall bear date on the day on which such certificate shall be so received by the said auditor, or on such other day as in such certificate shall be specified, anything in the said recited acts to the contrary notwithstanding; and all such exchequer bills so to be delivered shall and may be signed by the said auditor, or in his name by any person duly authorized to sign exchequer bills.

Commissioners
under recited
acts to apply
for exchequer
bills.

"V. And whereas in many parishes and extra-parochial places in which the churches and chapels are inadequate to the accommodation of one fourth of the

Bishops may
consent to the

STAT. 5 GEO.
4, c. 103.
building of
additional
churches or
chapels, or to
the purchase of
buildings for
that purpose,
upon applica-
tion and certi-
ficate of twelve
or more house-
holders that
there is not
accommoda-
tion for more
than one fourth
of the inha-
bitants of the
parish, at the
expense of
such persons,
or others wil-
ling to sub-
scribe thereto.

parishioners, and to which sums may not be granted under the provisions of this or any other former act for building additional churches or chapels, or in which the additional churches or chapels for which sums may have been or may be granted may not afford accommodation for one fourth of the inhabitants of such parish, chapelry, township, or extra-parochial place, there may be persons belonging to the church of England who may be desirous of building or purchasing churches or chapels for the performance of divine service according to the rites of the church of England: and whereas it is highly desirable that every facility should be afforded for the execution of so laudable a purpose; be it therefore enacted, that whenever any twelve or more substantial householders of any parish, township, or extra-parochial place shall certify in writing to the bishop of the diocese within which such parish, chapelry, township, or extra-parochial place shall be situate, that there is not accommodation for more than one fourth of the inhabitants thereof for the attendance upon divine service according to the rites of the church of England, and that they or some of them, either by themselves or with the assistance of other persons belonging to the church of England, are desirous of raising by private subscription such sum as may be necessary for building or purchasing a church or chapel, or any building or buildings to be used as a church or chapel for the performance of the said service, and to provide out of pew rents of such church or chapel a competent stipend for the spiritual person who may officiate therein, and for a clerk thereof, and for all other expenses incident to the performance of divine service, and for maintaining the said church or chapel, and the said bishop shall be satisfied of the several particulars contained in such application, it shall be lawful for such bishop, if he shall think fit, to signify his consent to the building or purchasing such church or chapel, as the case may be, according to such plan, and upon such site as shall be submitted to and approved by him for that purpose.

Subscribers
may elect three
life trustees for
the manage-
ment of the
church or cha-
pel, and nomi-
nation for a
limited period
of the spiritual
person to serve
it.

“VI. And be it further enacted, that the several and respective persons proposing to build or purchase any such church or chapel, or any such building as aforesaid, and their assigns, respectively subscribing for that purpose sums of not less than fifty pounds each, shall elect three trustees from amongst themselves for the management and general regulations of the temporal affairs of such church and chapel, and for the nomination to the bishop, for a limited period, of a spiritual person to serve the same; and such trustees shall be called life trustees of such church or chapel, and shall continue such trustees so long as any spiritual person nominated by them under the provisions of this act shall serve such church or chapel.

Upon death or
resignation of
life trustees,
new ones may
be chosen to
supply the
vacancy.

“VII. And be it further enacted, that in case any of the persons first appointed life trustees of any such church or chapel shall, during the period above mentioned, happen to die, or shall signify to the other life trustees his resignation of such trust, it shall be lawful for the majority of the persons who have subscribed towards the building or purchasing such church or chapel sums not less than fifty pounds each, and being owners or renters of pews in the same, who shall be present at any meeting to be called for that purpose, and which meeting any one or more of such trustees are hereby authorized and required to call and appoint, upon fourteen days' notice at the least being affixed to the door of such church or chapel upon the two Sundays next preceding the day on which such meeting is intended to be held, from time to time to nominate and appoint, by writing under their hands, any other person having subscribed a sum not less than fifty pounds, and being an owner or renter of a pew in such church or chapel, and a member of the church of England, a life trustee in the place of the life trustee so dying or resigning; and every such new life trustee shall in every respect be vested with such and the like powers and authorities, to all intents and purposes, as the person to whose place he may be nominated and appointed as aforesaid.

If subscribers
do not exceed
three, they are
to be deemed
the trustees

“VIII. And be it further enacted, that if the number of persons subscribing to build or purchase such church or chapel shall not exceed three, such person or persons shall be and be deemed to be the life trustee or life trustees of such church or chapel, under the provisions of this act, and shall have, use, and exercise all

such and the like powers and authorities, to all intents and purposes, as any such life trustees as aforesaid, chosen under the provisions of this act, may use and exercise; and in case of the death or resignation of any such life trustee, the person nominated by him, being a member of the church of England, by his last will and testament, or by any instrument signed by him, shall be a life trustee in his place.

“IX. And be it further enacted, that in any case in which application shall be made to the bishop of any diocese for his consent to the building or purchasing any church or chapel, or buildings to be used as a church or chapel, in any parish, chapelry, township, or extra-parochial place, situate within the said diocese, for the purpose aforesaid, by any person or persons belonging to the church of England, who may be willing to subscribe one half part at the least of the money necessary for building or purchasing the same, jointly with the parishioners of such place, who may be willing to raise the remainder of the money by rates, or to raise and borrow such sum upon the credit of the rates of such place, and the said bishop shall be satisfied of the several particulars contained in such application, it shall be lawful for such bishop, if he shall think fit, to signify his consent thereunto.

“X. Provided always, and be it further enacted, that every application which shall be made under the provisions of this act to the bishop of any diocese shall state that the church or chapel is to be appropriated to the performance of divine service according to the rites of the church of England, and shall offer to set apart such number or proportion of free seats as is required by the said recited acts in cases in which churches or chapels are built or purchased under the provisions of the said recited acts, with any money advanced by the commissioners under the said recited acts, and shall also offer to provide, out of the pew rents arising from the remaining part of the seats of such church or chapel, a competent salary for the spiritual person who may officiate therein, and for all other expenses incident to the performance of such divine service, and for maintaining the said church or chapel: provided also, that no pew rents shall be taken, nor any service performed in such church or chapel, whether built or purchased by subscription only, or jointly by subscription and by rates, before the same shall have been duly consecrated, and a duplicate copy of such application, with the assent of the bishop of the diocese to the same, shall be deposited in such church or chapel.

“XI. And be it further enacted, that the persons or parishioners of any parish or place as aforesaid, making such application to the bishop, shall in every such case, at the time of making the same, give notice in writing thereof to the patron and incumbent of the church of the parish, chapelry, township, or extra-parochial place in which it is proposed to build or purchase any such church or chapel, in order to afford to such patron or incumbent the opportunity of laying before the bishop any statement in writing relating thereto, and that the said bishop shall not signify his consent to such application within three calendar months from the time when he shall have received the same, together with a certificate that the said notice has been given.

“XII. And be it further enacted, that the life trustee or trustees of any such church or chapel which shall be built or purchased by private subscription, may nominate for the first two turns which shall occur after the consecration of the church or chapel, or for any number of turns which may occur during the space of forty years after the same, to the bishop of the diocese, for his approbation and licence, a spiritual person to serve the same; and all subsequent nomination shall be in the incumbent of the parish or extra-parochial place in which such church or chapel shall be built or purchased; unless in case of such chapel being made a district church as hereinafter mentioned, in which case such subsequent nomination shall be in the patron of the church of the original parish; and in case of any neglect of any trustee or trustees, patron or incumbent respectively, to make such nomination, the same shall lapse, as in the case of actual benefices; and if all the subscribers entitled to elect trustees shall die before such nominations shall have been made, or such forty years shall have elapsed as aforesaid, then and in every such case the nomination shall be made by the incumbent during such period:

STAT. 5 GEO.
4, c. 103.

under this act, and may by deed or will appoint successors.

Bishop may consent, upon joint application of subscribers or parishioners, who may be willing to build a church or chapel by subscription and rates, or money borrowed upon the credit of the rates.

Application to the bishop shall state certain particulars as to service and free seats.

In every such case, notice of the application to the bishop to be given to the patron and incumbent of the church of the parish or place.

Life trustees to nominate for the first two turns, or for any number of turns which may occur in forty years, a minister of the church, &c.; subsequent nominations to be by incumbent, unless made a district church, then by patron.

STAT. 5 GEO.
4, c. 103.

To lapse if
trustees do not
nominate.

If church or
chapel built in
part by rates,
incumbent to
nominate, ex-
cept made a
district church,
when nomina-
tion shall vest
in patron.

Church or
chapel and
ground, &c.
to vest in such
persons as shall
be specified in
the sentence of
consecration.

Life trustees or
churchwardens
may dispose of
vaults, &c. and
after paying the
dues to which
the incumbent
is entitled, the
remainder shall
form a fund for
supplying defi-
ciencies in
minister's
salary, and for
repairs.

Application of
surplus
income.

Such churches
or chapels may,

provided also, that if all such subscribers shall die, so that no such election of any trustee can be made, and any one of the trustees for the time shall die or vacate, then and in every such case the incumbent for the time being shall be and become a trustee, to use and exercise all powers and authorities given to trustees under the provisions of this act.

“XIII. Provided always, and be it further enacted, that in any case in which any such church or chapel shall be built or purchased in part by means of any rates to be raised in any parish, chapelry, township, or extra-parochial place, the first and subsequent nominations of the minister of such church or chapel shall be in the incumbent of the church of the original parish in which the same shall be built or purchased, except in case of such church or chapel being made a district church, when the same shall vest in the patron as aforesaid.

“XIV. And be it further enacted, that from and after the completion of every such church or chapel, the land, ground, and site whereon the same shall be built, with the cemetery thereto belonging, if any, and which land, ground, and site shall be specified and described in the sentence of consecration of the church or chapel, shall be and the same are hereby declared to be vested in such person or persons, and their successors for ever, by such name and style as shall be specified in the sentence of consecration of the church or chapel; and such person or persons shall in every such case have perpetual succession in the name and style specified in the sentence of consecration, and shall hold the lands, grounds, and sites so vested in them as bodies corporate by such name and style, without incurring or being subjected to any of the penalties or forfeitures of the statute of mortmain, or of any other law or statute whatsoever, to the use, intent, and purpose that every such church or chapel, with the cemetery to the same, if any, shall, when consecrated, be for ever thereafter set apart and dedicated to the service of Almighty God as a place of divine worship, according to the liturgy and usages of the united church of England and Ireland as by law established, and be subject to the bishop of the diocese as such.

“XV. And be it further enacted, that it shall be lawful for the life trustees or churchwardens respectively of any such church or chapel, and their successors, and they are hereby authorized and empowered, to sell and dispose of the vaults or burial places under any such church or chapel, and of vaults or burial grounds in the cemetery or yard of the church or chapel, if there shall be any cemetery or burial ground thereto; and such life trustees or churchwardens respectively are hereby empowered and required to pay to the incumbent of the parish such dues or sums as such incumbent would be entitled to and have of vaults or burial places of a like description in the church of the parish, and shall, after making such payments, invest or lay out the remainder of the monies thence arising in some public funds, stocks, or securities, from time to time, and also from time to time in like manner to lay out the interest, dividends, or proceeds of such public funds, stocks, or securities, or such part thereof as shall not be applied under the provisions of this act, in like funds, stocks, or public securities; and such life trustees, or churchwardens shall, out of such interest, dividends, or proceeds, from time to time make good any deficiencies, if any shall arise, in the payment of the stipends or salaries of the minister or clerk of the church or chapel, or any other payments or incidental expenses to be paid from the produce of the rents of pews or seats, by reason of the rents of pews not being adequate to the payment of such stipends, salaries, or expenses; and in the next place shall apply such interest, dividends, and proceeds in the maintaining, supporting, and repairing the church or chapel; provided always, that if by reason of any such funds, or if the produce of pew rents being more than sufficient for all the purposes to which the same are made applicable under the provisions of this act, there shall be a surplus of annual income, then and in any such case such surplus shall be applied in subsequent years to the purposes to which pew rents are applicable; and the pew rents shall in every such case be reduced rateably and in equal proportions, or a larger number of free seats shall be opened, as the bishop of the diocese shall order and direct.

“XVI. And be it further enacted, that it shall be lawful for the said commis-

sioners, with consent of a majority of the subscribers entitled to elect the trustees of any such church or chapel, and of the bishop, and of the patron and incumbent, to make any such church or chapel a district church or chapel, under the provisions of the said recited acts and this act.

“XVII. And be it further enacted, that at the expiration of the forty years all such churches and chapels shall become in all respects district churches, without any consent being obtained for that purpose, if his majesty in council shall have made a division of the parish or extra-parochial place for that purpose, in manner directed by the said recited acts, or shall remain parochial chapels if no such division and appropriation of any such churches or chapels to a district shall have been made.

“XVIII. And be it further enacted, that all the powers, authorities, provisions, regulations, clauses, penalties, and forfeitures in the said recited acts or any or either of them contained, for the securing, recovering, and paying the salaries of spiritual persons, and for the recovery of pew rents, and all regulations as to the number or proportions of free seats in churches or chapels built or purchased wholly or in part with money advanced by the commissioners under the provisions of the said recited acts, shall extend and be in full force, and be applied in all cases of any such churches or chapels as aforesaid being built or purchased by subscription or by rates, under the provisions of this act, as fully and effectually, to all intents and purposes, as if the same and each and every of them were severally and separately re-enacted and repeated in this act.

“XIX. And whereas doubts are entertained whether, since the duchy of Cornwall became vested in his majesty, any lands, grounds, tenements, or hereditaments, parcel of the said duchy, can be granted, conveyed, or enfranchised under the provisions of the said acts for the purposes thereof; and whereas an act passed in the third year of the reign of his present majesty, intituled, ‘An Act to enable His Majesty to make Leases, Copies, and Grants of Offices, Lands, and Hereditaments, Parcel of the Duchy of Cornwall, or annexed to the same;’ be it therefore enacted, that it shall be lawful for any three or more of the regular officers of the said duchy who by virtue of their several offices are concerned in the general superintendence and management of the revenue and affairs of the said duchy, and duly authorized by his majesty, under the provisions of the said last-recited act, by any deed or instrument under their hands and seals in the form prescribed by the said recited act of the third year of his present majesty, or as near thereto as circumstances will permit, to grant, convey, or enfranchise lands, grounds, tenements, or hereditaments for any such purposes of the said recited acts, or any or either of them, as are in the said acts or any or either of them specified, in relation to grants to be made by public departments under the said acts.”

CVII. STAT. 5 GEORGII 4, c. 109. A.D. 1824.

“An Act to enable the Earl Marshal and his Deputy to execute the Duties of their Office or Offices, without previously taking or subscribing certain Oaths or Declarations.”

[Earl marshal or his deputy may execute the duties of their offices, after taking the Oath of Allegiance and the Oath of Office, without taking the Oath of Supremacy.]

CVIII. STAT. 5 GEORGII 4, CAP. CXXVII. A.D. 1824.

“An Act to amend an Act of the first and second years of His present Majesty, for rebuilding the Church of Saint Nicholas, Harwich, in the County of Essex.”

CIX. STAT. 6 GEORGII 4, c. 4. [IRELAND.] A.D. 1825.

“An Act to amend certain Acts relating to unlawful Societies in Ireland.”

“Whereas by an act passed in the parliament of Ireland, in the thirty-third year of the reign of his late majesty King George the Third, intituled, ‘An Act to

STAT. 5 GEO. 4, c. 103.

by consent, be made district churches.

At expiration of forty years, to become district churches without consent, if parish shall have been divided for ecclesiastical purposes.

Powers of recited acts for recovery of salary of minister and pew rents to apply to churches and chapels built by subscription, &c.

Certain officers of the duchy of Cornwall empowered to grant lands for the purposes of the recited acts.

3 Geo. 4, c. 78.

STAT. 5 GEO. 4, c. 109.

STAT. 5 GEO. 4, CAP. CXXVII.

STAT. 6 GEO. 4, c. 4. [IR.]

Irish act, 33 Geo. 3, c. 29.

STAT. 6 GEO.
4, c. 4. [IR.]

Every society or other body of persons acting for redress of grievances in church or state, or for carrying on or defending actions, &c. renewing its meetings for more than fourteen days, or collecting or receiving money, declared unlawful.

Act not to extend to societies for religious or charitable purposes, &c.
Not to affect right of petitioning.

prevent the Election or Appointment of unlawful Assemblies, under Pretence of preparing or presenting public Petitions or other Addresses to His Majesty, or the Parliament,' all assemblies, committees, or other bodies of men, elected, constituted, or appointed to represent, or assuming or exercising a right or authority to represent the people of Ireland, or any number or description of the people of the same, or the people of any province, county, city, town, or other district within the same, under pretence of petitioning for or in any other manner procuring an alteration of matters established by law in church or state, save and except the knights, citizens, and burgesses elected to serve in parliament, and the houses of convocation, duly summoned by the king's writ, are declared and enacted to be unlawful assemblies; and provision is thereby made for the dispersion of all such unlawful assemblies, and for the punishment of persons acting or assisting in the election or appointment of such assemblies; and whereas it has been found that societies, committees, and other bodies of persons in Ireland, without any previous election or appointment by the people, or by any number or description thereof, may be so constituted that the mischiefs intended to be provided against by the said act, may equally arise; and it is therefore expedient to extend the provisions contained in the said act: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the commencement of this act, every society, committee, or other body of persons now constituted, or to be hereafter constituted in Ireland, assuming or in any manner, or by any means or contrivance, exercising the power of acting for the purpose or under the pretence of procuring the redress of grievances in church or state, or the alteration of any matters by law established in church or state, or for the purpose or under the pretence of carrying on or assisting in the prosecution or defence of causes, civil or criminal, which, or the members thereof, or any of them, shall, for the purposes aforesaid, or any of them, continue or renew their meetings or proceedings, whether under the same or any different name or names, by adjournment or otherwise, for a longer time than fourteen days from their first meeting, or which, or the members thereof, or any of them, shall appoint, authorize, or employ any committee or other select body, or any president, secretary, delegate, or other officer, to act for them or under their authority, unless such appointment, authority, or employment be limited to a period not exceeding fourteen days from the first meeting of such society, committee, or other body of persons, or to report to them after the expiration of such period as aforesaid; or which, or the members thereof, or any of them, shall appoint, authorize, or employ any select body or bodies, or any treasurer, collector, or any person or persons, to levy or receive, or which, or the members thereof, or any of them, shall receive when levied, any money or contributions from his majesty's subjects, or from any of them, or from any number or description of them, shall be deemed an unlawful combination and confederacy, and the meetings thereof, or of any of the members thereof, for the purposes or under the pretences aforesaid, or any of them, unlawful assemblies.

"VIII. Provided always, and be it enacted, that nothing herein contained shall extend to, or be construed to affect any society formed and acting merely for the purpose of religious worship, or for the due ordering thereof, according to any form allowed or tolerated by law; or to any society formed and acting merely for purposes of public or private charity, science, agriculture, manufactures, or commerce.

"IX. Provided also, and be it enacted, that nothing herein contained shall be deemed or construed in any manner to prevent or impede the undoubted right of his majesty's subjects to petition his majesty, or both houses or either house of parliament, for the redress of any public or private grievance, or to assemble for that purpose, or to prevent the appointment of any committee for the sole purpose of preparing or forwarding any such petition; provided that such committee shall not exceed the number of twenty persons, and shall not have power to appoint any other committee; and that such assembly or committee shall not have continuance, by adjournment or otherwise, for any period exceeding fourteen days from the

time of such first assembling or appointment respectively ; and shall not collect or receive any money or contribution from any of his majesty's subjects, other than such as may be necessary for the specific purposes of preparing and transmitting to the king, or either house of parliament, such petition as aforesaid."

STAT. 6 GEO.
4, c. 4. [18.]

CX. STAT. 6 GEORGII 4, c. 8 (1). A.D. 1825.

STAT. 6 GEO.
4, c. 8.

"An Act to amend and render more effectual an Act passed in the fifty-fifth year of the Reign of His late Majesty, for enabling Spiritual Persons to exchange their Parsonage Houses or Glebe Lands, and for other Purposes therein mentioned."

"Whereas an act was passed in the fifty-fifth year of the reign of his late majesty King George the Third, intituled, 'An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses, or Glebe Lands, belonging to their Benefices, for others of greater Value, or more conveniently situated for their Residence and Occupation ; and for annexing such Houses and Lands, so taken in Exchange, to such Benefices or Parsonage or Glebe Houses and Glebe Lands ; and for purchasing and annexing Lands to become Glebe in certain Cases ; and for other Purposes ;' and whereas it is by the said recited act enacted, that the bishop shall, in cases of exchange and purchase under the said act, issue a commission of inquiry, for the purposes therein mentioned, to be directed to such persons as are therein described, and of whom one shall be a barrister of three years standing at the least, to be named by the senior judge of Nisi Prius for the county in which the benefice, perpetual curacy, or parochial chapelry, whereto it shall be proposed to annex any buildings or land by exchange or purchase under the said act, shall be situate ; but inasmuch as the nomination of such barrister by a judge of Nisi Prius is not applicable to the counties palatine of Lancaster and Durham, be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that where any exchange or purchase shall be made, or proposed to be made, under the authority of the said act, in any benefice, perpetual curacy, or parochial chapelry, situate within the said counties palatine of Lancaster or Durham, such barrister shall be named by the chief justice or senior judge for the time being of the court of Common Pleas for the said counties palatine respectively.

55 Geo. 3,
c. 147.

The chief justice of the Common Pleas for the county palatine of Lancaster or Durham to act in cases of exchange under recited act.

"II. And whereas it is expedient that the incumbents of benefices, perpetual curacies, and parochial chapelries, should be enabled to exchange the glebe lands belonging to their benefices, perpetual curacies, or parochial chapelries, to a greater amount than thirty statute acres ; be it therefore enacted, that from and after the passing of this act, the power to exchange glebe lands for others of equal value, which is given to parsons, vicars, and other incumbents by the above recited act passed in the fifty-fifth year of the reign of his late majesty King George the Third, be extended to any number of statute acres, but subject to all the provisions, conditions, and restrictions, contained in the above recited act, and also to those in another act passed in the fifty-sixth year of his late majesty's reign, intituled, 'An Act to amend and render more effectual an Act passed in the last Session of Parliament, for enabling Spiritual Persons to exchange their Parsonage Houses or Glebe Lands, and for other Purposes therein mentioned.'

Power to exchange glebe lands for others extended to any number of acres, subject to the restrictions contained in 55 Geo. 3, c. 147, and 56 Geo. 3, c. 52.

"III. And whereas, by the said recited act of the fifty-fifth year of the reign of his late majesty King George the Third, the powers of exchange thereby given are limited to such houses, outbuildings, yards, gardens, and appurtenances and lands, to be accepted and taken in exchange by the spiritual persons therein named, as are of freehold tenure, or copyhold of inheritance, or for life or lives, holden of any manor belonging to the benefice in respect of which any such exchange is intended to be made : and whereas it may happen that such exchanges may sometimes be beneficially made where the lands or tenements so to be accepted and taken in exchange are copyhold of inheritance, holden of some manor not

Exchanges may be made for lands or tenements that are copyhold, and not held of a manor belonging to the benefice, &c.

STAT. 6 GEO.
4, cap. l.

CXXI. STAT. 6 GEORGII 4, cap. l. (1). A.D. 1825.

"An Act for confirming certain Leases granted by the Mayor and Commonalty, and Citizens of the City of London, Masters, Guardians, and Governors of the House and Hospital called Bethlem, and for enabling them to grant Building Leases of certain Lands, the Possessions of the said Hospital for long terms of years, for the Purposes herein mentioned."

STAT. 6 GEO.
4, cap. li.

CXXII. STAT. 6 GEORGII 4, cap. li. (1). A.D. 1825.

"An Act for confirming certain Leases granted by the Mayor and Commonalty, and Citizens of the City of London, Governors of the House of the Poor, commonly called Saint Bartholomew's Hospital, near West Smithfield, London, of the Foundation of King Henry the Eighth, and enabling them to grant Leases of the Possessions of the said Hospital for long terms of years, for the Purposes herein mentioned."

STAT. 6 GEO.
4, c. 54. [IR.]

CXXIII. STAT. 6 GEORGII 4, c. 54. [IRELAND.] A.D. 1825.

"An Act to amend an Act of the first and second years of His present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland."

STAT. 6 GEO.
4, cap. lv.

CXXIV. STAT. 6 GEORGII 4, cap. lv. A.D. 1825.

"An Act for making more effectual Provision for paying off and discharging the Debts and Expenses incurred in taking down and rebuilding the Parish Church of Saint James, in the Town and County of Poole, and the Tower of the same Church."

STAT. 6 GEO.
4, cap. lvi.

CXXV. STAT. 6 GEORGII 4, cap. lvi. A.D. 1825.

"An Act for altering and amending an Act of the fifty-ninth year of His late Majesty, for building a new Church in the Parish of Saint Luke, Chelsea, in the County of Middlesex."

STAT. 6 GEO.
4, cap. lvi.

CXXVI. STAT. 6 GEORGII 4, cap. lvi. A.D. 1825.

"An Act for more effectually vesting the Estates of the Charity called Waddington Hospital, in the County of York, in the Trustees of the said Charity, and for enabling them to grant Leases of the said Estates, for the purposes of erecting or repairing Buildings; and also to sell part of the said Estates, and to lay out the Monies arising thereby in the Purchase of other Estates; and for enlarging the Power given by the Founder to appoint new Trustees of the said Charity."

STAT. 6 GEO.
4, cap. lvii.

CXXVII. STAT. 6 GEORGII 4, cap. lvii. A.D. 1825.

"An Act for providing additional Burying Ground for the Parish of Saint Mary, Stratford Bow, in the County of Middlesex."

STAT. 6 GEO.
4, cap. lvii.

CXXVIII. STAT. 6 GEORGII 4, cap. lvii. A.D. 1825.

"An Act for vesting the Manor, Rectory, and Isle of Hayling, in the County of Southampton, part of the settled Estates of the Duke of Norfolk, in William Paderick the Younger, Esquire, his Heirs, and Assigns, and for applying the Money thence arising in the Purchase of other Estates to be settled to the same Uses, and for other Purposes."

(1) Vide Stat. 13 Eliz. c. 10 (ante 424); 14 Eliz. c. 14 (ante 435); and Stat. 22 Geo. Stat. 14 Eliz. c. 11, s. 17 (ante 434); Stat. 3, c. 77 (ante 917).

CXIII. STAT. 6 GEORGII 4, CAP. XXXIII. A.D. 1825.

STAT. 6 GEO.
4, CAP. XXXIII.

"An Act for erecting a Chapel at Pelham Crescent, in the Parish of Saint Mary-in-the-Castle, in the Liberty of the Town and Port of Hastings, in the County of Sussex."

CXIV. STAT. 6 GEORGII 4, CAP. XXXVII. A.D. 1825.

STAT. 6 GEO.
4, CAP. XXXVII.

"An Act for effecting an Exchange of Estates in the County of Norfolk, between Wyrley Birch, Esquire, and the Provost and College of Eton, in the County of Bucks."

CXV. STAT. 6 GEORGII 4, CAP. XLV. A.D. 1825.

STAT. 6 GEO.
4, CAP. XLV.

"An Act to enlarge the Powers of several Acts passed in the thirty-fifth, forty-fourth, forty-fifth, and forty-eighth years of the Reign of His late Majesty King George the Third, for enabling the Lord Bishop of London to grant a Lease, with Powers of Renewal, of Lands, in the Parish of Paddington, in the County of Middlesex, for the purpose of building upon, and to appoint new Trustees, and for other Purposes relating thereto."

CXVI. STAT. 6 GEORGII 4, CAP. XLVI. (1). A.D. 1825.

STAT. 6 GEO.
4, CAP. XLVI.

"An Act for confirming certain Leases granted by the Mayor, Commonalty, and Citizens of the City of London, Governors of the Possessions, Revenues, and Goods of the Hospital of King Edward the Sixth, called the Hospital of Saint Thomas the Apostle, and for enabling them to grant Building Leases of certain Lands."

CXVII. STAT. 6 GEORGII 4, C. 47. [SCOTLAND.] A.D. 1825.

STAT. 6 GEO.
4, C. 47. [Sc.]

"An Act for restricting the Punishment of Leasing-making, Sedition, and Blasphemy, in Scotland."

CXVIII. STAT. 6 GEORGII 4, CAP. XLVII. A.D. 1825.

STAT. 6 GEO.
4, CAP. XLVII.

"An Act for enabling the Archbishop of Canterbury and his Successors, to grant Licences for building upon and improving the Copyholds within the Manors of Lambeth and Croydon, in the County of Surrey, and to grant Licences to demise such Copyholds for those Purposes, and to fix the Fines payable upon Admission to the same during limited periods."

CXIX. STAT. 6 GEORGII 4, CAP. XLVIII. (1). A.D. 1825.

STAT. 6 GEO.
4, CAP. XLVIII.

"An Act for confirming certain Leases granted by the Mayor and Commonalty, and Citizens of the City of London, Governors of the Possessions, Revenues, and Goods of the Hospital of King Edward the Sixth, called Christ's Hospital; and for enabling them to grant Building Leases of certain Lands."

CXX. STAT. 6 GEORGII 4, CAP. XLIX. (1). A.D. 1825.

STAT. 6 GEO.
4, CAP. XLIX.

"An Act for confirming certain Leases granted by the Mayor and Commonalty, and Citizens of the City of London, Governors of the Possessions, Revenues, and Goods of the Hospital of King Edward the Sixth, called Bridewell; and for enabling them to grant Leases of the Possessions of the said Hospital for long terms of years, for the Purposes herein mentioned."

(1) Vide Stat. 13 ELIZ. c. 10 (ante 424); 14 ELIZ. c. 14 (ante 435); and Stat. 22 GEO. 4, c. 11, s. 17 (ante 434); Stat. 3, c. 77 (ante 917).

STAT. 6 GEO.
4, cap. l.

CXXI. STAT. 6 GEORGII 4, cap. l. (1). A.D. 1825.

"An Act for confirming certain Leases granted by the Mayor and Commonalty, and Citizens of the City of London, Masters, Guardians, and Governors of the Houses and Hospital called Bethlem, and for enabling them to grant Building Leases of certain Lands, the Possessions of the said Hospital for long terms of years, for the Purposes herein mentioned."

STAT. 6 GEO.
4, cap. li.

CXXII. STAT. 6 GEORGII 4, cap. li. (1). A.D. 1825.

"An Act for confirming certain Leases granted by the Mayor and Commonalty, and Citizens of the City of London, Governors of the House of the Poor, commonly called Saint Bartholomew's Hospital, near West Smithfield, London, of the Foundation of King Henry the Eighth, and enabling them to grant Leases of the Possessions of the said Hospital for long terms of years, for the Purposes herein mentioned."

STAT. 6 GEO.
4, c. 54. [IR.]

CXXIII. STAT. 6 GEORGII 4, c. 54. [IRELAND.] A.D. 1825.

"An Act to amend an Act of the first and second years of His present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland."

STAT. 6 GEO.
4, cap. lv.

CXXIV. STAT. 6 GEORGII 4, cap. lv. A.D. 1825.

"An Act for making more effectual Provision for paying off and discharging the Debts and Expenses incurred in taking down and rebuilding the Parish Church of Saint James, in the Town and County of Poole, and the Tower of the same Church."

STAT. 6 GEO.
4, cap. lvi.

CXXV. STAT. 6 GEORGII 4, cap. lvi. A.D. 1825.

"An Act for altering and amending an Act of the fifty-ninth year of His late Majesty, for building a new Church in the Parish of Saint Luke, Chelsea, in the County of Middlesex."

STAT. 6 GEO.
4, cap. lvi.

CXXVI. STAT. 6 GEORGII 4, cap. lvi. A.D. 1825.

"An Act for more effectually vesting the Estates of the Charity called Waddington Hospital, in the County of York, in the Trustees of the said Charity, and for enabling them to grant Leases of the said Estates, for the purposes of erecting or repairing Buildings; and also to sell part of the said Estates, and to lay out the Monies arising thereby in the Purchase of other Estates; and for enlarging the Power given by the Founder to appoint new Trustees of the said Charity."

STAT. 6 GEO.
4, cap. lvii.

CXXVII. STAT. 6 GEORGII 4, cap. lvii. A.D. 1825.

"An Act for providing additional Burying Ground for the Parish of Saint Mary, Stratford Bow, in the County of Middlesex."

STAT. 6 GEO.
4, cap. lvii.

CXXVIII. STAT. 6 GEORGII 4, cap. lvii. A.D. 1825.

"An Act for vesting the Manor, Rectory, and Isle of Hayling, in the County of Southampton, part of the settled Estates of the Duke of Norfolk, in William Padwick the Younger, Esquire, his Heirs, and Assigns, and for applying the Money thence arising in the Purchase of other Estates to be settled to the same Uses, and for other Purposes."

(1) Vide Stat. 13 Eliz. c. 10 (ante 424); 14 Eliz. c. 14 (ante 435); and Stat. 22 Geo Stat. 14 Eliz. c. 11, s. 17 (ante 434); Stat. 3, c. 77 (ante 917).

CXXIX. STAT. 6 GEORGH II, CAP. LVIII. A.D. 1825.

STAT. 6 GEO.
4, CAP. LVIII.

"An Act to provide for the perpetual Maintenance and Support of the Chapel of the Holy and Undivided Trinity, in the Town of Gosport, within the Parish of Alverstoke, in the County of Southampton."

CXXX. STAT. 6 GEORGH II, C. 67. A.D. 1825.

STAT. 6 GEO.
4, C. 67.

"An Act to alter and amend an Act passed in the seventh year of the Reign of His Majesty King James the First, intituled, An Act that all such as are to be Naturalized or Restored in Blood shall first receive the Sacrament of the Lord's Supper, and the Oath of Allegiance, and the Oath of Supremacy."

"Whereas an act was passed in the seventh year of the reign of his majesty King James the First, intituled, 'An Act that all such as are to be Naturalized or Restored in Blood shall first receive the Sacrament of the Lord's Supper, and the Oath of Allegiance and the Oath of Supremacy;' and whereas it is expedient that the said recited act should be altered and amended; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall not henceforth be necessary for any person who is to be naturalized or restored in blood to receive the sacrament of the Lord's Supper, as directed by the said act.

7 Jac. 1, c. 2.

Not necessary for any person naturalized or restored in blood to receive the sacrament.

"II. And be it further enacted, that if it shall appear to the satisfaction of the house of parliament, in which a bill shall originate for restoring any person in blood, that the person intended by such bill to be so restored in blood is unable from sickness or bodily infirmity, or other sufficient cause, to take the oaths of supremacy and of allegiance in the parliament house, before his or her bill shall be twice read, as directed by the said act, it shall and may be lawful for such house of parliament to receive in lieu thereof sufficient proof, before any such bill shall be twice read, that the said oaths have been taken within one year before a justice of the peace or mayor or other chief magistrate in any county or city or town in Great Britain or Ireland, or before one of his majesty's judges or justices in any of his majesty's courts of judicature in the colonies or foreign possessions of his majesty."

Proviso as to persons to be restored in blood taking the oaths.

CXXXI. STAT. 6 GEORGH II, CAP. LXIX. A.D. 1825.

STAT. 6 GEO.
4, CAP. LXIX.

"An Act for extending and rendering more effectual an Act of His late Majesty, for enlarging and improving the Minster Yard of the Cathedral and Metropolitane Church of Saint Peter, in York."

CXXXII. STAT. 6 GEORGH II, C. 75 (1). A.D. 1825.

STAT. 6 GEO.
4, C. 75.

"An Act to enable His Majesty to grant to a Company to be incorporated by Charter, to be called 'The Canada Company,' certain Lands in the Province of Upper Canada, and to invest the said Company with certain Powers and Privileges, and for other Purposes relating thereto."

CXXXIII. STAT. 6 GEORGH II, C. 85. A.D. 1825.

STAT. 6 GEO.
4, C. 85.

"An Act for further regulating the Payment of the Salaries and Pensions to the Judges of His Majesty's Courts in India, and the Bishop of Calcutta; for authorizing the Transportation of Offenders from the Island of Saint Helena; and for more effectually providing for the Administration of Justice in Singapore and Malacca, and certain Colonies on the Coast of Coromandel."

"V. And be it further enacted, that in all cases from and since the said twenty-second day of January one thousand eight hundred and twenty-two, in which it has already happened, or when and as often as it shall hereafter happen, that any chief justice or puisne judge of any of the said supreme courts of judicature at

Provision in case any judge or bishop, &c. shall die either during his

STAT. 6 GEO.
4, c. 85.

voyage or
within six
months after
his arrival, &c.

Fort William in Bengal, Madras, or Bombay, or the recorder of Prince of Wales' Island, or any Bishop of Calcutta, shall have departed or shall hereafter depart this life, either during his voyage to India or within six calendar months next after the day when he shall have arrived in India for the purpose of taking upon him the office of such chief justice or puisne judge, recorder, or bishop, the court of directors of the said united company shall and they are hereby required to pay, or direct and cause to be paid, out of the territorial revenues from which the salary of such chief justice or puisne judge, recorder, or bishop so dying shall be payable to the legal personal representatives of such chief justice or puisne judge, recorder, or bishop so dying as aforesaid, such sum or sums of money as shall, together with the sum or sums paid to or drawn by such chief justice or puisne judge, recorder, or bishop, in respect of his salary, make up the full amount of one year's salary of the office to which he shall have been appointed; and that from and since the first day of January one thousand eight hundred and twenty-three, when and as often as it shall have happened or shall hereafter happen that any such chief justice or puisne judge, recorder, or bishop hath departed or shall depart this life while in possession of such office, and after the expiration of six calendar months from the time of his arrival in India for the purpose of taking upon him the office of chief justice, puisne judge, recorder, or bishop, then and in all and every of such cases the said court of directors shall and they are hereby required to pay or direct and cause to be paid, out of the territorial revenues from which the salary of such chief justice, puisne judge, recorder, or bishop so dying shall be payable, to the legal personal representatives of such chief justice or puisne judge, recorder, or bishop respectively so dying as aforesaid, over and above what may have been due to such chief justice or puisne judge, recorders or bishop respectively at the time of his death, a sum equal to the amount of six calendar months' salary of the office of such chief justice or puisne judge, recorder, or bishop respectively.

53 Geo. 3,
c. 155.

4 Geo. 4, c. 71.
ss. 2 & 3.

Pension to
bishop on
resignation.

"XV. And whereas under and by virtue of an act made and passed in the fifty-third year of the reign of his late majesty King George the Third, and of another act made and passed in the fourth year of the reign of his present majesty, provision is made for granting a pension to the Bishop of Calcutta, under the limitations therein contained, and it is expedient to make further provision in respect thereof; be it further enacted, that it shall and may be lawful for his majesty, his heirs and successors, in manner in the said act of the fifty-third year of the reign of his late majesty mentioned, to grant to any such bishop who shall have exercised within the limits of the charter of the said united company the office of Bishop of Calcutta for five years a pension not exceeding one-half of the sum, which his majesty, by the said act of the fifty-third year of the reign of his late majesty, is empowered to grant to any such bishop; and also to grant to any such bishop who shall have exercised within the limits aforesaid the said office of Bishop of Calcutta for seven years, a pension not exceeding two-thirds of the sum which his majesty, by the said act of the fifty-third year of his late majesty's reign, is empowered to grant to any such bishop.

Resignation
under ten
years' service,
for other cause
than illness,
not to entitle
to pension.

"XVI. Provided also, and be it further enacted, that it shall not be lawful for his majesty, his heirs or successors, to direct any such allowance to be made to any such chief justice, puisne judge, recorder, or bishop respectively, who before he shall have held and exercised such office, or some or one of such offices, for the space of ten years in the whole, shall resign his said office for any other cause than in consequence of illness or infirmity, to be proved to the satisfaction of his majesty, his heirs or successors."

STAT. 6 GEO.
4, c. 87.

CXXXIV. STAT. 6 GEORGII 4, c. 87. A.D. 1825.

"An Act to regulate the Payment of Salaries and Allowances to British Consuls at Foreign Ports, and the Disbursements at such Ports for certain Public Purposes."

Provision for
support of

"X. And whereas churches and chapels for the performance of divine service, according to the rites and ceremonies of the united church of England and Ireland,

or of the church of Scotland, have been erected, and proper grounds have been appropriated and set apart for the interment of the dead, in divers foreign ports and places, and chaplains have been appointed for the performance of divine service in the said churches and chapels, and are now resident in such foreign ports and places; and it is expedient to afford encouragement for the support of the churches and chapels so erected as aforesaid, and to promote the erection of other churches and chapels in foreign ports and places to which his majesty's subjects may resort, and wherein they may be resident in considerable numbers, for the purposes of trade or otherwise; be it therefore enacted, that at any foreign port or place in which a chaplain is now, or shall at any future time be, resident and regularly employed in the celebration of divine service, according to the rites and ceremonies of the united church of England and Ireland, or of the church of Scotland, and maintained by any voluntary subscription or rate, levied among or upon his majesty's subjects resorting to or residing at such foreign port or place, or by any rate or duty levied under the authority of any of the acts hereinafter repealed, it shall and may be lawful for any consul-general or consul, in obedience to any order for that purpose issued by his majesty through one of his principal secretaries of state, to advance and pay from time to time, for and towards the maintenance and support of any such chaplain as aforesaid, or for and towards defraying the expenses incident to the due celebration of divine service in any such churches and chapels, or for and towards the maintaining any such burial grounds as aforesaid, or for and towards the interment of any of his majesty's subjects in any such burial grounds, any sum or sums of money, not exceeding in any one year the amount of the sum or sums of money which during that year may have been raised at such port or place for the said several purposes, or any of them, by any such voluntary subscription or rate as aforesaid; and every such consul-general or consul shall, once in each year, transmit to one of his majesty's principal secretaries of state, an account, made up to the thirty-first day of December, in the year next preceding, of all the sums of money actually raised at any such port or place as aforesaid, for the several purposes aforesaid, or any of them, by any such voluntary subscription or rate as aforesaid, and of all sums of money by him actually paid and expended for such purposes, or any of them, in obedience to any such orders as aforesaid, and which accounts shall by such principal secretary of state be transmitted to the lord high treasurer, or the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland for the time being, who shall give to any such consul-general or consul as aforesaid, credit for all sums of money not exceeding the amount aforesaid, by them disbursed and expended in pursuance of any such order as aforesaid, for the purposes before mentioned, or any of them.

"XI. And be it further enacted, that in case any of his majesty's subjects shall by voluntary subscriptions among themselves raise and contribute such a sum of money as shall be requisite for defraying one half part of the expense of erecting, purchasing, or hiring, any church, or chapel, or building, to be appropriated for the celebration of divine service according to the rites and ceremonies of the united church of England and Ireland, or of the church of Scotland, or for defraying one half part of the expense of erecting, purchasing, or hiring, any building to be used as a hospital for the reception of his majesty's subjects, or for defraying one half of the expense of purchasing or hiring any ground to be used as a place of interment for his majesty's subjects at any foreign port or place wherein any consul-general or consul appointed by his majesty, shall be resident, then and in any such case it shall and may be lawful for such consul-general or consul, in obedience to any order to be for that purpose issued by his majesty through one of his principal secretaries of state, to advance and pay, for and towards the purposes aforesaid, or any of them, any sum or sums of money not exceeding in the whole in any one year the amount of the money raised in that year by any such voluntary contribution as aforesaid; and every such consul-general or consul as aforesaid shall in like manner once in every year transmit to one of his majesty's principal secretaries of state an account, made up to the thirty-first day of December in the year next preceding, of all the sums of

STAT. 6 GEO.
4, c. 87.

churches and chapels, &c. in foreign ports and places where a chaplain is appointed and maintained by subscription: consuls authorized to advance for such purpose a sum equal to the amount subscribed.

Where voluntary contributions towards erecting churches, hospitals, or providing burial grounds, in any place where consuls are resident, such consuls are authorized to advance a sum equal to the amount of such contributions.

STAT. 6 GEO.
4, c. 87.

His majesty's
approbation to
be first ob-
tained.

Salaries to
chaplains not
to exceed the
sums herein
mentioned.

Meetings of
subscribers
to churches,
chapels, &c.

money actually raised at any such port or place as aforesaid, for the several purposes aforesaid, or any of them, by any such voluntary subscription as aforesaid, and of all sums of money by him actually paid and expended for such purposes, or any of them, in obedience to any such orders as aforesaid, and which accounts shall by such principal secretary of state be transmitted to the lord high treasurer, or to the lords commissioners of his majesty's treasury, for the time being, who shall give to such consuls-general or consuls, credit for all sums of money not exceeding the amount aforesaid, by him disbursed and expended in pursuance of any such order as aforesaid, for the purposes before mentioned, or any of them.

"XII. Provided always, and be it further enacted, that no such order shall be issued as aforesaid through any of his majesty's principal secretaries of state, authorizing the expenditure of money for the erection, purchase, or hiring, of any such new church or chapel, or hospital, as aforesaid, or for the purchase or hiring of any such new burial ground as aforesaid, unless and until such consul-general or consul shall first have transmitted to his majesty, through one of his majesty's principal secretaries of state, the plan of such intended church or chapel, hospital, or burial ground, with an estimate, upon the oath of some one or more competent person or persons, stating the probable expense of, and incident to the erection, purchase, or hiring, of any such church, chapel, hospital, or burying ground, as aforesaid, and unless and until his majesty shall have signified through one of his said principal secretaries of state, his approbation of the said plan and estimate: provided also, that no money shall actually be disbursed by any such consul-general or consul as aforesaid, for any of the purposes aforesaid, unless and until the money to be raised by any such voluntary subscription as aforesaid be actually paid up and invested in some public or other sufficient security, in the joint names of such consul-general or consuls and two trustees appointed for that purpose by the persons subscribing the same, or unless and until two or more of such subscribers shall enter into good and sufficient security to his majesty, by bond or otherwise, that the amount of such subscriptions shall actually be paid for the purposes aforesaid, by a certain day to be specified in every such bond or security, and which bond or security shall be preserved in the office of such consul-general or consul, and shall by him be cancelled and delivered back to the parties entering into the same, their heirs, executors, or administrators, when and so soon as the conditions thereof shall be fully performed and satisfied.

"XIII. Provided also, and be it further enacted, that the whole salary of any chaplain heretofore appointed or to be appointed to officiate in any such church or chapel in any foreign port or place in Europe, shall not exceed in the whole five hundred pounds by the year, or in any foreign port or place not in Europe, eight hundred pounds by the year: provided also, that all such chaplains shall be appointed to officiate as aforesaid, by his majesty, through one of his principal secretaries of state, and shall hold such their offices for and during his majesty's pleasure, and no longer.

"XIV. And be it further enacted, that all consuls-general and consuls appointed by his majesty to reside and being resident at any foreign port or place wherein any such church or chapel, or other place appropriated for the celebration of divine worship, or hospital, or any such burial ground as aforesaid, hath heretofore been or shall hereafter be erected, purchased, or hired, by the aid of any voluntary subscription or rates collected by or imposed upon his majesty's subjects, or some person or persons for that purpose duly authorized by any writing under the hand and seal of any such consul-general or consul, shall, once at the least in every year, and more frequently if occasion shall require, by public advertisement, or in such other manner as may be best adapted for insuring publicity, convene and summon a meeting of all his majesty's subjects residing at such foreign port or place as aforesaid, to be holden at the public office of such consul-general or consul, at some time, not more than fourteen days nor less than seven days next after the publication of any such summons; and it shall and may be lawful for all his majesty's subjects residing or being at any such foreign port or place as aforesaid, at the time of any such meeting, and who shall have subscribed any sum or sums of money

not less than twenty pounds in the whole nor less than three pounds by the year, for or towards the purposes before mentioned, or any of them, and have paid up the amount of such their subscriptions, to be present and vote at any such meetings; and such consuls-general or consuls shall preside at all such meetings; and in the event of the absence of any such consuls-general or consuls the subscribers present at any such meeting shall, before proceeding to the despatch of business, nominate one of their number to preside at such meeting; and all questions proposed by the consul-general, consul, or person so nominated as aforesaid to preside in his absence, to any such meeting, shall be decided by the votes of the majority in number of the persons attending and being present thereat; and in the event of the number of such votes being equally divided, the consul-general, consul, or person so presiding in his absence, shall give a casting vote.

STAT. 6 GEO.
4, c. 87.

“XV. And be it further enacted, that it shall and may be lawful for any such general meeting as aforesaid to make and establish, and from time to time, as occasion may require, to revoke, alter, and render such general rules, orders, and regulations, as may appear to them to be necessary for the due and proper use and management of such churches, chapels, hospitals, and burial grounds as aforesaid, or for the proper control over and expenditure of the money raised by any such subscription as aforesaid, or otherwise in relation to the matters aforesaid, as may be necessary for carrying into execution the objects of this act, so far as relates to those matters, or any of them: provided always, that no such rule, order, or regulation as aforesaid shall be of any force or effect, unless or until the same shall be sanctioned and approved by the consul-general or consul for the time being, appointed by his majesty to reside and actually resident at such foreign port or place; and provided also, that the same shall, by such consul-general or consul, be transmitted by the first convenient opportunity for his majesty's approbation; and that it shall and may be lawful for his majesty, by any order to be by him issued through one of his principal secretaries of state, either to confirm or disallow any such rules, orders, and regulations, either in the whole or in part, and to make such amendments and alterations in or additions to the same, or any of them, as to his majesty shall seem meet, or to suspend for any period of time the execution thereof, or any of them, or otherwise to direct or prevent the execution thereof, or any of them, in such manner as to his majesty shall seem meet; and all orders so to be issued by his majesty, in relation to the matters aforesaid, through one of his principal secretaries of state, shall be recorded in the office of the said consul-general or consul at the foreign port or place to which the same may refer, and shall be of full force, effect, and authority upon and over all his majesty's subjects there resident.”

General meetings may establish rules for the management of such churches, &c. subject to the sanction of the consul, who shall transmit the same for his majesty's approbation.

CXXXV. STAT. 6 GEORGII 4, c. 88(1). A.D. 1825.

STAT. 6 GEO.
4, c. 88.

“An Act to make Provision for the Salaries of certain Bishops and other Ecclesiastical Dignitaries and Ministers in the Diocese of Jamaica, and in the Diocese of Barbadoes, and the Leeward Islands; and to enable His Majesty to grant Annuities to such Bishops upon the Resignation of their Offices.”

“Whereas his majesty, by his several royal letters patent, has been graciously pleased to direct and appoint that the island of Jamaica, the Bahama Islands, and the settlements in the Bay of Honduras, and their respective dependencies, should be and become a bishopric, and the diocese and see of a bishop of the united church of England and Ireland as established by law, to be called ‘The Bishopric of Jamaica;’ and that there should be one bishop of the said diocese, and that there should also be one archdeacon and seven ministers of the gospel in and for the said diocese; and in like manner that the islands of Barbadoes, Grenada, Saint Vincent's, Dominica, Antigua and Mountserrat, Saint Christopher's, Nevis and the Virgin Islands, Trinidad, Tobago and Saint Lucie, and their respective dependencies, should be and become a bishopric, and the diocese and see of a bishop, to be called ‘The Bishopric of Barbadoes and the Leeward Islands,’ and that there shall be one bishop of the said last mentioned diocese, and that there should also be one

Appointment of bishops, archdeacons, ministers for the dioceses of Jamaica and of Barbadoes, and the Leeward Islands.

STAT. 6 GEO.
4, c. 88.

Salaries to be
payable to
bishops, &c.:

bishops,
4000*l.*;

archdeacons,
2000 .;

ministers,
300*l.*;

catechists,
100*l.*

Treasury may
issue money
out of the
consolidated
fund, to pro-
vide for pay-
ment of the
said salaries.

His majesty
empowered to
grant annuities
of 1000*l.* to
the bishops
retiring after
ten years.

archdeacon in and for the island of Barbadoes, and one archdeacon in and for the island of Antigua, and that there should be thirteen ministers of the gospel and three catechists within the said last mentioned diocese; and it is expedient that provision should be made for the payment of yearly salaries to such bishops, archdeacons, ministers, and catechists respectively, and also to enable his majesty to grant to such bishops respectively yearly pensions or annuities on their retiring from their dioceses: we, your majesty's most dutiful and loyal subjects, the commons of the United Kingdom of Great Britain and Ireland in parliament assembled, do most humbly beseech your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the persons who shall from time to time exercise and enjoy the several dignities and offices hereinafter mentioned, under or by virtue of his majesty's letters patent or authority, shall receive the several salaries or annual sums hereinafter respectively specified and set forth; that is to say, the bishop of the diocese of Jamaica, and the bishop of the diocese of Barbadoes and the Leeward Islands, in the West India, the salary or annual sum of four thousand pounds each, of lawful money of the United Kingdom of Great Britain and Ireland; the archdeacon of the island of Jamaica, and the archdeacon of the island of Barbadoes, and the archdeacon of the island of Antigua, the salary or annual sum of two thousand pounds each, of the like lawful money; the seven ministers of the gospel in the diocese of Jamaica, and the thirteen ministers of the gospel in the diocese of Barbadoes and the Leeward Islands, the salary or annual sum of three hundred pounds each, of the like lawful money; the three catechists in the said diocese of Barbadoes and the Leeward Islands, the salary or annual sum of one hundred pounds each, of the like lawful money; and that all the said several salaries and annual sums shall be paid and payable free and clear from all taxes and deductions whatsoever.

"II. And be it further enacted, that it shall and may be lawful for the commissioners of his majesty's treasury of the United Kingdom for the time being, or any three or more of them, and they are hereby authorized and required from time to time, by warrant or warrants under their hands, to direct the proper officer of the exchequer to issue and pay, out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as may be appointed to receive the same, all and every such sums and sum of money as may from time to time be necessary for the payment of all or any of the several salaries or annual sums made payable by this act, which may have accrued respectively at any time before the passing of this act, or which may from time to time accrue and become due and payable at any time after the passing of this act.

"III. And be it further enacted, that it shall be lawful for his majesty, his heirs and successors, by any letters patent under the great seal of the United Kingdom of Great Britain and Ireland, to give and grant unto any person who may or shall execute the office of bishop of the diocese of Jamaica, or the office of bishop of the diocese of Barbadoes and the Leeward Islands respectively, and who shall resign the same respectively, an annuity or yearly sum of money not exceeding the sum of one thousand pounds to any such bishop respectively, to commence and take effect immediately from and after the period whenever the person to whom such annuity or yearly sum of money shall be granted shall resign or shall have resigned the said offices respectively, and to continue from thenceforth for and during the natural life of the person to whom such annuity shall be granted as aforesaid; and such annuity or yearly sum shall be issued and payable out of and charged and chargeable upon the consolidated fund of the United Kingdom of Great Britain and Ireland, next in order of payment to and after paying and reserving sufficient to pay all such sum and sums of money as have been directed by any former act or acts of parliament to be paid out of the same, but with preference to all other payments which shall and may be charged upon or payable out of the said fund; and such annuity or yearly sum shall from time to time be paid and payable quarterly, free and clear of all taxes and deductions whatsoever, at the four

usual days of payment in the year; that is to say, the fifth day of January, fifth day of April, fifth day of July, and the tenth day of October, in each and every year, by even and equal portions, the first payment to be made on such of the said days as shall happen next after such resignation as aforesaid of the said office: provided always, that no such annuity or yearly sum of money granted to any person having executed either of the said offices respectively, shall be valid, unless such persons shall have continued in the said office for the period of ten years, or shall be afflicted with some permanent infirmity, disabling him from the due execution of his office of bishop, which shall be distinctly recited in the said grant.

STAT. 6 GEO.
4, c. 88.

"IV. And whereas it is expedient that the charge to be created by the salaries or pensions which may from time to time be payable under the authority of this act to the bishops, archdeacons, ministers, or catechists appointed or to be appointed by his majesty as aforesaid, should be charged upon the duties of four and a half per centum payable to his majesty in the West Indies, whenever the said duties, after payment of the prior charges thereon, shall afford the means of defraying the whole or any part of such salaries or pensions; be it therefore enacted, that the said salaries and pensions shall become and be a charge upon the said duties of four and a half per centum, next in priority after the salaries of the governors, lieutenant governors, and other public officers, payable out of those duties after the termination of any other charges now existing thereupon, and that any and every surplus which shall at any time arise out of the produce of those duties after defraying all such other charges now existing thereupon, or by reason of the cessation of any of those charges, shall go and be applied in the first instance to defray the charges of the salaries and pensions to be granted under the authority of this act accordingly."

Salaries and pensions to be a charge on the four and a half per cent. duties.

CXXXVI. STAT. 6 GEORGII 4, c. 92. A.D. 1825.

STAT. 6 GEO.
4, c. 92.

"An Act to render valid Marriages solemnized in certain Churches and Public Chapels in which Banns have not usually been published."

"Whereas since the making of an act passed in the twenty-sixth year of the reign of his late majesty King George the Second, intituled, 'An Act for the better preventing Clandestine Marriages,' and since the making of an act passed in the forty-fourth year of the reign of his late majesty King George the Third, intituled, 'An Act to render valid certain Marriages solemnized in certain Churches and Public Chapels in which Banns had not usually been published, before or at the time of passing an Act made in the twenty-sixth year of the Reign of His late Majesty King George the Second, intituled, "An Act for better preventing Clandestine Marriages,"' divers churches and chapels have been erected and built within that part of Great Britain called England, Wales, and the town of Berwick-upon-Tweed, which have been duly consecrated, and divers marriages have been solemnized therein since the passing of the said last-mentioned act; but by reason that in such churches and chapels banns of matrimony had not usually been published before or at the time of passing the said first-mentioned act, nor any authority obtained for solemnizing marriages therein under the provisions of an act passed in the fourth year of the reign of his present majesty King George the Fourth, intituled, 'An Act for amending the Laws respecting the Solemnization of Marriages in England,' such marriages have been or may be deemed to be void; may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all marriages already solemnized in any church or public chapel in that part of Great Britain called England and Wales, and the town of Berwick-upon-Tweed, erected since the making of the said act of the twenty-sixth year of the reign of his said late majesty King George the Second, and consecrated, shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had usually been published, before or at the time of passing the said first-mentioned act.

26 Geo. 2, c. 33.

44 Geo. 3, c. 77.

4 Geo. 4, c. 76.

Marriages which have been solemnized in churches and chapels erected since the recited act 26 Geo. 2, c. 33, shall be good in law as if solemnized in parish churches, &c.

STAT. 6 GEO.
4, c. 92.

Marriages in
future solemn-
ized in such
churches, &c.
shall be valid.

"II. And be it further enacted, that it shall and may be lawful for marriages to be in future solemnized in all churches and chapels erected since the passing of the said act in the twenty-sixth year of the reign of his late majesty King George the Second, and consecrated, in which churches and chapels it has been customary and usual before the passing of this act to solemnize marriages; and all marriages hereinafter solemnized therein shall be as good and valid in law as if such marriages had been solemnized in parish churches or public chapels having chapelries annexed, and wherein banns had usually been published before or at the time of passing the said act.

Registers of
such marriages
evidence.

"III. And be it further enacted by the authority aforesaid, that the registers of marriages solemnized, or to be solemnized, in the said churches or chapels, which are hereby enacted to be valid in law, or copies thereof, shall be received in all courts of law and equity as evidence of such marriages, in the same manner as the registers of marriages solemnized in parish churches or public chapels in which banns were usually published before or at the time of passing the said act of the twenty-sixth year of the reign of his said late majesty King George the Second, or copies thereof, are received in evidence; provided nevertheless, that in all such courts the same objections shall be available to the receiving such registers or copies as evidence, as would have been available to receiving the same as evidence if such registers or copies had related to marriages solemnized in such last-mentioned parish churches or public chapels as aforesaid.

Registers
solemnized in
chapels where
banns had not
been usually
published be-
fore the act
26 Geo. 2, to
be removed to
the parish
church.

"IV. And be it further enacted by the authority aforesaid, that the registers of all marriages solemnized in any such public chapel where banns had not been usually published before or at the time of passing the said act of the twenty-sixth year of the reign of his said late majesty King George the Second, which marriages are hereby enacted to be valid in law, shall, within three months after the passing of this act, be removed to the parish church of the parish in which such chapel shall be situated; and in case such chapel shall be situated in an extra-parochial place, then to the parish church next adjoining to such extra-parochial place, to be kept with the marriage registers of such parish, and in like manner as parish registers are directed to be kept by the said act of the twenty-sixth year of the reign of his said late majesty King George the Second."

STAT. 6 GEO.
4, CAP. CXXII.

CXXXVII. STAT. 6 GEORGII 4, CAP. CXXII. A.D. 1825.

"An Act for building two Chapels in the Town of Brighthelmston, in the County of Sussex."

STAT. 6 GEO
4, c. 124.

CXXXVIII. STAT. 6 GEORGII 4, c. 124(1). A.D. 1825.

"An Act for making the four Districts in the Parish of Saint Mary-le-bone, in the County of Middlesex, District Rectories for certain Purposes."

1 & 2 Geo. 4,
c. xxi.

"Whereas an act passed in the first and second years of the reign of his present majesty, intituled, 'An Act to enable the Vestrymen of the Parish of Saint Mary-le-bone, in the County of Middlesex, to effectuate the building of Four District Churches in the said Parish; and for other Purposes relating thereto:' and whereas by the said act the commissioners for building and promoting the building of additional churches were empowered to build four district churches in the said parish of Saint Mary-le-bone: and whereas it was thereby enacted that it should be lawful for the said commissioners, with such consent as therein mentioned, to assign a particular district to each and every or any of the said district churches, such assignment to be confirmed by his majesty in council, and that each division or district should be under the immediate care of the respective district ministers, so far as relates to visiting and administering the sacrament to the sick at their own habitations, and churching of women: and it was also by the said recited act enacted, that each district minister so to be appointed as aforesaid should perform divine service, and preach, and administer the holy sacrament in the district

church of which he should be minister, as therein mentioned; and should perform all parochial duties belonging to the function of a minister, save and except the publication of banns, the solemnization of matrimony, and baptisms; and it should be lawful for the said district ministers to receive, demand, and take the Easter dues or offerings and the surplice fees to arise, accrue, and become payable within each of their respective districts (save and except as therein mentioned): and it was by the said recited act further enacted, that all publication of banns, and all marriages, and also baptisms, in the said parish of Saint Mary-le-bone (including the said four districts), should be performed at the then parish church as the same were then done, and at no other place; and that all fees for the same respectively should be paid to the incumbent minister or rector of the said parish: provided that nothing therein contained should extend to exempt any such district ministers from the duty of performing private baptisms in their respective districts, when duly required so to do: and whereas, in pursuance of the powers and provisions of the said recited act, a district church has been built in Wyndham place, in the said parish of Saint Mary-le-bone, and duly consecrated, and a district minister has been thereunto appointed, and a district duly assigned to the same: and whereas one other district church has been built in Langham place, in the said parish of Saint Mary-le-bone, and duly consecrated, and a district minister has been thereunto appointed, and a district duly assigned to the same: and whereas one other district church has been built and duly consecrated in Stafford street, in the said parish, and a district minister has been thereunto appointed, and a district duly assigned to him: and whereas one other district has been assigned in the eastern part of the said parish, and a site provided therein for a church in Osnaburgh street, and preparations are made for speedily erecting the same: and whereas it appears fit and expedient, for the better carrying into effect the pious and benevolent purposes for which the said recited act was framed, that the said districts should be more fully and completely appropriated for ecclesiastical purposes, and names given thereto, and other and further duties performed therein by the district ministers respectively: and whereas the king's most excellent majesty, in right of his crown, is the patron of the rectory and parish church of the said parish, may it therefore please your majesty that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, so much of the said recited act as prohibits the district ministers of the said four districts from publication of banns, or the solemnization of marriages and baptisms, and from taking the surplice fees due and arising and accruing therefrom, and also so much of the said recited act as enacts that all publication of banns, and all marriages and baptisms, in the said parish of Saint Mary-le-bone, (including the said four districts,) shall be performed at the present parish church, as the same were then done, and at no other place, and that all fees for the same respectively should be paid to the incumbent minister or rector of the parish, so far as the same comprises or relates to the said four districts, shall be and the same are hereby repealed.

" II. And be it further enacted, that the aforesaid four districts, and the respective churches built and to be built therein, shall be severally known and distinguished by the names following; (that is to say,) the church situate in Wyndham place shall be called by the name of 'Saint Mary's Church in Saint Mary-le-bone,' and the district belonging thereto shall be called 'The District Rectory of Saint Mary in Saint Mary-le-bone,' and the incumbent minister thereof shall be called and denominated the district rector thereof; and the church situate in Langham place shall be called by the name of 'All Souls' Church in Saint Mary-le-bone,' and the district belonging thereto shall be called by the name of 'The District Rectory of All Souls in Saint Mary-le-bone,' and the incumbent minister thereof shall be called and denominated the district rector thereof; and the church situate in Stafford street shall be called by the name of 'Christ Church in Saint Mary-le-bone,' and the district belonging thereto shall be called by the name of 'The District Rec-

STAT. 6 GEO.
4, c. 124.

So much of recited act as prohibits the district ministers from publishing banns, or the solemnization of marriages and baptisms, and as directs payment of fees for the same to the incumbent of the parish, repealed.

The four district rectories to be distinguished by the names herein mentioned.

STAT. 6 GEO.
4. C. 124.

Neither of the district churches to be tenable with the parish church. Districts and description of boundaries to be inrolled in Chancery.

The Bishop of London to certify to the incumbent of each of the four district rectories, and public notice shall be given in the parish church, that banns may be published, and marriages and baptisms solemnized in the churches of the district rectories, &c.

tory of Christ Church in Saint Mary-le-bone,' and the incumbent minister thereof shall be called and denominated the district rector thereof; and the church intended to be built in Osnaburgh street shall be called 'Trinity Church,' and the district thereof shall be called 'The District Rectory of the Trinity, or Trinity District Rectory, in Saint Mary-le-bone,' and the incumbent minister thereof shall be called and denominated the district rector thereof: provided always, that such denomination of district rectors, and district churches, shall not be deemed or taken to convey to the said district rectors, or district churches, any right, power, or authority, other than such as are expressly given by this act and the above-recited act.

" III. And it is hereby further enacted, that neither of the churches of the said district rectories shall be tenable with the original parish church, nor with either of the churches of the other said district rectories.

" IV. And be it further enacted, that the said several four districts so made and ascertained, and marked out by described bounds, and made distinct and separate district rectories by this act, and the description of the bounds thereof respectively, shall be enrolled in the high court of Chancery, and be registered in the office of the registry of the diocese; and a correct copy of the description of such districts, and of the respective boundaries thereof, shall be printed or painted in legible characters, and hung up in the vestry room of the said parish of Saint Mary-le-bone; and a copy of each of such districts, and of the description of the boundaries thereof, shall be kept in the chest of the church of the district rectory with the books of registers of the church; and another copy shall be printed or painted in some conspicuous place of the church of the district rectory, so as to be accessible at all seasonable times to every person desirous of inspecting the same.

" V. And be it further enacted, that after the passing of this act, the Lord Bishop of the diocese of London for the time being shall, and the said lord bishop is hereby authorized and required forthwith, as soon as the same can be done, to certify the passing of this act to the incumbent minister of each of the four district rectories of the said parish; and public notice shall be given in the church of the parish of Saint Mary-le-bone, and also in each of the churches of the said district rectories, on the Sunday succeeding the receipt by such minister as aforesaid of such certificate, that thereafter banns may be published, and marriages and christenings may be solemnized and had in the church of such district rectories respectively, as directed by this act; and such certificates respectively shall be kept in the respective chests of the churches of each of the said district rectories, with the books of registry thereof, and a copy thereof shall be entered in the books of registry of banns and marriages, and a duplicate of such certificate shall be registered in the registry of the diocese; and such certificate shall be deemed and taken to be conclusive evidence in all courts, and in all questions relating to any banns published, or marriages celebrated or solemnized in any such church, that the same might, according to law, respectively be published and celebrated and solemnized in such church; and that all banns published, and marriages celebrated, solemnized, and had, in any such church, according to the laws and canons in force within this realm in that behalf, shall, after the granting of such certificate, be good, valid, legal, and effectual, to all intents and purposes whatsoever: provided always, that no banns or marriages respectively published, celebrated, solemnized, or had, according to the laws and canons in force within the realm in that behalf in any such church, after the same are allowed by this act to be solemnized therein, shall be or be deemed or taken to be invalid or illegal, or void or voidable, by reason of any such certificate not having been duly given, or registered, or entered, as hereinbefore required: provided always, that until the church intended to be built in Osnaburgh street, and directed by this act to be called 'Trinity Church,' shall be consecrated, all banns of marriages and baptisms within the district assigned to the said church, which is by this act directed to be called 'Trinity District Rectory,' shall respectively be published, solemnized, and had, in the present parish church, as the same are now done; and all fees for the same respectively shall be paid to the minister or rector of the said parish church.

"VI. And be it further enacted, that from and after the receipt of such certificate and notice given as aforesaid, (and not before,) it shall be lawful for the ministers of the churches of the said district rectories respectively, to publish all banns, and solemnize all marriages, either by banns or licence, and administer all baptisms in the churches of their said district rectories respectively, and to perform all other parochial functions of a minister, in the same manner as the incumbent minister or rector of Saint Mary-le-bone is now by law empowered to do, and also to take all fees for the same respectively, (save and except as hereinafter mentioned with respect to burials.)

STAT. 6 GEO.
4, c. 124.

District ministers empowered to publish banns, marry, and baptize, in their several districts.

"VII. And be it further enacted, that all banns and marriages so published and solemnized in the churches of the said district rectories shall be in all respects and for all purposes valid and effectual, as if such banns and marriages had been published and solemnized in the parish church, and the churches shall be considered as the proper churches for the publication of banns and the solemnization of marriage of all persons residing within the said district rectories respectively, in the place of the said parish church, and the banns and marriages of all such persons shall be published and solemnized in the church of the district rectory in which they reside, subject to all the laws, restrictions, and penalties now in force, or that may be hereafter enacted respecting the publication of banns and the solemnization of marriage of persons residing in any separate and distinct parish.

Banns and marriages so published and solemnized shall be valid.

"VIII. And be it further enacted, that all acts of parliament, and laws and customs, relating to publishing of banns of marriage, marriages, christenings, and churchings, and the registering thereof, and to all ecclesiastical fees, oblations, or offerings, shall apply to all such district rectories, and the churches thereof, when and so soon as banns of marriage shall be allowed to be published, and marriages, christenings, and churchings, or any of them, shall be allowed to be solemnized therein, and to the ecclesiastical persons having cure of souls therein, or serving the same, in like manner in every respect as if the same respectively had been ancient, separate, and distinct parishes and parish churches by law, to all intents and purposes.

All acts of parliament, &c. relating to publishing banns of marriage, &c. to apply to all such districts and churches.

"IX. Provided always, and be it further enacted, that nothing in this act contained shall be deemed, taken, or construed to alter or in any way affect the law respecting burials to be performed within the parish of Saint Mary-le-bone, and the burial fees thereof, as settled or declared by the aforesaid act, or by any other act or law now in force concerning the same.

Law respecting burials not to be altered.

"X. And be it further enacted, that the said parish of Saint Mary-le-bone, including the said four district rectories, shall continue to be one whole and entire parish, for all purposes other than and except ecclesiastical purposes, as herein declared; and that the powers of the vestrymen of the said parish shall remain and continue to be the same in all respects as they are or were before the passing of this act, and they are hereby empowered to carry this act into execution, as if the several clauses hereof had formed part of the said recited act.

Parish of Saint Mary-le-bone one parish, except for ecclesiastical purposes. Powers of vestrymen not altered. Trinity district.

"XI. Provided always nevertheless, that this act shall have no effect as to the said district rectory to be called 'Trinity District Rectory,' until the consecration of the church in such district.

"XII. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

Public act.

CXXXIX. STAT. 6 GEORGHII 4, c. 130 (1). [IRELAND.] A.D. 1825.

STAT. 6 GEO.
4, c. 130- [1a.]

"An Act to alter and amend the Law as to Church Rates in Ireland, and to regulate the same."

(1) Repealed by Stat. 7 Geo. 4, c. 72.

STAT. 6 GEO.
4, CAP.
CLXXVI.

CXL. STAT. 6 GEORGII 4, CAP. CLXXVI. A.D. 1825.

"An Act for extinguishing Tithes and Customary Payments in lieu of Tithes, within the Parish of Saint Botolph without Bishopsgate, in the Liberties of the City of London; and for making Compensation to the Rector for the time being in lieu thereof."

STAT. 6 GEO.
4, CAP. CXCV.

CXLI. STAT. 6 GEORGII 4, CAP. CXCV. A.D. 1825.

"An Act to enable the Rector, Churchwardens, and Inhabitants of the Parish of Saint Dunstan-in-the-East, in the City of London, to borrow Money for paying off certain Debts of the said Parish, and for other Purposes relating thereto."

STAT. 7 GEO.
4, CAP. III.

CXLII. STAT. 7 GEORGII 4, CAP. III. A.D. 1826.

"An Act for the Appropriation of two Chapels as Chapels of Ease to the Parish Church of Brightelmston, in the County of Sussex."

STAT. 7 GEO.
4, C. I.

CXLIII. STAT. 7 GEORGII 4, C. 4. A.D. 1826.

"An Act to amend an Act of the last Session of Parliament, for making Provision for the Salaries of certain Bishops, and other Ecclesiastical Dignitaries and Ministers in the Diocese of Jamaica, and in the Diocese of Barbadoes and the Leeward Islands; and for enabling His Majesty to grant Annuities to such Bishops upon the Resignation of their Offices."

6 Geo. 4, c. 88.

"Whereas an act was passed in the last session of parliament, intituled, 'An Act to make Provision for the Salaries of certain Bishops, and other Ecclesiastical Dignitaries and Ministers, in the Diocese of Jamaica, and in the Diocese of Barbadoes and the Leeward Islands; and to enable His Majesty to grant Annuities to such Bishops upon the Resignation of their Offices:' and whereas it is expedient that the said act should be amended; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said recited act as enacts, that there shall be seven ministers in the diocese of Jamaica, and thirteen ministers and three catechists in the diocese of Barbadoes, with certain salaries specified in the said act, shall be repealed.

Repeal of so much of the recited act as restricts the number of ministers and their salaries.

Salaries, how to be distributed.

"II. And be it further enacted, that it shall and may be lawful for the commissioners of his majesty's treasury of the United Kingdom for the time being, or any three or more of them, and they are hereby authorized and required, from time to time, by warrant or warrants under their hands, to direct the proper officer of the exchequer to issue and pay out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as may be appointed to receive the same, any sum or sums of money, not exceeding the sum of six thousand three hundred pounds per annum, to commence and be computed from the fifth day of April, one thousand eight hundred and twenty-four, for the salaries of ministers, catechists, and schoolmasters, in the dioceses of Jamaica and Barbadoes and the Leeward Islands, and to be distributed among such ministers, catechists, and schoolmasters, in salaries or otherwise, as the bishops of the respective dioceses, with the approbation of the commissioners of the treasury, or of his majesty's secretary of state, shall appoint; and so that the sum to be paid to the ministers, catechists, and schoolmasters, in pursuance of the said act of the last session of parliament and of this act, shall not exceed two thousand one hundred pounds per annum for the diocese of Jamaica, and four thousand two hundred pounds per annum for the diocese of Barbadoes and the Leeward Islands; and that no minister shall have a salary exceeding three hundred pounds per annum, as authorized by the said act."

CXLIV. STAT. 7 GEORGHII 4, CAP. V. A.D. 1826.

STAT. 7 GEO.
4, CAP. V.

"An Act . . . for removing the Election of Members and of Mayors of the said Town from the Church of Saint Mary the Virgin in Dover."

CXLV. STAT. 7 GEORGHII 4, CAP. IX. A.D. 1826.

STAT. 7 GEO.
4, CAP. IX.

"An Act for enabling the Master, Wardens, or Keepers of the Commonalty of Freemen of the Mystery of Coopers, London, and of the Suburbs of the same City, to purchase and hold in Mortmain a Piece of Land adjoining the Free School at Egham, in the County of Surrey, founded by Henry Strode, as Trustees for the Purposes of the said Charity."

CXLVI. STAT. 7 GEORGHII 4, C. 14. [IRELAND.] A.D. 1826.

STAT. 7 GEO.
4, C. 14. [IR.]

"An Act for the further Amendment of an Act of the first and second years of His present Majesty, for the Establishment of Asylums for the Lunatic Poor in Ireland."

CXLVII. STAT. 7 GEORGHII 4, C. 15. A.D. 1826.

STAT. 7 GEO.
4, C. 15.

"An Act to amend an Act passed in the seventh and eighth years of the Reign of King William the Third, for the more easy Recovery of small Tithes."

"Whereas by an act passed in the seventh and eighth years of the reign of King William the Third, intituled, 'An Act for the more easy Recovery of small Tithes,' it is enacted, that all and singular the tithes, commonly called small tithes, with all oblations and obventions due to the several rectors, vicars, and other persons, in England and Wales, and Berwick-upon-Tweed, not exceeding the sum of forty shillings, shall be recovered by complaint to two or more justices of the peace within the county, riding, city, town corporate, or place, where the same shall grow due; neither of which justices is to be patron of the church or chapel where the said tithes shall arise: and whereas by an act passed in the fifty-third year of the reign of his late majesty King George the Third, intituled, 'An Act for the better Regulation of Ecclesiastical Courts in England, and for the more easy Recovery of Church Rates and Tithes,' the sum to be recovered for all manner of tithes and offerings is extended to an amount not exceeding ten pounds: and whereas it is expedient in certain cases to alter and amend that part of the said recited act of King William the Third which relates to the jurisdiction before which the said tithes shall be recovered; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall and may be lawful, in all cities, towns corporate, or other towns or places in England, Wales, or Berwick-upon-Tweed, where the justices of the peace in and for the same are patrons of the said church or chapel where any tithes or offerings do or shall arise, for two justices of the peace in and for any adjoining county, riding, or division, to hear and determine all complaints for withholding the said tithes and offerings, not exceeding the amount of ten pounds; such complaint to be made in writing by the said rector or vicar, or other person, his attorney, or agent.

7 & 8 Gul. 3,
c. 6.

53 Geo. 3,
c. 127.

In places where the justices are patrons of the church, tithes to be recovered before justices of any adjoining county or place.

"II. And be it further enacted, that nothing in this act shall be construed to repeal or alter any of the clauses or provisions of the said recited acts, or either of them, save and except as to such parts thereof as are expressly altered or amended by the same."

Recited acts not repealed, except as herein mentioned.

STAT. 7 GEO.
4, c. 17.

CXLVIII. STAT. 7 GEORGH II 4, c. 17. A.D. 1826.

"An Act for remedying Inconveniences in the Administration of Justice, arising from the present Vacancy of the See of Durham, and for preventing the like in future."

"Whereas the office of sheriff in the county palatine of Durham is held by grant of the Bishop of Durham for the time being, during the pleasure of the same bishop, and the see of Durham is now vacant by the decease of the late bishop thereof; and by reason of his decease the said office of sheriff hath also become vacant, and there was no officer legally authorized to return jurors or to execute writs at the general quarter session of the peace for the said county palatine in the week after the clause of Easter; and it is necessary to provide a remedy for the inconveniences which may ensue therefrom, and in other respects from the vacancy of the said office of sheriff; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the last sheriff of the said county palatine, his deputy or deputies, and all other officers and ministers of justice within the same, whose offices determined on the decease of the late bishop of the said see, shall be and they are hereby continued in their respective offices from the decease of the said late bishop for the term of six calendar months thence next ensuing, in as full and ample manner to all intents and purposes as if the said see had not become vacant, unless the succeeding bishop of the said see shall sooner determine the same or any of them; and that the said sheriff, officers, and minister respectively, shall have the like power and authority of executing and returning all writs and precepts to him or them directed or to be directed, and of doing all other acts to their respective offices appertaining, as fully and effectually as if the said see had not become vacant; and that all trials and other proceedings had and taken, or to be had and taken, in the court of quarter session holden for the said county palatine in the week after the clause of Easter, or at any adjournment thereof, and all judgments and orders there pronounced and made, and all sentences and punishments there passed and awarded, shall be good, valid, and effectual to all intents and purposes whatsoever, any law or usage to the contrary notwithstanding; provided always, that nothing herein contained shall be construed to legalize or render valid any act which would not have been legal or valid if the said see had not become vacant.

The last sheriff, &c. of Durham to continue in office for six months from the decease of the late bishop, unless succeeding bishop shall sooner determine the same.

Proceedings at the last Easter quarter session valid.

Determination of grants of office hereafter to be made by any Bishop of Durham.

Public act.

"II. And, for preventing the like inconveniences in future, be it further enacted, that no grant or appointment of or to any office or employment concerning the administration of justice in the said county palatine, hereafter to be made by any bishop of the said see, shall cease, determine, or be void by reason of the death of any such bishop, but every such grant and appointment shall continue in full force for the term of six calendar months after any such death, unless in the meantime determined by any succeeding bishop of the said see.

"III. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

STAT. 7 GEO.
4, cap. xxii.

CXLIX. STAT. 7 GEORGH II 4, cap. xxii. A.D. 1826.

"An Act for building a Parsonage House for the Rector of the Parish of Saint Paul, Shadwell, in the County of Middlesex; and for enabling such Rector to grant Building Leases of part of the Rectory Land; and for other Purposes."

STAT. 7 GEO.
4, cap. xxiv.

CL. STAT. 7 GEORGH II 4, cap. xxiv. A.D. 1826.

"An Act for enabling the Governors of the Hospital of the Poor or Almshouse called Sekford's Almshouse, in Woodbridge, in the County of Suffolk, to grant Building and other Leases of their Estates situate in the Parish of Saint James Clerkenwell, in the County of Middlesex, and for other Purposes, for the Benefit of the said Hospital."

CLI. STAT. 7 GEORGII 4, cap. xxv. A.D. 1826.

STAT. 7 GEO.
4, cap. xxv.

"An Act to enable the Provost and College of Eton, in the County of Bucks, to grant Building Leases of Lands in the Parishes of Hampstead and Mary-le-bone, in the County of Middlesex, and for other Purposes."

CLII. STAT. 7 GEORGII 4, cap. xxvi. A.D. 1826.

STAT. 7 GEO.
4, cap. xxvi.

"An Act for confirming an Exchange made of certain parts of the Glebe Lands of the Rectory of Stowlangtoft, in the County of Suffolk."

CLIII. STAT. 7 GEORGII 4, cap. xxvii. A.D. 1826.

STAT. 7 GEO.
4, cap. xxvii.

"An Act to confirm an Award made for ascertaining the Glebe Lands of the Rectory Appropriate of Waghen, in the County of York, and for dividing the same from the Fee Simple Estates of the late Joseph Windham, Esquire, situate in the Parish of Waghen aforesaid."

CLIV. STAT. 7 GEORGII 4, cap. xxviii. A.D. 1826.

STAT. 7 GEO.
4, cap. xxviii.

"An Act for amending and enlarging the Powers of an Act of the seventeenth year of the Reign of His late Majesty King George the Third, and of another Act of the fifty-fourth year of the Reign of the same King, for enabling the Feoffees and Trustees of an Estate in the County of Middlesex, given by Lawrence Sheriff for the founding and maintaining a School and Almshouses at Rugby, in the County of Warwick, to sell part of the said Estate, or to grant Leases thereof, and for other Purposes."

CLV. STAT. 7 GEORGII 4, c. 30. A.D. 1826.

STAT. 7 GEO.
4, c. 30.

"An Act to amend the several Acts for authorizing Advances for carrying on Public Works, and to extend the Provisions thereof in certain cases."

"Whereas an act was passed in the fifty-seventh year of the reign of his late majesty King George the Third, intituled, 'An Act to authorize the Issue of Exchequer Bills, and the Advance of Money out of the Consolidated Fund, to a limited Amount, for the carrying on of Public Works and Fisheries in the United Kingdom, and Employment of the Poor in Great Britain, in manner therein mentioned;' and whereas another act was passed in the same session of parliament to amend the said recited act; and whereas the said recited acts have been amended, and the powers thereof extended by several acts passed in the fifty-eighth year of his said late majesty, and in the first, third, fourth, fifth and sixth years of the reign of his present majesty; and it is expedient to make provision for extending the benefit of the said acts in certain cases; and whereas an act was passed in the last session of parliament, intituled, 'An Act to amend the Laws relating to Bankrupts;' and doubts have arisen how far certain provisions of the said recited act of the fifty-seventh year of his said late majesty's reign, and the several acts for amending the same, may be affected by the said last recited act of the last session of parliament; be it therefore declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said recited act of the last session of parliament for amending the laws relating to bankrupts, or any clause, matter, or thing therein contained, shall not extend, or be deemed or construed to extend, to repeal, alter, or abridge any powers, clauses, provisions, or regulations, for the purpose of enabling the commissioners for the execution of the said recited act of the fifty-seventh year of his late majesty's reign, or of any act or acts for amending or extending the said act of the said fifty-seventh year, to enforce payment of any loan or advance made by them, in case of the bankruptcy of any party or parties to whom such loans or advances have been or shall be made, or in case of the bankruptcy of the sureties of any such parties respectively; but that all such powers, clauses, provisions, and regulations, con-

57 Geo. 3, c. 34.

6 Geo. 4, c. 16.

The powers given to the commissioners under the recited act 57 Geo. 3, c. 34, for enforcing the payment of advances made by them, not to be abridged, in cases of bankruptcy, by

STAT. 7 GEO.
4, c. 30.
the provisions
of 6 Geo. 4,
c. 16.

3 Geo. 4, c. 86.

6 Geo. 4, c. 35.

Commissioners
to take 5l. per
cent. interest on
future loans.

Nothing in
this act to
affect the
powers of
5 Geo. 4, c. 77,
as amended by
6 Geo. 4, c. 35.

Commissioners
may lend to
any archbishop
or bishop in
Ireland for
purchasing
land or houses,
or for building
or improving
houses of
residence.

tained in the said recited act of the fifty-seventh year of his said late majesty's reign, or in the several acts for altering or amending the same, or in any of them, shall remain and continue in full force and effect, anything in the said act of the last session of parliament for amending the laws relating to bankrupts in anywise notwithstanding.

"II. And whereas by an act passed in the third year of his present majesty's reign, intituled, 'An Act to amend two Acts of the fifty-seventh year of His late Majesty and the first year of His present Majesty, for authorizing the Issue of Exchequer Bills and the Advance of Money for carrying on Public Works and Fisheries, and Employment of the Poor, and to authorize a further Issue of Exchequer Bills for the Purposes of the said Acts;' and also by an act made in the sixth year of his present majesty's reign, intituled, 'An Act to render more effectual the several Acts for authorizing Advances for carrying on Public Works, so far as relates to Ireland;' the commissioners for the execution of the said recited acts are directed to take interest at the rate of four pounds per centum per annum, upon any advances to be made by them under and by virtue of the said acts, and the several acts therein recited or referred to; and whereas it is expedient that from and after the passing of this act the said commissioners should be authorized and empowered to take and charge interest at the rate of five pounds per centum per annum upon all advances made by them in Great Britain or Ireland; be it therefore enacted, that from and after the passing of this act it shall be lawful for the said commissioners, and they are hereby authorized and required, to take interest at and after the rate of five pounds per centum per annum on any loans or advances to be made by them, either in Great Britain or Ireland, at any time after the passing of this act; anything contained in the said recited acts to the contrary thereof in anywise notwithstanding.

"III. Provided always, and be it enacted, that nothing in this act contained shall extend, or be deemed or construed to extend, to alter, lessen, or abridge the powers given to or vested in the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, by an act passed in the fifth year of his present majesty's reign, intituled, 'An Act to amend the Acts for the Issue of Exchequer Bills for Public Works,' as explained and amended by the said recited act of the sixth year of his majesty's reign, to reduce the rate of interest in the manner and under the circumstances in the said acts particularly stated and referred to.

"IV. And whereas it is expedient to extend the provisions of the said recited act of the sixth year of his present majesty's reign, for rendering more effectual the several acts for authorizing advances for carrying on public works, so far as relates to Ireland, and to enable the said commissioners for the execution of the said act to make advances in Ireland to any archbishop, bishop, or other ecclesiastical person, for providing suitable or more convenient residences; be it therefore enacted, that from and after the passing of this act, it shall and may be lawful for the commissioners for the execution of the said recited act, upon application in writing being made to them in that behalf, by any archbishop or bishop, or other ecclesiastical person in Ireland, to lend and advance to such archbishop or bishop, or other ecclesiastical person, out of the sum of three hundred thousand pounds, by the said act authorized to be issued out of the growing produce of the consolidated fund of the United Kingdom arising in Ireland, such sum or sums of money as the said commissioners shall think fit, for the purpose of purchasing, within the diocese or benefice of any such archbishop, bishop, or other ecclesiastical person, any land upon which any house or houses, or offices or other buildings, have been already built, with conveniences thereto belonging; or any land fit for building a house, offices, and conveniences thereon, for the habitation and residence of any such archbishop, bishop, or other ecclesiastical person, and their respective successors for ever, or any land, tenements, or hereditaments, for the purpose of repairing, enlarging, or improving any house or houses, outhouses, gardens, or orchards, of or belonging to the demesne, glebe or mensal land, or any other lands, of such archbishop, bishop, or other ecclesiastical person, or for otherwise providing suitable or

CLXIII. STAT. 7 GEORGH II 4, CAP. LII. A.D. 1826.

STAT. 7 GEO.
4, CAP. LII.

"An Act for providing an additional Cemetery in the Parish of Liverpool, in the County Palatine of Lancaster."

CLXIV. STAT. 7 GEORGH II 4, CAP. LIV. A.D. 1826.

STAT. 7 GEO.
4, CAP. LIV.

"An Act for extinguishing Tithes and Customary Payments in lieu of Tithes and Easter Offerings within the Parish of Saint Giles, Cripplegate, in the Liberties of the City of London; and for making Compensation to the Vicar, for the time being, in lieu thereof."

CLXV. STAT. 7 GEORGH II 4, c. 57. A.D. 1826.

STAT. 7 GEO.
4, c. 57.

"An Act to amend and consolidate the Laws for the Relief of Insolvent Debtors in England."

"XXVIII. Provided always, and be it further enacted, that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any such prisoner, being a beneficed clergyman or curate, to the income of such benefice or curacy, for the purposes of this act; provided always nevertheless, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profit of any such benefice, for the payment of the debts of such prisoner; and the order of adjudication made in the matter of such prisoner's petition, in pursuance of this act, shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceedings to authorize the same; and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levari facias*, founded upon any judgment against such prisoner."

Assignees' power not to extend to the income of a benefice or curacy. Sequestration of profit of benefice may be obtained.

CLXVI. STAT. 7 GEORGH II 4, c. 66(1). A.D. 1826.

STAT. 7 GEO.
4, c. 66.

"An Act to render more effectual the several Acts now in force to promote the Residence of the Parochial Clergy, by making Provision for purchasing Houses and other necessary Buildings for the Use of their Benefices."

"Whereas in and by an act of parliament passed in the seventeenth year of the reign of his majesty King George the Third, intituled, 'An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices,' it was enacted, that where new buildings were necessary to be provided or erected for the habitation and residence of the rector, vicar, or other incumbent of any ecclesiastical living, parochial benefice, chapelry, or perpetual curacy, pursuant to the authority thereby given, it should be lawful for the ordinary, patron, and incumbent of every such living or benefice to contract, or to authorize, if they should think fit, the person to be nominated under the provisions of the said act to contract, for the absolute purchase of any house or buildings in a situation convenient for the habitation and residence of the rector, vicar, or other incumbent of such living or benefice, and not at a greater distance than one mile from the church belonging to such living, and also, to contract for any land adjoining or lying convenient to such house or building, or to the house or building belonging to any parochial living or benefice having no glebe lying near or convenient to the same, not exceeding the quantity thereby limited, and to cause the purchase money for such house or buildings to be paid out of the money to arise under the powers and authorities of the said act; in all which cases the said buildings and lands should be conveyed to the patron of such living or benefice, and his heirs, in trust for the sole use and benefit of the rector, vicar, or other incumbent of such living or benefice for the time being, and their successors, and should be annexed to such church or chapel, and be enjoyed and go in succession with the same for ever: but no contract so made by the

17 Geo. 3, c. 53.

(1) *Vide* Stat. 1 & 2 Vict. c. 106, and Stat. 5 & 6 Vict. c. 26

STAT. 7 GEO.
4, cap. xxxv.

CLVL. STAT. 7 GEORGII 4, cap. xxxv. A.D. 1826.

"An Act for enabling the Prebendary of the Prebend of Wenlock's Barn to purchase, for the benefit of Himself and his Successors, the Hereditaments comprised in a certain Indenture of Lease, for the Residue of the Term thereby demised, and to grant Building Leases of the same Hereditaments, and for other Purposes."

STAT. 7 GEO.
4, cap. xxxvi.

CLVII. STAT. 7 GEORGII 4, cap. xxxvi. A.D. 1826.

"An Act to confirm a Contract entered into for granting Sub-leases for building on Lands within the Manor of Brownwood, in the County of Middlesex, parcel of the Prebend of Brownwood, founded in the Cathedral Church of Saint Paul in London; and to enlarge the Powers of an Act passed in the second year of the Reign of His present Majesty King George the Fourth, intituled, An Act to enable the Prebendary of the Prebend of Brownwood, in the County of Middlesex, founded in the Cathedral Church of Saint Paul in London, to grant a Lease of the Manor of Brownwood, in the said County, parcel of the said Prebend, in manner therein mentioned, and to enable the granting of Sub-leases for building thereon, and otherwise improving the same, and for other Purposes; and to amend the same Act; and to authorize the Redemption of the Land Tax payable in respect of the said Manor, and the Lands and Hereditaments within the same; and for other Purposes."

STAT. 7 GEO.
4, cap. xli.

CLVIII. STAT. 7 GEORGII 4, cap. xli. A.D. 1826.

"An Act for effecting a Sale of part of the Glebe Lands belonging to the Rectory of Kingswinford, otherwise Shynford Regis, in the County of Stafford, and the Mines in and under the same, to the Right Honourable John William Viscount Dudley and Ward; and for other Purposes."

STAT. 7 GEO.
4, cap. xlii.

CLIX. STAT. 7 GEORGII 4, cap. xlii. A.D. 1826.

"An Act for vesting Pedlar's Acre Estate, situate in the Parish of Saint Mary Lambeth, in the County of Surrey, in Trustees, for letting the same, and for applying the Produce thereof according to the Directions of the Vestry of the said Parish."

STAT. 7 GEO.
4, c. 48.

CLX. STAT. 7 GEORGII 4, c. 48. A.D. 1826.

"An Act to alter and amend the several Laws relating to the Customs."

[Materials used in building churches and chapels exempted from all duties.
s: 52.]

STAT. 7 GEO.
4, cap. l.

CLXI. STAT. 7 GEORGII 4, cap. l. A.D. 1826.

"An Act for building a Church or Chapel of Ease in the Township of Ripon, in the West Riding of the County of York."

STAT. 7 GEO.
4, cap. li.

CLXII. STAT. 7 GEORGII 4, cap. li. A.D. 1826.

"An Act for erecting and endowing a Church in the Parish of Liverpool, in the County Palatine of Lancaster, to be called the Church of St. David."

CLXIII. STAT. 7 GEORGII 4, CAP. LII. A.D. 1826.

STAT. 7 GEO.
4, CAP. LII.

"An Act for providing an additional Cemetery in the Parish of Liverpool, in the County Palatine of Lancaster."

CLXIV. STAT. 7 GEORGII 4, CAP. LIV. A.D. 1826.

STAT. 7 GEO.
4, CAP. LIV.

"An Act for extinguishing Tithes and Customary Payments in lieu of Tithes and Easter Offerings within the Parish of Saint Giles, Cripplegate, in the Liberties of the City of London; and for making Compensation to the Vicar, for the time being, in lieu thereof."

CLXV. STAT. 7 GEORGII 4, c. 57. A.D. 1826.

STAT. 7 GEO.
4, c. 57.

"An Act to amend and consolidate the Laws for the Relief of Insolvent Debtors in England."

"XXVIII. Provided always, and be it further enacted, that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any such prisoner, being a beneficed clergyman or curate, to the income of such benefice or curacy, for the purposes of this act; provided always nevertheless, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profit of any such benefice, for the payment of the debts of such prisoner; and the order of adjudication made in the matter of such prisoner's petition, in pursuance of this act, shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceedings to authorize the same; and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levari facias*, founded upon any judgment against such prisoner."

Assignees' power not to extend to the income of a benefice or curacy. Sequestration of profit of benefice may be obtained.

CLXVI. STAT. 7 GEORGII 4, c. 66(1). A.D. 1826.

STAT. 7 GEO.
4, c. 66.

"An Act to render more effectual the several Acts now in force to promote the Residence of the Parochial Clergy, by making Provision for purchasing Houses and other necessary Buildings for the Use of their Benefices."

"Whereas in and by an act of parliament passed in the seventeenth year of the reign of his majesty King George the Third, intituled, 'An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices,' it was enacted, that where new buildings were necessary to be provided or erected for the habitation and residence of the rector, vicar, or other incumbent of any ecclesiastical living, parochial benefice, chapelry, or perpetual curacy, pursuant to the authority thereby given, it should be lawful for the ordinary, patron, and incumbent of every such living or benefice to contract, or to authorize, if they should think fit, the person to be nominated under the provisions of the said act to contract, for the absolute purchase of any house or buildings in a situation convenient for the habitation and residence of the rector, vicar, or other incumbent of such living or benefice, and not at a greater distance than one mile from the church belonging to such living, and also, to contract for any land adjoining or lying convenient to such house or building, or to the house or building belonging to any parochial living or benefice having no glebe lying near or convenient to the same, not exceeding the quantity thereby limited, and to cause the purchase money for such house or buildings to be paid out of the money to arise under the powers and authorities of the said act; in all which cases the said buildings and lands should be conveyed to the patron of such living or benefice, and his heirs, in trust for the sole use and benefit of the rector, vicar, or other incumbent of such living or benefice for the time being, and their successors, and should be annexed to such church or chapel, and be enjoyed and go in succession with the same for ever: but no contract so made by the

17 Geo. 3, c. 53.

(1) Vide Stat. 1 & 2 Vict. c. 106, and Stat. 5 & 6 Vict. c. 26

- STAT. 7 GEO.
4, c. 66. nominee should be valid until confirmed by the ordinary, patron, and incumbent, by writing under their hands; and every such purchase deed was to be in the form or to the effect contained in the schedule to the said act annexed, and should be registered in such manner and in such office as other deeds were thereby directed to be registered: and whereas an act was passed in the twenty-first year of the reign of his said late majesty, to explain and amend the said first-mentioned act: and whereas in and by an act of parliament passed in the forty-third year of his said late majesty's reign, intituled, 'An Act for effectuating certain Parts of an Act passed in the second and third years of the Reign of Her late Majesty Queen Anne, intituled, "An Act for the making more effectual Her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling Her Majesty to grant in perpetuity the Revenues of the First-fruits and Tenths, and also for enabling any other Persons to make Grants for the same Purpose," so far as the same relate to Deeds and Wills made for granting and bequeathing Lands, Tenements, Hereditaments, Goods, and Chattels to the Governors of the Bounty of Queen Anne, for the Purposes in the said Act mentioned; and for enlarging the Powers of the said Governors;' it was enacted, that where a living should have been or should be augmented by the said governors, either by way of lot or benefaction, and there was no parsonage house suitable for the residence of the minister, it should be lawful for the said governors, and they were thereby empowered, from time to time, in order to promote the residence of the clergy on their benefices, to apply and dispose of the money appropriated for such augmentation, and remaining in their hands, or any part thereof, in such manner as they should deem most advisable, in or towards the building, rebuilding, or repurchasing a house and other proper erections within the parish, convenient and suitable for the residence of the minister thereof, which house should for ever thereafter be deemed the parsonage house appertaining to such living to all intents and purposes whatsoever: and whereas in and by an act of parliament passed in the fifty-fifth year of the reign of his said late majesty, intituled, 'An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands belonging to their Benefices for others of greater Value, or more conveniently situated for their Residence and Occupation; and for annexing such Houses and Lands so taken in Exchange to such Benefices, as Parsonage or Glebe Houses and Glebe Lands; and for purchasing and annexing Lands to become Glebe in certain Cases; and for other Purposes;' it was enacted, that from and after the passing of the said act, it should be lawful to and for any owner or owners of any messuages, buildings, lands, or hereditaments, whether such owner or owners should be a corporation sole or aggregate, or tenant or tenants in fee-simple, or in fee-tail general or special, or for life or lives, and for the guardians, trustees, or feoffees for charitable or other uses, husbands, or committees of or acting for any such owner or owners as aforesaid, who at the time of making any exchange or purchase authorized by the said act should be respectively infants, feme covert, or lunatics, or under any other legal disability, or otherwise disabled to act for themselves, himself, or herself, by deed or deeds indented, and to be registered as therein mentioned, and with such consent, and to be signified as therein mentioned, of such incumbent and of the patron and bishop, to grant and convey to any parson, vicar, or other incumbent for the time being of any ecclesiastical benefice, perpetual curacy, or parochial chapelry, any messuage, outbuildings, yards, gardens, and lands, with their appurtenances, or any messuage or outbuildings only, or any lands (with or without necessary outbuildings) only, of such owner or owners, in lieu of and in exchange for any parsonage house, outbuildings, yards, gardens, and glebe lands, and pastures, feedings, and rights of common, or any of them, or any part thereof, of or belonging to any such benefice, perpetual curacy, or parochial chapelry, or (in cases of purchase) to sell and convey to such parson, vicar, or other incumbent, any lands, not exceeding in the whole twenty statute acres, with the necessary outbuildings thereon, for such sum or sums of money as should be certified to be the true and just value of the same at the time of such sale thereof, by a valuation to be made as therein directed; which said sum or sums of money
- 21 Geo. 3, c. 66.
- 43 Geo. 3,
c. 107.
- 55 Geo. 3,
c. 147.

to be received for the purchase of any lands or hereditaments should, in all cases where the lands or hereditaments so to be purchased belonged to any corporation sole or aggregate, infant, feme covert, lunatic, or person or persons under any other disability or incapacity, with all convenient speed be paid into the bank of England, in the name and with the privity of the accountant general of the high court of Chancery, to such account, and applied or laid out in such manner and for such purposes, and the interest and annual produce thereof to be paid to such persons, as in and by the said act appointed and directed: and whereas the provisions of the said last-recited act have been extended to Ireland by an act passed in the fourth year of the reign of his present majesty, intituled, 'An Act to amend the Laws for collecting Church Rates, and Money advanced by the Trustees and Commissioners of the First-fruits of Ecclesiastical Benefices, and for the Improvement of Church Lands in Ireland;' and also by an act passed in the fifth year of his present majesty's reign, intituled, 'An Act to amend an Act of the last Session of Parliament, for amending the Laws for the Improvement of Church Lands in Ireland:' and whereas several acts were passed in the fifty-sixth year of the reign of his said late majesty, and in the first and the sixth years of the reign of his present majesty, to amend the said act of the fifty-fifth year of his late majesty's reign: and whereas the means of providing houses and buildings for the residence and occupation of the parochial clergy are still in many cases insufficient, by reason that the powers given to owners of houses, buildings, and lands, by the said act of the fifty-fifth year of his late majesty's reign, if under any disability or incapacity to convey, authorize the sale of land only, and the exchange only of houses and buildings; and that although power to purchase houses and buildings is given by the said acts of the seventeenth and forty-third years of his late majesty's reign, the owners thereof, if under any such disability or incapacity, are not empowered to sell and convey the same: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall and may be lawful to and for any owner or owners of any messuages, buildings, or lands, which may be purchased under the authority of the said acts of the seventeenth and forty-third and fifty-fifth years of his late majesty's reign, or either of them, whether such owner or owners shall be a corporation sole or aggregate, or tenant or tenants in fee-simple or in fee-tail, general or special, or for life or lives, and for the guardians, trustees, or feoffees for charitable or other uses, husbands, or committees of or acting for any such owner or owners as aforesaid, who shall be respectively infants, feme coverts, or lunatics, or under any other legal disability, or otherwise disabled to act for themselves, himself, or herself, to sell such messuages, buildings, and lands, or any of them, for the purposes of the said acts or either of them, and to convey the same in manner hereinafter mentioned; and all messuages, buildings, and lands, which shall be purchased under the authority of this act, or of the said acts of the seventeenth, forty-third, and fifty-fifth years of his late majesty's reign, or either of them, shall be conveyed unto and to the use of the parson, vicar, or other incumbent of the benefice, curacy, or chapelry, for the residence and occupation of the parson, vicar, or other incumbent whereof the same shall be purchased, and shall for ever, from and after the conveyance thereof, be and become annexed to the same benefice, curacy, or chapelry, and be holden and enjoyed by the parson, vicar, or other incumbent thereof, and his successors, accordingly, without any licence or writ of *ad quod damnum*, the statute of mortmain or any other statute or law to the contrary notwithstanding; and a copy of every such conveyance of any messuage, buildings, or lands, the purchase money whereof shall be raised under the powers of the said act of the seventeenth year of his late majesty's reign, shall be registered as by the said act is directed with respect to conveyances thereby authorized.

STAT. 7 GEO.
4, c. 66.

4 Geo. 4, c. 86.

5 Geo. 4, c. 8.

56 Geo. 3, c. 52.

1 Geo. 4, c. 6.

6 Geo. 4, c. 8.

Corporations
and persons
under disability
or incapacity
authorized to
sell messuages,
lands, &c. for
the purposes of
recited acts.

Conveyance to
be registered.

"II. Provided always, and be it further enacted, that in every case in which any messuage, buildings, or lands shall be sold under the authority of this act, by any owner or owners, having any less estate or interest in the same than in fee-

Such mes-
suages, lands,
&c. to be sur-

STAT. 7 GEO.
4, c. 66.

vayed, and the
map and valuation
verified on
oath, and pre-
served.

Application of
purchase
money.

simple, or by any corporation aggregate or sole, or person or persons under any legal disability, a map and plan thereof, under an actual survey and a valuation thereof, shall be made and taken by some competent surveyor, and verified upon oath to be taken before some justice of the peace, which oath any justice of the peace is hereby authorized to administer; and such map, plan, and valuation, and the affidavit verifying the same, shall be annexed to and preserved with the conveyance.

“III. Provided also, and be it further enacted, that in every case in which a sale and conveyance shall be made under the authority of this act, of any messuages, buildings, or lands which shall belong to any corporation aggregate or sole, or tenant in fee-tail, general or special, or for life or lives, infant, feme covert, lunatic, or person or persons under any other legal disability, or otherwise disabled to act for themselves, himself, or herself, the purchase money for the same shall with all convenient speed be paid into the bank of England or the bank of Ireland, as the case may be, in the name and with the privity of the accountant-general of the high court of Chancery of England or Ireland, as the case may be, to be placed to his account *ex parte* the person or persons or corporation who would have been entitled to the rents, issues, and profits of such messuages, buildings, or lands; to the intent that such money shall be applied or laid out under the direction and with the approbation of the said court of Chancery of England or Ireland, (to be signified by an order to be made upon a petition to be preferred by or on behalf of the person or persons who would have been entitled to the rents, issues, and profits of such messuages, buildings, or lands,) in the purchase of the land tax, or towards the payment of any debts or incumbrances affecting the same messuages, buildings, or land, or other lands or hereditaments standing settled to the same or the like uses, or in the purchase of other lands or hereditaments to be conveyed, settled, and made subject to and for and upon such and the like uses, trusts, limitations, and dispositions, and in the same manner as the messuages, buildings, or lands so purchased as aforesaid stood settled or limited, or such of them as at the time of making such purchase and conveyance shall be existing undetermined and capable of taking effect; and in the mean time and until such purchase shall be made the said money shall, by order of the said court of Chancery of England or Ireland, upon application thereto, be invested by the accountant-general in his name in some one of the public funds of England or Ireland, and the dividends and annual produce thereof shall from time to time be paid, by order of the said court, to the person or persons who would have been entitled to the rents, issues, and profits of the said messuages, buildings, or lands, in case no purchase and conveyance thereof had been made under the provisions of this act.”

STAT. 7 GEO.
4, c. 72. [IR.]

CLXVII. STAT. 7 GEORGII 4, c. 72 (1). [IRELAND.] A.D. 1826.

“An Act to consolidate and amend the Laws which regulate the Levy and Application of Church Rates and Parish Cesses, and the Election of Churchwardens, and the Maintenance of Parish Clerks, in Ireland.”

“Whereas it is expedient that the provisions of several acts in force in Ireland, relating to church rates and parish cesses, and to the election of churchwardens and the maintenance of parish clerks, should be repealed, and that more effectual regulations should be made for those purposes; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the commencement of this act, the several acts hereinafter mentioned, or so much of them as is hereafter specified and set forth, shall be repealed: (that is to say,) so much of an act made in the parliament of Ireland in the sixth year of the reign of King George the First, intituled, ‘An Act for exempting the Protestant Dissenters of this Kingdom from certain Penalties to which they are now subject,’ as relates to or concerns the

The following
acts and parts
of acts re-
pealed, viz.:
6 Geo. 1, c. 3,
ss. 4, 7.

1) The enactments of this statute as to Stat. 3 & 4 Geo. 4, c. 37, s. 63. *Widow's*
vestry associations, have been repealed by Stat. 10 Geo. 4, c. 7, s. 13.

officer of churchwarden or deputy churchwarden; so much of an act made in the parliament of Ireland in the twelfth year of the reign of the said King George the First, intituled, 'An Act for the more effectual erecting and better regulating of Free Schools, and for rebuilding and repairing of Churches,' as relates to the more speedy and effectual levying such money as shall be agreed upon, assessed, and ordered at vestries for building and repairing of churches; and also so much of an act, made in the parliament of Ireland in the third year of the reign of King George the Second, intituled, 'An Act for better keeping Churches in repair,' as relates to the collecting, applotting, and accounting for parish cesses made and agreed upon in vestry for the repair of parish churches, chapels, and other necessary charges relating to such churches and chapels, or to any appeal by any churchwarden in respect of the accounting for such cesses; and also so much of an act made in the parliament of Ireland in the twenty-first year of the reign of King George the Second, intituled, 'An Act for disappropriating Benefices belonging to Deans, Archdeacons, Dignitaries, and other Members of Cathedral Churches, and for appropriating others in their stead; and also for the Removal of the Sites of ruined Cathedral Churches,' as relates to the putting and keeping in repair of any parochial church made cathedral and parochial under the said recited act, except only in cases where any permanent agreement shall have been made at any time before the passing of this act, by and between the dean and chapter of such church, testified under their common seals, and by the protestant inhabitants of the parish or union in which such church is situate, ascertaining the proportions in which such deans and chapters and inhabitants shall respectively contribute to the putting in repair such cathedral and parochial churches; and also so much of an act made in the parliament of Ireland, in the twenty-third year of the reign of King George the Second, intituled, 'An Act for amending, continuing, and making more effectual the several Acts now in force in this Kingdom for the more easy Recovery of Tithes and other Ecclesiastical Dues of small Value, and also for the more easy providing a Maintenance for Parish Clerks,' as relates to the maintenance of parish clerks; and also so much of an act made in the parliament of Ireland in the thirty-third year of King George the Second (for reviving and amending part of the said last recited act of the twenty-third year of the said king's reign) as relates to parish clerks; and also so much of an act made in the parliament of Ireland in the eleventh and twelfth years of the reign of King George the Third, intituled, 'An Act for erecting Parochial Chapels of Ease in Parishes of large Extent, and making such Chapels, and those that are already erected, perpetual Cures; and for making a proper Provision for the Maintenance of perpetual Curates to officiate in the same; and also in like manner for making appropriate Parishes perpetual Cures,' whereby it is enacted, that occupiers of land within every parish shall, as to every cess or tax for the repairing of any church or chapel, or for other necessary charges belonging to such church or chapel, be and be construed to be inhabitants within every such parish, whether such parish be a parish of itself or be united to any other parish by episcopal union or otherwise, or whether such occupiers do or do not reside or dwell within such parish; and also so much of an act made in the parliament of Ireland in the twenty-first and twenty-second years of the reign of King George the Third, intituled, 'An Act to oblige Churchwardens to account pursuant to an Act for the better keeping Churches in repair; and to make the Cathedral Church of Ferns the Parish Church of the Parish of Ferns,' as relates to obliging of churchwardens to account; and also so much of an act made in the parliament of Ireland in the twenty-third and twenty-fourth years of the reign of King George the Third, intituled, 'An Act for making appropriate Parishes belonging to Archbishops and Bishops perpetual Cures, and the better to enable such Archbishops and Bishops to endow and augment the Endowments of Vicarages and Curacies to them respectively appropriate; and to render more effectual the several Acts now in force, to enable the Clergy, having Cure of Souls, to reside upon their respective Benefices, and to build on their respective Glebe Lands,' whereby it is enacted, that every person who shall be duly elected or nominated a churchwarden of any parish, union, or chapelry, shall, after expiration of the term

STAT. 7 GEO.
4, c. 72. [1a.]
12 Geo. 1, c. 9,
s. 8,

3 Geo. 2, c. 11,
ss. 3, 4, 5,

21 Geo. 2, c. 8,
s. 9,

23 Geo. 2, c. 12,

33 Geo. 2, c. 11,
ss. 1, 3,

11 & 12 Geo.
3, c. 16, s. 17,

21 & 22 Geo.
3, c. 52, ss. 1, 3,

23 & 24 Geo.
3, c. 49, s. 10,

- STAT. 7 GEO.
4, c. 72. [1a.] mentioned in the said act, be deemed and taken to be the legal churchwarden, although such churchwarden shall have neglected or refused to take the usual oath of office in manner prescribed by law, and that such election or nomination shall be entered in the vestry book of every parish, union, or chapelry, signed by the rector, vicar, curate, or any one of them, and three of the parishioners then present at the least, and that the act of vestry so signed shall be considered and received as conclusive evidence of such election or nomination, although the same shall not be signed by the said churchwardens or either of them; and also the whole of an act made in the parliament of Ireland in the twenty-fifth year of the reign of King George the Third, intituled, 'An Act for the better carrying into execution the several Laws for providing a Maintenance for Parish Clerks, and for other Purposes;' and also so much of an act made in the parliament of Ireland in the twenty-ninth year of the reign of King George the Third, intituled, 'An Act for the better providing for the Repairs of Churches and the Residence of the Clergy,' as relates to the repairs of churches; and also so much of an act made in the parliament of the United Kingdom in the fifty-fourth year of his late majesty's reign, intituled, 'An Act for the better Regulation of Ecclesiastical Courts in Ireland, and for the more easy Recovery of Church Rates and Tithes,' as relates to the more easily and speedily recovering of church rates or parish cesses of limited amount unduly refused or withheld; and also so much of an act made in the parliament of the United Kingdom in the fourth year of the reign of his present majesty, intituled, 'An Act to amend the Laws for collecting Church Rates and Money advanced by the Trustees and Commissioners of the First-fruits of Ecclesiastical Benefices, and for the Improvement of Church Lands, in Ireland,' as relates to any proceedings with respect to any church rates; and also the whole of an act made in the last session of parliament, intituled, 'An Act to alter and amend the Law as to Church Rates in Ireland, and to regulate the same;' and the said several hereinbefore recited acts, either in the whole or in part, as hereinbefore specified and set forth, and from and after the commencement of this act, shall be and the same are hereby repealed accordingly.
- 25 Geo. 3, c. 58,
- 29 Geo. 3, c. 27,
as. 1, 2,
- 54 Geo. 3, c. 68,
s. 7,
- 4 Geo. 4, c. 86,
as. 1, 2, 3,
- 6 Geo. 4, c. 130.

At vestries called for repairing, &c. of church, providing requisites for divine service, making rates, &c. no other matter shall be proceeded on, nor Roman catholics be capable of voting.

"II. And be it further enacted, that whenever any vestry shall be called or holden in any parish, union, or chapelry in Ireland, respecting or relating to all or any of the following purposes, namely, the building, rebuilding, enlarging, or repairing of the church or chapel of any parish, union, or chapelry, the providing things necessary for the celebration of divine service therein, as required and authorized by any rubric or canon in force in England or Ireland, the election of the churchwardens or chapelwardens, the settling of the salary for maintenance of the parish clerk or sexton, or the clerk of any chapelry or chapel of ease, or the making any rate to defray the expenses of such building, rebuilding, enlarging, or repairing, or other necessary charges, or any of them, or respecting or relating to the letting or demising of any estate, or the disposal of the income of any estate, or any part thereof, belonging to or held in trust for the church or chapel or parish, no other matter shall be proceeded upon at such vestry, save and except the matters aforesaid, or some of them, for the purpose of which such vestry shall be held; and that no inhabitant of such parish, being a Roman catholic, shall be capable of voting at such vestry holden for such purposes as aforesaid.

At vestries held for any other purposes, all parishioners may vote.

"III. Provided always, and be it enacted, that in all cases whatever where any vestry shall be called or holden in any parish, union, or chapelry, for any purposes other than and save and except the several purposes and matters hereinbefore specially mentioned, it shall and may be lawful for every parishioner, of whatever religious persuasion he may be, who shall be chargeable to the church rates or cess in such parish, union, or chapelry, and not disabled by law, to vote at such vestry respecting every matter or business therein brought forward.

No vestry shall be held without public notice.

"IV. And be it further enacted, that no vestry or meeting of inhabitants in vestry of or for any parish, chapelry, or union of parishes, shall be holden for any purpose whatever, save and except for the purpose of applotting such assessments as may be ordered by any grand jury to be levied on such parish, chapelry, or union, until public notice shall have been given of such vestry, and of the place and hour

of holding the same, and of the special purpose thereof, seven days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing a copy of such notice on the principal door of such church or chapel, and on the door of some one meeting house for religious worship of the Presbyterian congregation, if any, within such parish, chapelry, or union; and that no such vestry or meeting shall be holden for any purpose respecting which Roman catholics shall be capable of voting, until such notice shall have been given in manner aforesaid, and also by affixing another copy of such notice on the doors of some one Roman catholic chapel within such parish, chapelry, or union.

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4, c. 72. [18.]

“V. Provided always, and be it further enacted, that if it shall happen that there shall not be any parish church or chapel within any such parish or chapelry or union, or that there shall not be any church or chapel fit for the celebration of divine worship within such parish, chapelry, or union, the posting up of a notice of such vestry on some conspicuous public place in the market town wherein or nearest to the place wherein such vestry shall be intended to be held, and the delivering three true copies of such notice to three householders of such parish, chapelry, or union respectively, shall be deemed sufficient notice of every such vestry; and the notices required and directed by this act shall be good and sufficient notices of vestries required or authorized to be holden by law for any purpose whatsoever.

Where there is no parish church, notices shall be posted in nearest market town, and copies delivered to three householders.

“VI. And be it further enacted, that from and after the commencement of this act, no person professing the Roman catholic religion shall be compelled or compellable to fill or serve the office of churchwarden or chapelwarden of or in any parish, chapelry, or union in Ireland, either in person or by deputy; anything in any act or acts in force in Ireland, or any law, custom, or usage, to the contrary in anywise notwithstanding.

Roman catholics not compellable to serve the office of churchwarden.

“VII. And for the more orderly conduct of vestries, be it further enacted, that in case the incumbent or curate, or minister acting as curate of any parish, union, or chapelry, shall be present at any vestry, it shall be lawful for such incumbent, curate, or minister to sit and act as chairman of such vestry; and in case such incumbent, curate, or minister shall not be present at such vestry, then it shall be lawful for the inhabitants present and entitled to vote at such vestry, to elect and appoint any person to be chairman of such vestry, who shall be of the full age of twenty-one years, and entitled to vote at such vestry, and who shall for one year next immediately preceding the holding of such vestry have been assessed and charged with and shall have paid parish rates, and such person shall act as chairman, and shall preside at such vestry accordingly; and in cases of equality of votes upon any question arising at such vestry, the chairman shall, in addition to such vote as he may be entitled to give as incumbent, curate, minister, or inhabitant of such parish, union, or chapelry, have the casting vote; and minutes of the proceedings, resolutions, and acts of every such vestry shall be fairly and distinctly entered in the vestry book of the parish, or in a book to be provided for the purpose, at the expense of the parish, union, or chapelry, by the churchwarden or chapelwarden, and shall be signed by the incumbent, curate, minister, or other chairman, or by the churchwardens or chapelwardens or warden, and by such other inhabitants, present and qualified to vote at such vestry, as shall think fit to sign the same.

Incumbent shall be chairman of vestry, unless absent, in which case another chairman may be chosen.

Chairman to have casting vote.

Minutes of vestry.

“VIII. And be it further enacted, that as well the vestry book required to be kept by this act, as also all former vestry books, and other parish books, and all rates, assessments, and applotments, accounts, and vouchers of churchwardens and chapelwardens, and other parish officers, and all other deeds, writings, public papers or documents whatever, of or belonging or relating to any parish, union, or chapelry in Ireland, save and except such as relate to the composition for tithes, shall be from time to time deposited with and kept and preserved by the incumbent of such parish, union, or chapelry, or in such place and manner, or by such person or persons, as such incumbent shall direct and appoint; and if any person

Vestry books and other documents to be preserved by the incumbent.

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4, c. 72. [18.]

Penalty on
destroying or
detaining the
same.

Civil or criminal proceedings may be instituted against parties so offending.

Inhabitants of parishes who contribute to the repairs of churches, under 4 Geo. 4, c. 86, s. 7, may vote in the election of churchwardens, &c.

Assessments may be made for coffins provided for poor people, on certificate of six inhabitants.

in whose hands or custody any such books, rates, assessments, applotments, accounts, and vouchers, deeds, writings, papers, or documents, shall be, shall wilfully or negligently destroy, obliterate, or injure the same or any of them, or shall permit or suffer the same or any of them to be destroyed, obliterated, or injured, or after reasonable notice and demand shall refuse or neglect to deliver over the same to such person or persons as may be appointed to have the care or custody of the same, or to receive the same, or shall refuse or neglect to deposit the same in such place as shall by the order of any such incumbent be directed, every person so offending, and being lawfully convicted thereof, by confession or on the oath of one or more credible witnesses or witnesses, by and before two of his majesty's justices of the peace, upon complaint thereof to them made, shall for every such offence forfeit and pay such sum, not exceeding twenty pounds nor less than forty shillings, as shall by such justices be adjudged and determined, and the same shall be recovered and levied by warrant of such justices, in such manner and by such ways and means as costs in the cases hereafter mentioned are to be and may be recovered and levied by warrant, and applied to the use of the parish, union, or chapelry: provided always, that if any person shall unlawfully retain any such books, rates, assessments, applotments, accounts, vouchers, deeds, writings, papers, or documents, or shall refuse or neglect to deliver the same or any of them, to any person or persons authorized to receive the same as aforesaid, or shall obliterate, destroy, or injure the same or any of them, or shall permit or suffer the same to be obliterated, destroyed, or injured, every such offender may in every such case be proceeded against in any of his majesty's courts, civilly or criminally, in like manner as if this act had not been made.

"IX. And be it further enacted, that in all cases where, under and by virtue of any of the provisions contained in the said act of the fourth year of his present majesty's reign, for amending the laws for collecting church rates and money advanced by the trustees and commissioners of the first-fruits of ecclesiastical benefices, and for the improvement of church lands in Ireland, any parish, union, or chapelry, or any district or portion thereof, can and may be lawfully assessed and rated to contribute for or towards the building, enlarging, or repairing of any church or chapel, or the providing necessary charges belonging to the same, it shall be lawful for the inhabitants of every such parish, union, or chapelry, or any district or portion thereof, (if otherwise duly qualified,) during such time and so long as they shall respectively be bound to contribute to such cesses and rates according to the provisions of the said recited act, and no longer, to vote at all vestries to be held for or in respect of the assessment and applotment of the sum or sums respectively to or in respect whereof such contribution is to be made, and also (if duly qualified) to vote in the election of the churchwardens and chapelwardens, and in the settlement of the accounts of such churchwardens and chapelwardens, and also in the election of the other parish officers of the parishes respectively to the cesses and rates whereof they are or shall be so bound and liable to contribute respectively as aforesaid, as if they were respectively inhabitants of the same parishes respectively; and such inhabitants shall also be eligible to the office of churchwarden or chapelwarden in such parish, chapelry, or union, anything in the said recited act to the contrary notwithstanding: provided always, that nothing hereinbefore contained shall entitle any such inhabitant to vote at any vestry at which any such inhabitant is or may be by this present act or any other act expressly disqualified from voting.

"X. And whereas doubts have been entertained whether any assessments can be lawfully made of any sums for providing coffins for the interment of poor persons dying in any parish, union, or chapelry in Ireland; be it therefore enacted, that from and after the commencement of this act assessments may be lawfully made for such purposes: provided always, that no sum or sums shall be expended by any churchwarden or chapelwarden of any parish, union, or chapelry, for any such purposes, unless a certificate be first given to such churchwarden or chapelwarden, signed by six or more householders who are rated to and shall have paid the parish cess in such parish, union, or chapelry, of whom a justice of the peace

(if any such be resident within the parish) shall be one, that in their opinion it is proper and necessary that such coffins shall be respectively so provided at the expense of such parish, union, or chapelry, and that the relatives of the deceased have not the means to defray the expense thereof.

"XI. And be it further enacted, that every assessment of any sum or sums for or in respect of all or any of the matters in this present act mentioned, including salaries for parish officers, shall be made in Easter week : provided always, that if in any case such assessment shall not have been made in Easter week, it shall be lawful for the bishop of the diocese in which such parish, chapelry, or union shall be situate, to appoint any other day and time for the making of any such assessment, to be signified and directed in writing by such bishop to the churchwardens or churchwarden of any parish, chapelry, or union ; and that any assessment of any sum or sums for or towards the repairs of churches or chapels, or providing all things necessary for the celebration of divine service therein, may be also made at all other times of the year when and as it shall be necessary ; and that no assessment shall be allowed at any vestry hereafter to be held, as for incidental expenses, or for contingencies generally, or for any purpose, matter or thing not specified in such assessment ; and that all and every the sums assessed and applotted shall be applied to the uses and purposes respectively in the respective assessments mentioned, or by this act authorized or directed, and none other.

"XII. And be it further enacted, that from and after the commencement of this act, no appeal shall be made to or received by any ecclesiastical judge against any rate or assessment or applotment made in any parish, union, or chapelry, or anything therein contained ; nor shall the same be drawn in question by or before any ecclesiastical jurisdiction ; nor shall any suit be commenced before any ecclesiastical judge, for the recovery of any sum so assessed or applotted at any vestry.

"XIII. And be it further enacted, that whenever any assessment or tax shall have been made, agreed upon, and imposed at any vestry, for or in respect of any matters or things which may by this act, or any other act or acts of parliament now in force or hereafter to be made, be assessed upon any parish, chapelry, or union, the major part of the inhabitants present and qualified to vote at such vestry, shall at such vestry appoint the churchwardens or chapelwardens, or one of such churchwardens or chapelwardens, together with some other person or persons, or any two or more persons, not being churchwardens or chapelwardens, duly to applot the sums so assessed upon the inhabitants of any such parish, union, or chapelry, according to the respective values of their lands and tenements within such parish, union, or chapelry ; and that the churchwardens or chapelwardens of every such parish, chapelry, or union, shall afterwards give public notice of the same, by causing a true and correct copy of such rate or assessment, containing the names of such applotters, signed by the incumbent or curate, or minister acting as such, or other person who presided at such vestry, or by the churchwardens or chapelwardens, or one of them, to be posted and affixed, within three days next after the making of such rate or assessment (excluding the day of the making thereof) on the outer door of every church or chapel in such parish, chapelry, or union, and on the door of some one Roman catholic chapel and presbyterian meeting house, if any, within the same ; and if there be no church or chapel within such parish, chapelry, or union, or no church or chapel fit for the celebration of divine service, then on some conspicuous place in the market town wherein or nearest whereto such last-mentioned vestry shall have been holden, and by delivering three true copies of the same, signed as aforesaid, to three householders of such parish, chapelry, or union respectively.

"XIV. And be it further enacted, that it shall and may be lawful to and for any inhabitant or inhabitants of any such parish, chapelry, or union, liable to the payment of any parish cesses, (of whatever religious persuasion any such inhabitant or inhabitants may be,) within fourteen days next after the expiration of the said three days by this act allowed for the posting of the copy of such rate or assessment as aforesaid, and exclusive of such three days, to appeal to the justices of the peace at the first general or quarter sessions of the peace or adjournment

STAT. 7 GEO.
4, c. 72. [1a.]

Assessments shall be made in Easter week ; if not then, at a time to be appointed by the bishop.

Assessments for repair of churches to be made when necessary. No assessment for incidents, &c. not specified.

No appeal against rates to ecclesiastical jurisdictions.

Vestry shall appoint churchwardens or others, to applot assessments.

Notices of assessments.

Inhabitants liable to payment of parish cess, may appeal against assessment to justices at sessions, giving

STAT. 7 GEO.
4, c. 72. [Ire.]
notice to
incumbent or
churchwarden,
and three
householders.

Applotment
shall be made
within fifteen
days after time
allowed for
appeal, or
after deter-
mination
thereon;

and delivered
to the incum-
bent, who
shall call a
vestry within
ten days.

At which
vestry applot-
ment shall be
confirmed,
being first
amended, if
requisite.

Applotment
shall be signed
and certified by
incumbent, and
two transcripts
made and
delivered to
churchwar-
dens; and
original pre-
served.

Appeal against
applotment.

thereof, which shall be holden next after the end and expiration of the said term of fourteen days, for the county, county of a city, town, or place wherein the said vestry was held, against any such rate or assessment generally, or on account of the illegality or excess of any item or charge, salary or allowance therein mentioned: provided always, that all and every persons and person so appealing shall first give notice in writing, signed with the names and in the handwriting of all and every the persons or person so appealing, to the incumbent or curate, or to both or one of the churchwardens or chapelwardens, and three householders of such parish, chapelry, or union, of their or his intention so to appeal.

“XV. And be it further enacted, that within fifteen days next after the end and expiration of the period of fourteen days hereby allowed for appealing against any such rate or assessment as aforesaid, or next after the making of any order or determination upon such appeal, if the same shall be made, (as the case may be,) and exclusive of the day whereon such order or determination shall be so made, or the last day of such term of fourteen days, the churchwardens or chapelwardens, or other persons appointed according to this act to applot such rate or assessment, shall proceed impartially and fairly to applot, upon the inhabitants of every such parish, chapelry, or union, the sum and sums contained in and imposed by such rate or assessment; and such applotters shall, on or before the day next after the end and expiration of such term of fifteen days, deliver or cause to be delivered such applotment, signed by such applotters or the major part of them, to the incumbent or curate, or minister acting as such, or to some one of the churchwardens or chapelwardens of such parish, chapelry, or union, not being an applotter as aforesaid; and the person so receiving such applotment shall write and indorse thereon the day of the week, month, and year on which he shall so receive the same, and shall on the Sunday next following his receipt thereof cause due notice to be given of the holding a vestry in such parish, chapelry, or union, within ten days then next following, for the purpose of taking such applotment into consideration, and at such vestry such applotment shall be in the first place laid before such vestry by the incumbent or curate or other person presiding at such vestry; and it shall and may be lawful for any inhabitant then present, and entitled to vote at such vestry, to make any objection or objections to or on account of any charge, item, matter, or thing contained in such applotment, or omitted therefrom, and which ought to have been contained therein; and it shall be lawful for the major part of the inhabitants present and qualified to vote at such vestry, and they are hereby authorized and empowered, on hearing all parties who shall object as aforesaid, to make such alterations, changes, corrections, and amendments in and of the said applotment or any part or item thereof, and to supply any defects and omissions therefrom, in such manner as to them shall seem just and reasonable, and then finally to confirm, ascertain, and settle such applotment; and thereupon the incumbent or curate, or other person presiding at such vestry, shall in the said vestry sign his name at the foot of such applotment when so confirmed, and shall certify that such applotment was confirmed at such vestry; and two several transcripts shall be made of such applotment, namely, one for each churchwarden or chapelwarden of such parish, union, or chapelry; and the original assessment and applotment shall in all cases be safely kept among the papers and documents of such parish, union, or chapelry.

“XVI. And be it further enacted, that if any person shall feel himself or herself aggrieved by or dissatisfied with the sum applotted upon any lands or tenements, as compared with the sum or sums applotted upon any other lands or tenements in the same parish, under any applotment to be made by virtue of this act, it shall be lawful for such person so feeling himself or herself aggrieved, at any time before the expiration of ten days next immediately after and exclusive of the day of the confirmation of such applotment, to appeal to the justices of the peace at the then next general sessions of the peace, or any adjournment thereof, for the county or place within which the vestry shall have been held at which such applotment was confirmed, which shall be holden after the end and expiration of such ten days: provided always, that every person so appealing shall first give

notice in writing, signed with the names and in the handwriting of all and every persons so appealing, to the incumbent or curate, or to both or one of the churchwardens or chapelwardens, and three householders of such parish, chapelry, or union, of their or his intention so to appeal.

“XVII. And be it further enacted, that every appeal against any such assessment or applotment respectively shall be made in writing, signed with the names and in the handwriting of all and every the person or persons appealing, setting forth the grounds of every such appeal, and shall be delivered within the said term of fourteen days or ten days respectively, as the case may be, to some one justice of the peace for such county, county of a city, town, or place; and a copy thereof shall also be delivered within the said term of fourteen days or ten days respectively to the incumbent or curate, or to one of the churchwardens or chapelwardens of such parish, chapelry, or union; and the person or persons so appealing shall, on the day of his or their lodging such appeal as aforesaid, enter into a recognizance in the sum of one hundred pounds, before such justice, or any other justice of the peace for such county, county of a city, town, or place, with two sufficient sureties, or without sureties if such justice of the peace shall in his discretion think fit to accept the sole recognizance of the person or persons so appealing; and every such recognizance shall be conditioned to prosecute such appeal, and to abide or submit to such order as may be made thereon, and to pay such costs as shall be awarded by the justices at such general or quarter sessions of the peace, or adjournment thereof; and the justices at the said next sessions of the peace, (of whom, if such session shall be holden for the county of Dublin, the chairman of the said sessions, or barrister acting as his deputy or substitute for the time being, shall be one; or if such sessions shall be holden for the county of the city of Dublin, the recorder of the city of Dublin, or barrister acting as his deputy or substitute for the time being, shall be one; or if such sessions shall be holden for any other county, the assistant barrister for the time being for such county, or barrister acting as such, shall be one; or if such session shall be holden for any county of a city or county of a town the recorder or person acting as such shall be one,) shall, upon due proof of such notice of appeal having been given as aforesaid, and of the entering into such recognizance as aforesaid, hear and finally determine the cause and matter of every such appeal, by the oaths of witnesses or otherwise in a summary way, and shall award such costs either to the party or parties appealing, or to the churchwardens or chapelwardens of such parish, chapelry, or union, as such justices at such sessions shall think proper: and it shall be lawful for such justices at such sessions, where the appeal shall be against the rate or assessment, to strike out or correct any item or charge, salary, or allowance, against which complaint has been made; and where such appeal shall be against the applotment, it shall be lawful for such justices to correct, alter, and amend such applotment, as to such justices at such sessions shall seem meet: provided always, that no appeal against any applotment shall in any way affect the assessment with reference to which such applotment shall have been made.

“XVIII. Provided also, and be it enacted, that no rate shall be quashed or altered on account or in respect of any excess in the total amount of such rate, where the amount of such excess shall not in the whole exceed the proportion of one farthing per acre.

“XIX. And be it further enacted, that immediately after the end and expiration of the term of ten days, in case no appeal shall, as aforesaid, be made against the said applotment, or otherwise within three days next after the making any order or determination of the justices at sessions, in case any appeal shall have been made against such applotment, as the case may be, (such three days to be exclusive of the day of making such order or determination on appeal, as the case may be,) the churchwardens or chapelwardens of the parish, union, or chapelry, for which such applotment shall be made, shall and they are hereby required, with all convenient speed, to proceed to levy, collect, and receive of and from the inhabitants of every such parish, union, or chapelry, the several sums so on them respectively charged and applotted.

STAT. 7 GEO.
4, c. 72. [1a.]

Mode of hearing and determining appeals against assessments and applotments.

Appeal not to affect the assessment.

No rate to be quashed for excess if it does not exceed $\frac{1}{4}$ d. per acre. After expiration of time for appeal against applotment, or within three days after determination of appeal, churchwardens shall proceed to collect the rates.

STAT. 7 GEO.
4, C. 72. [I.R.]
notice to
incumbent or
churchwarden,
and three
householders.

thereof, which shall be holden next after the end and expiration of the said term of fourteen days, for the county, county of a city, town, or place wherein the said vestry was held, against any such rate or assessment generally, or on account of the illegality or excess of any item or charge, salary or allowance therein mentioned: provided always, that all and every persons and person so appealing shall first give notice in writing, signed with the names and in the handwriting of all and every the persons or person so appealing, to the incumbent or curate, or to both or one of the churchwardens or chapelwardens, and three householders of such parish, chapelry, or union, of their or his intention so to appeal.

Applotment
shall be made
within fifteen
days after time
allowed for
appeal, or
after deter-
mination
thereon;

“XV. And be it further enacted, that within fifteen days next after the end and expiration of the period of fourteen days hereby allowed for appealing against any such rate or assessment as aforesaid, or next after the making of any order or determination upon such appeal, if the same shall be made, (as the case may be,) and exclusive of the day whereon such order or determination shall be so made, or the last day of such term of fourteen days, the churchwardens or chapelwardens, or other persons appointed according to this act to applot such rate or assessment, shall proceed impartially and fairly to applot, upon the inhabitants of every such parish, chapelry, or union, the sum and sums contained in and imposed by such rate or assessment; and such applotters shall, on or before the day next after the end and expiration of such term of fifteen days, deliver or cause to be delivered such applotment, signed by such applotters or the major part of them, to the incumbent or curate, or minister acting as such, or to some one of the churchwardens or chapelwardens of such parish, chapelry, or union, not being an applotter as aforesaid; and the person so receiving such applotment shall write and indorse thereon the day of the week, month, and year on which he shall so receive the same, and shall on the Sunday next following his receipt thereof cause due notice to be given of the holding a vestry in such parish, chapelry, or union, within ten days then next following, for the purpose of taking such applotment into consideration, and at such vestry such applotment shall be in the first place laid before such vestry by the incumbent or curate or other person presiding at such vestry; and it shall and may be lawful for any inhabitant then present, and entitled to vote at such vestry, to make any objection or objections to or on account of any charge, item, matter, or thing contained in such applotment, or omitted therefrom, and which ought to have been contained therein; and it shall be lawful for the major part of the inhabitants present and qualified to vote at such vestry, and they are hereby authorized and empowered, on hearing all parties who shall object as aforesaid, to make such alterations, changes, corrections, and amendments in and of the said applotment or any part or item thereof, and to supply any defects and omissions therefrom, in such manner as to them shall seem just and reasonable, and then finally to confirm, ascertain, and settle such applotment; and thereupon the incumbent or curate, or other person presiding at such vestry, shall in the said vestry sign his name at the foot of such applotment when so confirmed, and shall certify that such applotment was confirmed at such vestry; and two several transcripts shall be made of such applotment, namely, one for each churchwarden or chapelwarden of such parish, union, or chapelry; and the original assessment and applotment shall in all cases be safely kept among the papers and documents of such parish, union, or chapelry.

and delivered
to the incum-
bent, who
shall call a
vestry within
ten days.

At which
vestry applot-
ment shall be
confirmed,
being first
amended, if
requisite.

Applotment
shall be signed
and certified by
incumbent, and
two transcripts
made and
delivered to
churchwar-
dens; and
original pre-
served.

Appeal against
applotment.

“XVI. And be it further enacted, that if any person shall feel himself or herself aggrieved by or dissatisfied with the sum applotted upon any lands or tenements, as compared with the sum or sums applotted upon any other lands or tenements in the same parish, under any applotment to be made by virtue of this act, it shall be lawful for such person so feeling himself or herself aggrieved, at any time before the expiration of ten days next immediately after and exclusive of the day of the confirmation of such applotment, to appeal to the justices of the peace at the then next general sessions of the peace, or any adjournment thereof, for the county or place within which the vestry shall have been held at which such applotment was confirmed, which shall be holden after the end and expiration of such ten days: provided always, that every person so appealing shall first give

notice in writing, signed with the names and in the handwriting of all and every persons so appealing, to the incumbent or curate, or to both or one of the churchwardens or chapelwardens, and three householders of such parish, chapelry, or union, of their or his intention so to appeal.

“XVII. And be it further enacted, that every appeal against any such assessment or applotment respectively shall be made in writing, signed with the names and in the handwriting of all and every the person or persons appealing, setting forth the grounds of every such appeal, and shall be delivered within the said term of fourteen days or ten days respectively, as the case may be, to some one justice of the peace for such county, county of a city, town, or place; and a copy thereof shall also be delivered within the said term of fourteen days or ten days respectively to the incumbent or curate, or to one of the churchwardens or chapelwardens of such parish, chapelry, or union; and the person or persons so appealing shall, on the day of his or their lodging such appeal as aforesaid, enter into a recognizance in the sum of one hundred pounds, before such justice, or any other justice of the peace for such county, county of a city, town, or place, with two sufficient sureties, or without sureties if such justice of the peace shall in his discretion think fit to accept the sole recognizance of the person or persons so appealing; and every such recognizance shall be conditioned to prosecute such appeal, and to abide or submit to such order as may be made thereon, and to pay such costs as shall be awarded by the justices at such general or quarter sessions of the peace, or adjournment thereof; and the justices at the said next sessions of the peace, (of whom, if such session shall be holden for the county of Dublin, the chairman of the said sessions, or barrister acting as his deputy or substitute for the time being, shall be one; or if such sessions shall be holden for the county of the city of Dublin, the recorder of the city of Dublin, or barrister acting as his deputy or substitute for the time being, shall be one; or if such sessions shall be holden for any other county, the assistant barrister for the time being for such county, or barrister acting as such, shall be one; or if such session shall be holden for any county of a city or county of a town the recorder or person acting as such shall be one.) shall, upon due proof of such notice of appeal having been given as aforesaid, and of the entering into such recognizance as aforesaid, hear and finally determine the cause and matter of every such appeal, by the oaths of witnesses or otherwise in a summary way, and shall award such costs either to the party or parties appealing, or to the churchwardens or chapelwardens of such parish, chapelry, or union, as such justices at such sessions shall think proper: and it shall be lawful for such justices at such sessions, where the appeal shall be against the rate or assessment, to strike out or correct any item or charge, salary, or allowance, against which complaint has been made; and where such appeal shall be against the applotment, it shall be lawful for such justices to correct, alter, and amend such applotment, as to such justices at such sessions shall seem meet: provided always, that no appeal against any applotment shall in any way affect the assessment with reference to which such applotment shall have been made.

“XVIII. Provided also, and be it enacted, that no rate shall be quashed or altered on account or in respect of any excess in the total amount of such rate, where the amount of such excess shall not in the whole exceed the proportion of one farthing per acre.

“XIX. And be it further enacted, that immediately after the end and expiration of the term of ten days, in case no appeal shall, as aforesaid, be made against the said applotment, or otherwise within three days next after the making any order or determination of the justices at sessions, in case any appeal shall have been made against such applotment, as the case may be, (such three days to be exclusive of the day of making such order or determination on appeal, as the case may be,) the churchwardens or chapelwardens of the parish, union, or chapelry, for which such applotment shall be made, shall and they are hereby required, with all convenient speed, to proceed to levy, collect, and receive of and from the inhabitants of every such parish, union, or chapelry, the several sums so on them respectively charged and applotted.

STAT. 7 GEO.
4, c. 72. [18.]

Mode of hearing and determining appeals against assessments and applotments.

Appeal not to affect the assessment.

No rate to be quashed for excess if it does not exceed $\frac{1}{4}$ d. per acre. After expiration of time for appeal against applotment, or within three days after determination of appeal, churchwardens shall proceed to collect the rates.

STAT. 7 GEO.
4, c. 72. [18.]
Rates not ex-
ceeding 20l.
may be reco-
vered by civil
bill:

“XX. And be it further enacted, that all and every rate and rates and sum and sums of money which shall be assessed on the inhabitants of any parish, union, or chapelry, according to the directions of this act, after the same shall have been respectively applotted, shall and may be levied and recovered from such inhabitants in manner and by the means hereafter mentioned; that is to say, in case any inhabitant or inhabitants of any parish, union, or chapelry, shall refuse or neglect to pay any sum or sums of money, not exceeding twenty pounds, assessed and applotted under or by virtue of this act, after demand of payment thereof made by such churchwardens or chapelwardens, or one of them, or by any person or persons empowered by them or one of them, to demand the same, it shall and may be lawful for such churchwardens or chapelwardens to recover such sum or sums of money by petition or English bill, usually called a civil bill, setting forth (without specifying any other cause of action) that the sum demanded by such civil bill is due to the plaintiffs therein as churchwardens or chapelwardens, as the case may be, ‘in the parish, union, or chapelry of _____ by virtue of an applotment of a parish cess, confirmed on the _____ day of _____ in the _____,’ stating the name of the parish, union, or chapelry, and the day, month, and year, of confirming the applotment on which such proceedings shall be had.

or by order of
two justices.

“XXI. And be it further enacted, that in case any churchwarden or chapelwarden shall think fit so to do, it shall be lawful, instead of proceeding by process of civil bill for nonpayment of any sum or sums assessed and applotted as aforesaid, for any churchwarden or chapelwarden to prefer a complaint in writing, to the effect last aforesaid, to any one justice of the peace of the county, county of a city, town, or place wherein the person or persons so neglecting or refusing to pay any sum or sums so applotted shall reside; and it shall be lawful for such justice of the peace, by warrant under his hand and seal, to summon and convene before himself and any other justice, or before any two or more justices of the peace for such county, county of a city, town, or place, the person or persons so complained of; and such two or more justices of the peace, when met or assembled, shall examine into the matter of such complaint on oath, (which oath the justices so met or assembled shall and are hereby empowered to administer,) and shall by order under the hands and seals of such two justices, or of the major part of such justices so met or assembled, direct the payment to such churchwarden or chapelwarden respectively of the sum and sums due and payable from the party complained against under such applotment, together with a sum certain as and for such reasonable costs and charges as to such justices shall seem meet; and upon refusal or neglect of such party or parties to pay the sum or sums so by such justices directed to be paid, it shall and may be lawful for any one of the said justices or for any one justice of the peace for such county, county of a city, town, or place, by warrant under his hand and seal, after the end and expiration of eight days, and not sooner, from the making of any such order as aforesaid, and exclusive of the day of making thereof, to empower the churchwardens or chapelwardens, or either of them, or any person named by them or either of them, and acting at their peril, to levy the money thereby ordered to be paid, together with the amount of such further costs, if any, incurred after the making of the said order, as such justice may judge reasonable, by distress and sale of the cattle, goods, or chattels, within any part of such county, county of a city, town, or place, of the person or persons so complained against, his executors or administrators, rendering the overplus to him, her, or them, the necessary charges and expenses of distraining being thereout first deducted as directed by such justice; and if sufficient distress cannot be found within such county, county of a city, town, or place, then on oath thereof made before any one or more justice or justices of the peace of any other county, county of a city, town or place or jurisdiction, in which any of the cattle, goods, or chattels of such person or persons shall be found, (which oath or oaths such justice or justices shall administer, and certify by indorsing in his or their handwriting his or their name or names on the warrant granted to make such distress,) the cattle, goods, and chattels of such person or persons so refusing or neglecting to pay as aforesaid, shall be subject and liable to such distress and sale in such other county,

Upon neglect
or refusal to
pay after eight
days from such
order, the same
may be levied
by distress.

county of a city, town, or place, or jurisdiction, where the same may be found, and may by virtue of such warrant and certificate be distrained and sold in the same manner as if the same had been found within the county, county of a city, town, or place, wherein the person or persons may reside, who shall be so liable, and shall refuse to pay as aforesaid.

STAT. 7 GEO.
4, c. 72. [18.]

“XXII. Provided always, and be it enacted, that whenever any rate or assessment or sum of money shall be due under any assessment or applotment made by the authority of this present act, from any corporation aggregate, ecclesiastical or civil, or public company, college, hall, guild, or fraternity, a demand of payment thereof from the treasurer, registrar, secretary, clerk, or agent, or person or persons acting as such, of such corporation, company, college, hall, guild, or fraternity, shall be deemed and taken to be a sufficient demand thereof, within the true intent and meaning of this present act, to all intents and purposes; and it shall and may be lawful for any churchwarden or chapelwarden, at his or their election, to have, use, and take all and every remedy and means, by action at common law or otherwise, for the recovery of any sum or sums applotted by virtue of this act, against any person or persons, or body or bodies politic or corporate, as such churchwardens or chapelwardens might lawfully do in case a specific remedy had not been given by this act, anything hereinbefore contained to the contrary in anywise notwithstanding; and that all occupiers of lands or tenements within any parish, union, or chapelry, shall, as to any tax, rate, assessment, and applotment made by authority of this act, for or in respect of the building, rebuilding, repairing, or enlarging of churches or chapels, or for the providing all things necessary for the due celebration of divine service, and other necessary charges, or for the maintenance of parish clerks, and clerks of chapels of ease, and salaries of parish officers, or otherwise, be and be construed to be inhabitants of and within any such parish, union, or chapelry, whether such occupier or occupiers do or do not reside or dwell within the same.

Demand
against public
officers of
corporation
sufficient.

Churchwar-
dens may pro-
ceed for rate by
action, &c.

Occupiers of
lands deemed
inhabitants of
parishes.

“XXIII. And be it further enacted, that whenever at any time after the commencement of this act the church or chapel of any parish, union, or chapelry shall be in want of repairs, or of any matters or things necessary for the due celebration of divine service therein, it shall be lawful for the archbishop or bishop of the diocese wherein such church or chapel shall be situate, or in case of the illness or absence from Ireland of such archbishop or bishop, or during the vacancy of the see, then for the vicar-general of such diocese, from time to time to direct and cause an estimate to be made of the amount of the sum required for such repairs or other purposes, and to signify his approbation of such estimate, by certifying such approbation at the foot of such estimate, and to transmit such estimate, with such certificate of approbation thereof, to the churchwardens or chapelwardens or warden of such parish, union, or chapelry, and to issue a monition, under the consistorial seal of such diocese, directed to and requiring the churchwardens or chapelwardens or warden of such parish, union, or chapelry, to cause a vestry to be summoned and to meet within a time to be therein specified, not being less than twenty days from the day of the date of such monition, for the purpose of making an assessment on the inhabitants of such parish, union, or chapelry, for raising the amount required by such estimate and certificate for the repairing such church or chapel, and providing things necessary as aforesaid for the due celebration of divine service therein, or for either of the said purposes, as the case may require, and for defraying the expense of such estimate, and the reasonable costs and charges attending the proceedings thereon; and such monition shall be served on such churchwardens or chapelwardens or warden, by the delivery of true copies or a true copy of such monition, attested by the registrar of the said diocese or his deputy, or by the persons or person acting as such, to such churchwardens or chapelwardens, or one of them, or to some person above the age of sixteen years, at the place or places of abode of such churchwardens or chapelwardens, or one of them, within three days next after the date of such monition, and exclusive of the day of such date, and by at the same time shewing to such churchwardens or chapelwardens or other person, or one of them, such original monition under seal.

Whenever any
church or cha-
pel shall be in
want of repairs,
&c. an esti-
mate of the
amount shall
be prepared
and certified,
and a monition
issued to the
churchwardens
to summon a
vestry for
making a rate
for that pur-
pose.

STAT. 7 GEO.
4, c. 72. [18.]

Churchwardens shall give notice of vestry accordingly. On failure of assessment by vestry, churchwardens shall make a rate, which shall be as valid as if made by vestry.

Churchwardens shall make applotment of such assessment, and deliver it to the incumbent, who shall call a vestry to consider the same.

Such applotments liable to confirmation and appeal as other applotments made under this act.

On neglect of vestry to confirm applotment, the same shall be confirmed by the churchwardens.

“XXIV. And be it further enacted, that within seven days next after such service, such churchwardens or chapelwardens or warden shall cause notice to be given of a vestry to be held in such parish, union, or chapelry, for the purposes aforesaid, pursuant to the said monition, and within the time limited thereby for holding such vestry.

“XXV. And be it further enacted, that if at any vestry so to be summoned, an assessment shall not be made on the inhabitants of such parish, union, or chapelry, for the purposes and to the amount mentioned in such monition, or if such vestry shall not meet and assemble, it shall be lawful for the churchwardens or chapelwardens or warden of such parish, union, or chapelry, and they are hereby authorized and required, immediately after the holding of every such vestry, if such vestry shall meet, or otherwise upon the day and place appointed for the holding of such vestry, by a writing or instrument signed by such churchwardens or chapelwardens, or one of them, dated on the day appointed for the holding such vestry, to make an assessment upon the inhabitants of such parish, union, or chapelry, of such sum or sums of money as shall be by the said monition stated to be necessary for the making of such repairs, and providing things necessary for the due celebration of divine service in the church or chapel thereof, or for either of the said purposes, as the case may require; and such last-mentioned assessment shall be of the like force and effect, to all intents and purposes, as if the same had been made at any vestry summoned for that purpose.

“XXVI. And be it further enacted, that such churchwardens or chapelwardens, or one of them, shall, within fifteen days next after the date and exclusive of the day of the date of such assessment to be made by them or him, or within fifteen days after the determination of any appeal against such assessment, applot the sum or sums so by him or them assessed fairly and impartially upon and among the inhabitants of such parish, union, or chapelry, and shall truly date, sign, and certify every such applotment, when made, to be just and fair, and shall, on the day next after the day of the date of such applotment, deliver the same so signed and certified, to the incumbent or curate or minister acting as curate of such parish, union, or chapelry; and such incumbent or curate or minister shall indorse upon such applotment the time of his receipt thereof, and shall on the then next following Sunday cause notice to be given of a vestry to be held in and for such parish, union, or chapelry, within ten days then next ensuing, in order to take such applotments into consideration; and at such vestry so to be holden, such and the same acts and proceedings shall and may be had, done, and taken, and such objections made to such applotment, and such and the same powers shall and may be used and exercised by the inhabitants of the parish, union, or chapelry, in such vestry assembled, in relation thereto, as are and is hereinbefore granted, given, provided, and enacted of and concerning the acts and proceedings to be had, done, and taken in vestries to be held for taking into consideration applotments made of cesses imposed by inhabitants in vestry, and the adjustment, settlement, ascertainment, and confirmation thereof; and such appeals may lawfully be entered, and made against any applotment of sums assessed by any churchwardens or chapelwardens so confirmed as aforesaid in such vestry, and under and subject to such and the same rules, regulations, conditions, restrictions, and provisos, as are hereinbefore mentioned and provided and enacted of and concerning the applotment of sums assessed by the inhabitants in vestry assembled.

“XXVII. And be it further enacted, that if the inhabitants assembled in any such vestry holden for taking into consideration the applotment of sums assessed by any churchwardens or chapelwardens, or the major part of such inhabitants, shall refuse to take such applotment into consideration, or shall neglect or omit at such vestry finally to settle, ascertain, and confirm the same, or if such vestry shall not be holden pursuant to such appointment, the applotment so made by any such churchwarden or chapelwarden as aforesaid shall, upon the day appointed for the holding of such vestry, be signed, settled, ascertained, and confirmed, and certified as being so confirmed, by such churchwardens or chapelwardens respectively, and shall be deemed, construed, and taken, to all intents and purposes, as absolutely

revised, ascertained, and confirmed, without any other or further confirmation, by the inhabitants in vestry, or other signature to or certificate thereof.

“XXVIII. Provided always, and be it enacted, that it shall be lawful for any person or persons, being an inhabitant of such parish, union, or chapelry, and liable to the payment of any sum under such applotment, to appeal against such applotment within ten days next after and exclusive of the day of the confirmation of the same by such churchwarden or chapelwarden, to the justices of the peace at the next general or quarter sessions of the peace in and for the county, county of a city, town, or place, within which such parish, union, or chapelry, shall be situate, under the like conditions, limitations, and restrictions, and in like manner and form in every particular, and on performing all and every the matters and things by this act required to be done and fulfilled by any person or persons appealing against any applotment confirmed in vestry; and immediately from and after the end and expiration of such ten days, or immediately from and after the day of the making of the order and determination of the justices on any such appeal, as the case may be, such churchwarden or chapelwardens or warden shall proceed to collect and levy the sums mentioned in every such applotment made by them or him, in such manner, and by such and the same ways and means in every particular, as by this act are directed and provided of and concerning applotments of sums assessed by the inhabitants in vestry, and shall apply all such sums, when levied and collected, to the purposes specified and required in and by the monition under and by virtue of which such assessment and the applotment thereof shall have been made pursuant to this act.

“XXIX. And be it further enacted, that all and every the rules, regulations, provisions, powers, and conditions in and by this act made, granted, and enacted, of and concerning applotments to be settled, ascertained, and confirmed by the inhabitants of any parish, union, or chapelry in vestry, and concerning appeals therefrom, and the collection and levying of the sums thereby applotted, shall be and the same are hereby applied to, of and concerning and in respect of all applotments to be made and confirmed by such churchwardens or chapelwardens or warden, and the appealing therefrom, and the collecting of all or any of the sums thereby applotted; save and except only so far as by this act is otherwise specially enacted and provided.

“XXX. And be it further enacted, that every churchwarden and chapelwarden of every parish, union, or chapelry, whether he shall have served the office in person or by deputy, shall at the vestry which shall be holden in and for such parish, union, or chapelry, for the election of his and their next and immediate successor or successors, churchwardens or chapelwardens, deliver or cause to be delivered in such vestry, to the incumbent or curate, or minister acting as such, or other person presiding at such vestry, a full, true, correct, and particular account of the receipts and disbursements of such churchwarden or chapelwarden, of every kind and description, for and on account of such parish, union, or chapelry, and specifying therein the arrears, if any, then remaining due in respect of any rates or assessments, and by whom by name each part of such arrears is due and owing; and every such churchwarden or chapelwarden shall verify such account by oath, to be by him respectively taken in such vestry before the incumbent, curate, or minister acting as such, or other person presiding at such vestry as aforesaid, and which oath and oaths it shall be lawful for every such incumbent, curate, or minister acting as such, or other person so presiding, to administer, or otherwise by the affidavit of such churchwarden or chapelwarden respectively, to be then and there exhibited, sworn before any master in Chancery or master extraordinary in Chancery, or before any justice of the peace, or judge or surrogate of any ecclesiastical court of any diocese.

“XXXI. And be it further enacted, that immediately after the other necessary business of such vestry shall be concluded, the incumbent or curate or minister, or other person presiding thereat, shall and he is hereby required to adjourn such vestry to a certain day, not later than thirty days nor sooner than twenty days afterwards, (or, if he shall so think fit, to the day on which the vestry shall be

STAT. 7 GEO.
4, c. 72. [1a.]

Appeal against such applotment, after confirmation by the churchwarden.

All regulations as to applotments in vestry applied to applotments by churchwardens.

Churchwardens shall account on oath at the vestry to be held for the choice of their successors.

Adjourned vestry shall be held within thirty days, for examining and adjusting the

STAT. 7 GEO.
4, c. 72. [18.]
churchwardens' accounts.

All applotments shall be evidence against the churchwarden to charge him with the amount.

Credit not to be allowed for any sums not included in account, or not disbursed by authority.

Accounts shall be open to inspection of inhabitants.

On refusal to account, churchwardens shall be charged with all sums applotted, &c.

Churchwar-

holden for the applotment of any assessment made in Easter week pursuant to this act,) to be then holden for the purpose of examining, vouching, and settling the accounts of such churchwardens or chapelwardens respectively; and at such vestry so to be held by and pursuant to such adjournment, it shall be lawful for the inhabitants entitled to be present and vote at such vestry, and every of them, to examine and investigate such accounts respectively, and any vouchers to be produced for the same and for every item thereof; and the majority of the inhabitants of such parish, union, or chapelry, then and there present, shall finally adjust and settle such accounts, and strike the balance on the foot thereof.

"XXXII. And be it further enacted, that as well on such examination and settlement of accounts, as on any settlement of the accounts of any churchwarden or chapelwarden before justices of the peace at sessions in manner hereafter mentioned, as also in any action or suit or civil bill to be brought against any such churchwarden or chapelwarden who ought to account as aforesaid, the applotment of every such parish rate or assessment confirmed as is provided by this act, or an authentic copy thereof attested by the incumbent or curate, or minister acting as such, shall be sufficient evidence, *prima facie*, to charge such churchwardens or chapelwardens respectively with the whole and full amount of the sum and sums thereby appearing to be applotted.

"XXXIII. And be it further enacted, that no churchwarden or chapelwarden shall be at any time allowed in his account, or get credit for any sum or sums of money expended by him, unless he shall specify the same in an account so to be delivered in at the vestry held for the election of his successors as aforesaid, nor for any sum which shall not appear to have been expended under the authority of this act, or some other act or acts of parliament, or by the authority of some vestry held for such parish, union, or chapelry, under the authority of this present act; and all such accounts shall be at all reasonable times and hours open to the inspection and to be copied in the whole or in part by any inhabitant or inhabitants assessed or liable to be assessed as aforesaid.

"XXXIV. And be it further enacted, that if any churchwarden or chapelwarden shall refuse or omit to deliver, or cause to be delivered, such their accounts respectively, in such vestry held for the election of the next succeeding churchwardens or chapelwardens, verified as aforesaid, or if it shall appear to such vestry that any such churchwarden or chapelwarden whose accounts are so exhibited shall have refused or wilfully neglected to collect or cause to be collected any parish rate, sum, or cess, assessed and applotted as in this present act mentioned and directed, or any part thereof, it shall and may be lawful for the major part of the inhabitants present at the vestry so to be held by adjournment for the examination of such accounts, and they are hereby authorized and required, to charge any such churchwarden or chapelwarden respectively with the full amount of the sums applotted by any such applotment, or with so much and such part thereof as ought to have been and shall not have been received as aforesaid by any such churchwarden or chapelwarden respectively, and to charge any such churchwarden or chapelwarden with such sum, as balance, as shall appear to such vestry to be due and owing, by such churchwarden or chapelwarden respectively, to such parish, union, or chapelry; and in case it shall happen that any late churchwardens or chapelwardens or warden shall have been in any such account charged with and have paid any sum or sums as aforesaid not actually received, but which ought to have been received by them or him, and the same or any of them shall be afterwards paid to or received by any succeeding churchwardens or chapelwardens or warden, such sum or sums so afterwards paid in and received shall be duly accounted for and be paid to such late churchwardens or chapelwardens or warden, their or his executors or administrators, by such succeeding churchwarden or chapelwarden who shall have received the same, subject nevertheless to such credits by way of set-off or otherwise as may lawfully be made in account against such late churchwarden or chapelwarden respectively by such successor or successors as aforesaid.

"XXXV. And be it further enacted, that if any such late churchwarden or

chapelwarden accounting, or refusing or neglecting to account, shall think himself aggrieved by any act or determination of the major part of the inhabitants assembled at such adjourned vestry, in respect of the charging such churchwarden or chapelwarden with any such balance or sum of money, it shall and may be lawful for any such late churchwarden or chapelwarden respectively, jointly or severally, within fourteen days next after and exclusive of the day of holding such adjourned vestry, to appeal against such act or determination to the justices at the first general or quarter sessions of the peace, or any adjournment thereof, to be holden next after the end or expiration of such term of fourteen days for the county, county of a city, town, or place, wherein such adjourned vestry was so holden: provided always, that every such late churchwarden, so appealing, shall give notice in writing to the succeeding churchwardens or chapelwardens, or one of them, or to the incumbent or curate of such parish, union, or chapelry, of such intention so to appeal, and shall within the said term of fourteen days deliver to some justice of the peace of the said county or county of a city, town, or place, his or their appeal in writing, and on the day of delivering such appeal shall enter into recognizance with two sufficient sureties before such justice, or some other justice of the peace for the said county, county of a city, town, or place, in double the amount of the balance or sum so as aforesaid at the said adjourned vestry charged against the party so appealing, conditioned to prosecute such appeal, and to abide and submit to the order or determination of the justices at such sessions, and to pay to the succeeding churchwardens or chapelwardens of such parish, union, or chapelry, such sum or sums of money and such costs as may by the order or determination of such justices be adjudged and awarded to be paid by such appellant or appellants; and the justices at such first or next sessions of the peace or adjournment thereof, (of whom the chairman of the sessions for the county of Dublin, the recorder of the city of Dublin or other county of a city or county of a town, the assistant barrister or barristers for any county, or the barrister acting for and in the place of such chairman, recorder, or assistant barrister, according to the place of holding the said sessions of the peace as aforesaid, shall always be one,) upon due proof that such notice of appealing was given, and recognizance was entered into as required by this act, shall hear and determine the matter of such appeal; and it shall be lawful for such justices to examine the late and then present churchwardens or chapelwardens respectively, or any of them, or any witness or witnesses, on oath, and to take and audit the accounts of any such late churchwarden or chapelwarden, and to strike and ascertain the balance thereof, after all just charges and credits, and to give such order and direction in respect of the payment and discharge of such balance, by instalments or otherwise, as to such justices shall seem fit, and to award costs to or against the person or persons so appealing, or to or against the then present churchwardens or chapelwardens of the said parish, union, or chapelry, as such justices shall think fit.

“XXXVI. And be it further enacted, that immediately from and after the expiration of such period of fourteen days so allowed for such appeal of such late churchwardens or chapelwardens, or from and after the making of the order or determination on such appeal, as the case may be, (the last of the said fourteen days, and the day of making such order or determination being severally excluded,) every sum or balance due from any such late churchwarden or chapelwarden, shall be and be deemed and taken in law as a debt of such late churchwarden or chapelwarden respectively to the churchwardens or chapelwardens for the time being of every such parish, union, or chapelry, and may be sued for, levied, and recovered by the churchwardens or chapelwardens for the time being of such parish, union, or chapelry, (whether such churchwardens or chapelwardens shall or shall not be the immediate successor or successors of any such late churchwarden or chapelwarden,) by action of debt, or other proper action or suit, in any of his majesty's courts at Dublin, in which no essoin, wager of law, or protection, nor more than one imparlance, shall be allowed; or if such balance or sum be under fifty pounds, the same may be recovered by civil bill, at the election of the churchwardens or chapelwardens respectively who shall sue for the same; and it shall be

STAT. 7 GEO.
4, c. 72. [1a.]
dens aggrieved
by act of ves-
try may appeal
to the quarter
sessions, who
may ascertain
the balance
due.

Notice of
appeal.

Balances may
be recovered
by succeeding
churchward-
ens, after the
expiration of
time of appeal,
or after the
order of ses-
sions.

STAT. 7 GEO.
4, C. 72. [18.]

churchwarden or chapelwarden shall take and make and subscribe the oath required by this act accordingly: provided always, that every person who shall execute the office of a churchwarden or chapelwarden by deputy, shall be liable and answerable for all money which shall come to the hands of his deputy by reason of such office, and for the acts, neglects, and defaults of such deputy in respect of the collection and disposition of the parish cesses and rates, in such and the same manner, and as fully to all intents and purposes as if such office had been executed in person by such churchwarden or chapelwarden, and as if such monies and all sums assessed and apportioned in vestry had come to the hands of such churchwarden or chapelwarden; and every such churchwarden or chapelwarden shall account for the same accordingly.

No person shall serve the office of churchwarden for two successive years, if any other qualified person can be found.

“XLIX. And be it further enacted, that it shall not be lawful for any vestry in Ireland to elect, nor for any ordinary, incumbent, or curate to appoint any person to fill the office of churchwarden or chapelwarden in and for any parish, union, or chapelry, for the year next and immediately succeeding the year in which such person shall have served for the whole period of one entire year the office of churchwarden or chapelwarden of the same parish, chapelry, or union, in person or by deputy, if it shall be made appear to the satisfaction of such vestry, ordinary, incumbent, or curate, that there is any other person liable to serve and duly qualified to exercise such office in such parish, union, or chapelry.

For providing for the maintenance of parish clerks, assessments shall be made of certain annual sums.

“L. And be it further enacted, that in every parish, union, or chapelry (not being within the county of the city of Dublin, or the suburbs thereof) in which there shall be a church or chapel fit for the celebration of divine service according to the rites and ceremonies of the united church of England and Ireland, a vestry shall be held on the Monday or Tuesday in Easter week in every year, and at every such vestry a sum shall be assessed for the maintenance of the clerk of every such parish, union, or chapelry, and of every chapel of ease, in manner following: that is to say, for the clerk of every such parish, chapelry, or union, in the church or chapel whereof there shall be divine service usually celebrated, not only on Sundays and festival days, but also on common week days, that is to say, on two such common days at least in the week, a sum not exceeding twenty pounds nor less than ten pounds, and in all other cases a sum not exceeding ten pounds nor less than five pounds; and to and for the clerk of every chapel of ease in any parish or union in which there shall be a chapel of ease used and fit for the celebration of divine service as aforesaid, (except such chapel of ease be served only alternately, or in less frequent turns with the church of the parish or union wherein it is situate,) a sum not exceeding ten pounds nor less than five pounds, as and for the maintenance and maintenances of every such clerk respectively for the year then next ensuing, and in satisfaction and lieu of all other fees, dues, or allowances whatever, alleged or claimed to be payable to such parish clerk under any usage or custom; and if such assessment be not so made on the Monday or Tuesday in Easter week as aforesaid, in any parish, union, or chapelry, every such parish, union, or chapelry shall be charged with the sums or maintenance following, as and for the support of any such clerk for the year in and for which such assessment ought to be made and shall have been omitted to be made; that is to say, with the sum of ten pounds for the clerk of any such parish, chapelry, or union, in the church or chapel whereof divine service is usually celebrated in the church or chapel on Sundays, festivals and common days as aforesaid, and in all other cases with the sum of five pounds; and for the clerk of every chapel of ease in which divine service shall be so performed (except in the case of such service in turns as aforesaid) with the sum of four pounds, in satisfaction and lieu of all dues, fees, and allowances as aforesaid, as and for the maintenance of such respective clerks for the year in and for which such respective assessments ought to be made; and in cases where such assessments respectively shall be made, then the sums respectively to be assessed for the maintenances of such clerks respectively, or in cases where no assessment shall be made, then the said sums of ten pounds, five pounds, or four pounds respectively, as the case may be, shall be added to and shall be equally and fairly apportioned amongst the other sums to be assessed by the inha-

If assessment not made, certain lesser sums shall be chargeable on the parish.

part thereof, by the churchwardens or chapelwardens or warden for the time being, or by any inhabitant or inhabitants of such parish, union, or chapelry, as shall be fit, and shall and may award costs to and against the petitioner or petitioners, and shall and may enforce the order and orders to be made on every such petition by process of attachment, sequestration, injunction, or otherwise, against such churchwardens or chapelwardens or warden, or inhabitant or inhabitants, as the case may require.

“XL. And be it further enacted, that every assessment and applotment, and every act, order, or charge made in vestry, in any parish, union, or chapelry, and every assessment and applotment made by authority of this act pursuant to such monition as aforesaid, against which, in the whole or in part, any appeal is hereby permitted to be made, if not duly appealed from within the time or times hereby as aforesaid prescribed for making such appeals respectively, and every order and determination which shall be made by the justices of the peace at the sessions of the peace, or adjournment thereof, as hereinbefore mentioned, which shall be made on the hearing of any appeal pursuant to this act, shall, from and after the expiration and end of such respective times within which such respective appeals are hereby permitted to be made, or from and after the making of the respective orders or determinations on the hearing of such appeals respectively, as the case may be, be final, binding, and conclusive to all intents and purposes, in law and equity, and shall not at any time or times thereafter be impeached, questioned, or set aside, or varied by or in any court of law or equity, or in or before any other court, jurisdiction, or place whatever; nor shall any such order or determination of the justices of the peace be removed or removable by writ of *certiorari*, or other process, to any of his majesty's courts.

“XLI. And be it further enacted, that it shall be lawful for the justices at every such sessions of the peace or adjournment thereof as aforesaid, and they are hereby authorized and empowered, by their order or warrant, to levy any costs by them to be awarded or ordered, to be paid by any person or persons appealing in manner aforesaid, by distress and sale of his or their cattle, goods, and chattels, in case such person or persons shall, after demand made thereof, refuse, or neglect to pay the same to the churchwardens or chapelwardens respectively to whom the same shall have been so awarded; or it shall and may be lawful for such churchwardens or chapelwardens or warden to sue for and recover from such person or persons the amount of the costs so awarded, by action at law, or, if not exceeding fifty pounds, by civil bill, at the election of such churchwardens or chapelwardens or warden.

“XLII. And be it further enacted, that in all cases where, under and by virtue of the said act made in the parliament of Ireland in the twenty-first year of the reign of his late majesty King George the Second, intituled, ‘An Act for disappropriating Benefices belonging to Deans, Archdeacons, Dignitaries, and other Members of Cathedral Churches, and for appropriating others in their stead, and also for the Removal of the Sites of ruined Cathedral Churches,’ any parochial church shall have been or shall be made cathedral and parochial; and in all cases where, under and by virtue of an act made in the parliament of Ireland in the thirty-ninth year of the reign of his late majesty King George the Third, intituled, ‘An Act for the repairing of Cathedral Churches, in Cases where the Parish Churches have been long in Ruins,’ any cathedral church shall have been or shall be made use of as a parish church; and it shall happen that no permanent agreement shall have been or shall be made by and between the dean and chapter or the chapter of such cathedral church, testified under their common seal, and the protestant inhabitants of the parish or union in which such church is or shall be situate, ascertaining the proportions in which such deans and chapters, or chapters, and the inhabitants, shall respectively contribute to the putting and keeping in repair such cathedral and parochial churches, at all times thereafter when such repairs shall be required; it shall be lawful for the archbishop or bishop of the diocese in which such churches are or shall be respectively situate, by any instrument under his archiepiscopal or episcopal seal, finally to adjust, settle, and

STAT. 7 GEO.
4, c. 72. [IR.]

All assessments, and the orders of vestry not appealed from,

and all determinations on appeals, shall be final.

Order of justices not removable by *certiorari*. Costs of appeal may be levied against appellants by distress under warrant of justices, or recovered by action or civil bill.

Where any church has been made cathedral and parochial, &c. and no permanent agreement exists as to proportioning the repairs, such proportion may be settled by the archbishop or bishop.

STAT. 7 GEO.
4, c. 72. [In.]

Before applotment of any sums for repairs, the amount shall be estimated by the archbishop, &c. and the parish assessed as to their share.

Sums to be paid by dean and chapter shall be a charge on their economy fund, or on the rents of the deaneries;

and on non-payment, the rents, &c. may be sequestered.

Election or appointment of churchwardens shall be made annually at vestry on Easter Monday or Tuesday, and an entry made thereof, &c. and the persons so elected, &c. shall be deemed churchwardens (unless exempted

ascertain the proportions in which such deans and chapters, or chapters, and inhabitants of parishes, shall so respectively contribute to the rebuilding, enlarging, putting and keeping in repair at all times thereafter of such cathedral and parochial churches; and the sums necessary and sufficient for such purposes shall be from time to time apportioned and paid accordingly.

“XLIII. And be it further enacted, that the amount of all and every sum and sums which shall from time to time be required to be raised, levied, and paid, for the purpose of rebuilding, enlarging, or putting and keeping in repair of every such church made cathedral and parochial, before any assessment thereof, or of any part or proportion thereof, shall be made on the inhabitants of any parish or union, shall be from time to time estimated, ascertained, and settled by such archbishop or bishop as aforesaid; and thereupon such part and so much of such respective sums as ought, according to any such permanent agreement made or to be made as aforesaid, or as shall be settled and ascertained by any such archbishop or bishop as aforesaid, to be borne and paid by the inhabitants of such parish or union, and no more, shall with all convenient speed be assessed on the inhabitants of such parish or union in vestry, according to the directions in this act in other cases of assessment; and so much and such parts of the amount of such sum or sums as ought, according to such agreement, or according to the allowance or direction of such archbishop or bishop, to be paid and borne by such dean and chapter or chapters, shall be paid and borne by them accordingly, when and as soon as the applotment of such assessment on the inhabitants of such parish, union, or chapelry, of their proportion shall have been finally settled and confirmed as aforesaid, and shall be a charge on the economy fund of such dean and chapter, or chapter, or on the rents, issues, and profits of the respective deaneries, dignities, prebends, and canonries holden by the dean and the respective dignitaries, prebendaries, and canons, in right of any such deanery, dignity, prebend, or canonry, in case there shall not be any economy fund, or that such economy fund shall not be sufficient for the purpose; and in such case the whole of such sum or sums of money, or so much as shall be deficient, shall be paid by such deans, dignitaries, and prebendaries, and canons, out of the issues and profits of such their respective deaneries, dignities, prebends, and canonries, in and according to the proportions to be settled amongst themselves by such deans and chapter or chapters respectively; and in case such proportion shall not be so settled, or in case the sum or sums which ought so to be paid by such deans and chapters, or chapters, shall not be paid to such person or persons as such archbishop or bishop shall by writing signed by him appoint within thirty days next after the confirmation of the applotment of such parochial assessment, it shall be lawful for any such archbishop or bishop to settle and ascertain such proportions as aforesaid, if necessary, and to enforce the payment of all and every sum so proportioned, either by such deans and chapters, or chapters, or by such archbishop or bishop, by sequestration of the rents, issues and profits of any and every such deanery, dignity, prebend, or canonry, as the case may require, until such payment shall be so made by such dean and chapter, or chapter as aforesaid, of the sum or sums which they shall be so liable to bear and pay, and of the costs of such sequestration.

“XLIV. And be it further enacted, that a vestry shall be called and holden on the Monday or Tuesday in Easter week in every year, in every parish, union, and chapelry in Ireland, for the election or nomination or appointment of churchwardens or chapelwardens or warden, and that such election or nomination or appointment shall be duly entered at such vestry in the vestry book of the parish, union, or chapelry; and that every person who shall be so elected or nominated or appointed (and not being exempted or disqualified under the provisions of this act) shall be deemed and taken to be and is hereby declared to be a legal churchwarden or chapelwarden of such parish, union, or chapelry, to all intents and purposes, and shall be compelled and compellable (unless in cases excepted by this act) to take upon him such office, and to perform the duties of the said office in person or by deputy, according to the directions of this act; and the entry of such election or nomination or appointment shall be signed by the incumbent or curate, or minister

acting as such, or one of them, and three of the inhabitants at least, qualified to vote at such vestry, if so many inhabitants shall be present at such vestry, or otherwise by all the inhabitants present at such vestry; and the said act of vestry so signed shall be considered and received as conclusive evidence of the election, nomination, or appointment of such churchwardens or chapelwardens, although the same shall not be signed by such churchwardens or chapelwardens or either of them.

“XLV. And be it further enacted, that in case any churchwarden or chapelwarden of any parish, chapelry, or union shall die, or shall become insolvent, or shall be imprisoned for debt or other cause, or shall become fugitive from Ireland, then and in every such case it shall and may be lawful for the vestry duly assembled in such parish, chapelry, or union, after such notice as by this act is required, to elect a churchwarden or chapelwarden in the room of such churchwarden or chapelwarden so dying, becoming insolvent, imprisoned, or fugitive, and such new churchwarden or chapelwarden shall take the oath prescribed by this act, and shall be to all intents and purposes as fully churchwarden or chapelwarden as if he had been elected on the Easter Monday or Tuesday preceding.

“XLVI.(1) And be it further enacted, that every person who at any time after the commencement of this act shall be elected or nominated or appointed to be churchwarden or chapelwarden, or to be deputy to any churchwarden or chapelwarden of any parish, union, or chapelry in Ireland, shall take and subscribe an oath of office, in the form and to the effect following; (that is to say,)

“I, A. B., do swear, that I will truly, impartially, and faithfully execute the office of churchwarden or chapelwarden [or deputy churchwarden or chapelwarden] within the parish [union or chapelry] of _____ in respect of the parochial rates and assessments, and the collection and management of the same, and the other property and monies of the said parish [union and chapelry].

“So help me God.”

“And such oath shall and may be taken, made, and subscribed by any such person either before the incumbent or curate of the parish, union, or chapelry, or before any ecclesiastical judge, and which oath such incumbent, curate, or judge is hereby respectively empowered to administer, and shall administer, without fee or reward, to any such churchwarden or chapelwarden, or deputy churchwarden or chapelwarden: provided nevertheless, that the said oath of office, or anything contained therein, shall not be construed to exempt any such churchwarden or chapelwarden or deputy from the fulfilment of any duty by law required to be performed by such churchwarden or chapelwarden, and not specified in such oath.

“XLVII. Provided always, and be it enacted, that every preacher or teacher in holy orders, or pretended holy orders, being a minister, preacher, or teacher of a congregation, who shall have taken or shall take the oath, and who shall have made and subscribed or who shall make and subscribe the declaration required to be taken, made, and subscribed by the said act made in the parliament of Ireland in the sixth year of King George the First, for exempting protestant dissenters from certain penalties, shall be thenceforth exempted and incapacitated from being chosen or appointed to bear, and shall be exempted from and incapable of bearing the office of churchwarden or chapelwarden.

“XLVIII. And be it further enacted, that if any person (not being a preacher or teacher exempted or incapacitated by this act) who shall at any time be chosen or otherwise appointed to the office of churchwarden or chapelwarden in any parish, union, or chapelry, within four weeks next after his being so chosen or appointed shall state in writing signed with his name, to the minister of such parish, union, or chapelry, that he is desirous of executing the said office of churchwarden or chapelwarden by deputy, it shall and may be lawful for any such churchwarden or chapelwarden to nominate and appoint a good and sufficient person, who shall be approved by the incumbent or curate of such parish, union, or chapelry, to be his deputy churchwarden or chapelwarden; and such deputy

STAT. 7 GEO. 4, c. 72. [Ia.] or disqualified by this act).

Churchwarden may be elected in the room of one deceased, &c.

Churchwardens shall take oath of office herein set forth.

Oath of office.

Oath, &c. to be administered by incumbent, &c.

Not to exempt churchwardens from duties not specified.

Dissenting preachers exempted and incapacitated from serving office of churchwardens.

Churchwardens may execute office by deputy, approved by the ordinary, &c. who shall take the oath, &c. and for whom the principle shall be answerable.

STAT. 7 GEO.
4, c. 72. [1a.]

churchwarden or chapelwarden shall take and make and subscribe the oath required by this act accordingly: provided always, that every person who shall execute the office of a churchwarden or chapelwarden by deputy, shall be liable and answerable for all money which shall come to the hands of his deputy by reason of such office, and for the acts, neglects, and defaults of such deputy in respect of the collection and disposition of the parish cesses and rates, in such and the same manner, and as fully to all intents and purposes as if such office had been executed in person by such churchwarden or chapelwarden, and as if such monies and all sums assessed and apportioned in vestry had come to the hands of such churchwarden or chapelwarden; and every such churchwarden or chapelwarden shall account for the same accordingly.

No person shall serve the office of churchwarden for two successive years, if any other qualified person can be found.

“XLIX. And be it further enacted, that it shall not be lawful for any vestry in Ireland to elect, nor for any ordinary, incumbent, or curate to appoint any person to fill the office of churchwarden or chapelwarden in and for any parish, union, or chapelry, for the year next and immediately succeeding the year in which such person shall have served for the whole period of one entire year the office of churchwarden or chapelwarden of the same parish, chapelry, or union, in person or by deputy, if it shall be made appear to the satisfaction of such vestry, ordinary, incumbent, or curate, that there is any other person liable to serve and duly qualified to exercise such office in such parish, union, or chapelry.

For providing for the maintenance of parish clerks, assessments shall be made of certain annual sums.

“L. And be it further enacted, that in every parish, union, or chapelry (not being within the county of the city of Dublin, or the suburbs thereof) in which there shall be a church or chapel fit for the celebration of divine service according to the rites and ceremonies of the united church of England and Ireland, a vestry shall be held on the Monday or Tuesday in Easter week in every year, and at every such vestry a sum shall be assessed for the maintenance of the clerk of every such parish, union, or chapelry, and of every chapel of ease, in manner following; that is to say, for the clerk of every such parish, chapelry, or union, in the church or chapel whereof there shall be divine service usually celebrated, not only on Sundays and festival days, but also on common week days, that is to say, on two such common days at least in the week, a sum not exceeding twenty pounds nor less than ten pounds, and in all other cases a sum not exceeding ten pounds nor less than five pounds; and to and for the clerk of every chapel of ease in any parish or union in which there shall be a chapel of ease used and fit for the celebration of divine service as aforesaid, (except such chapel of ease be served only alternately, or in less frequent turns with the church of the parish or union wherein it is situate,) a sum not exceeding ten pounds nor less than five pounds, as and for the maintenance and maintenances of every such clerk respectively for the year then next ensuing, and in satisfaction and lieu of all other fees, dues, or allowances whatever, alleged or claimed to be payable to such parish clerk under any usage or custom; and if such assessment be not so made on the Monday or Tuesday in Easter week as aforesaid, in any parish, union, or chapelry, every such parish, union, or chapelry shall be charged with the sums or maintenance following, as and for the support of any such clerk for the year in and for which such assessment ought to be made and shall have been omitted to be made; that is to say, with the sum of ten pounds for the clerk of any such parish, chapelry, or union, in the church or chapel whereof divine service is usually celebrated in the church or chapel on Sundays, festivals and common days as aforesaid, and in all other cases with the sum of five pounds; and for the clerk of every chapel of ease in which divine service shall be so performed (except in the case of such service in turns as aforesaid) with the sum of four pounds, in satisfaction and lieu of all dues, fees, and allowances as aforesaid, as and for the maintenance of such respective clerks for the year in and for which such respective assessments ought to be made; and in cases where such assessments respectively shall be made, then the sums respectively to be assessed for the maintenances of such clerks respectively, or in cases where no assessment shall be made, then the said sums of ten pounds, five pounds, or four pounds respectively, as the case may be, shall be added to and shall be equally and fairly apportioned amongst the other sums to be assessed by the inha-

If assessment not made, certain lesser sums shall be chargeable on the parish.

archbishop of the province and bishop of the diocese, certified in the manner aforesaid, shall divide and settle the patronage by turns afterwards amongst the several patrons, giving a right to each of them to present oftener or seldomer, according to the true yearly value of the respective parish or parishes whereof they are patrons, the consent of each patron being first had thereto, and entered in the instrument erecting such union, and that such settlement shall be final and binding to all patrons, whether ecclesiastical or lay patrons, and to all parties, for ever.

“V. Provided always, and be it enacted, that any owner or proprietor of any rectory impropriate, having the patronage of the vicarage of the church of such rectory, shall not, by presenting in his turn a clerk to any union, under or by virtue of this act, be judged in law to disappropriate his rectory, unless such person making such presentation shall, by express words contained therein, plainly signify his design and intent to make such disappropriation, and that such presentation be under the hand and seal of the patron so presenting, attested by two or more credible persons; any law, statute, or usage to the contrary notwithstanding.

“VI. And whereas, in many places in Ireland, deans, archdeacons, dignitaries, prebendaries, and canons of cathedral churches have one or more rectory or rectories, or part or parts of one or more rectory or rectories or parishes, and the rectorial tithes thereof respectively, annexed and appropriated to one deanery, archdeaconry, dignity, prebend, or canonry, within which rectories there are vicars endowed, so that such dean, archdeacon, dignitary, prebendary, or canon have not the actual cure of souls within the said parishes or rectories or part of rectories so appropriated to their dignities, the actual cure being in the respective vicars: and whereas the vicarial tithes of such parishes aforesaid, in which there are vicarages endowed, are often of very inconsiderable value, and inadequate in many instances to the suitable maintenance of their respective vicars, by whom they are received: and whereas it will be beneficial, that the rectorial tithes or the parts thereof of the said several and respective parishes or rectories so as aforesaid appropriated to such deanery, archdeaconry, dignity, prebend, or canonry, should be disappropriated, disunited, and divested out of such dean, archdeacon, dignitary, prebendary, or canon, and vested in the respective vicars of the said parishes: be it therefore enacted, that from and after the passing of this act it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, and his majesty's privy council there, with the assent, advice, approbation, and consent of all such persons, and in such manner as is hereinbefore mentioned, to disappropriate, disunite, and divest any rectory or rectories, or part or parts of any rectory or rectories, and the rectorial tithes thereof, from and out of any such deanery, archdeaconry, dignity, prebend, or canonry, and the dean, archdeacon, dignitary, prebendary, or canon thereof respectively, and to unite any such rectory or rectories to their respective vicarages, so that each and every of such rectories, or parts of rectories, when so disappropriated, shall, with its vicarage, form a distinct parish or benefice; and also, in lieu of any rectory or rectories, or part thereof, so disunited, to unite and appropriate to such deanery, archdeaconry, dignity, prebend, or canonry, any benefice or benefices, with cure of souls, in value at least equal to the rectory or rectories, or part or parts of such rectory or rectories, so then disappropriated from such deanery, archdeaconry, dignity, prebend, or canonry; saving always to all deans, deans and chapters, archdeacons, dignitaries, prebendaries, and canons, and all other incumbents, at the time of such disappropriation or union respectively, during the respective incumbencies, and to all patrons and ordinaries, all their respective rights, titles, and interests in and to any such disappropriated rectory or rectories, or part or parts thereof, or to such united benefices, or to any of them; and saving also to every archbishop and bishop, register and schoolmaster, their respective dues, payable out of any and every such parish, rectory, or part thereof, or other benefice; saving also to all tenants who have any lease or leases of any glebe or tithes belonging to any part of such disappropriation, union, parish, rectory, or benefice, all their right and interest during their respective leases.

STAT. 7 GEO.
4, c. 73. [12.]

Owner of rectory impropriate shall not, by presenting to union, disappropriate his rectory by implication.

Lord lieutenant and council empowered to disunite the rectorial tithes from any dignity, and to unite them to their vicarages;

and to unite other benefices to the dignity.

Saving of rights.

STAT. 7 GEO.
4, c. 72. [Ir.]
orders, war-
rants, &c. shall
not be void for
defect in form.

distress, sale, appeal, instrument, or recognizance, had, given, made, provided, or entered into, under the authority or in execution of this present act, shall be rendered void, annulled, prejudiced, weakened, or set aside, in the whole or in part, for or by reason of any defect in form or any other cause, not being of substance; and in case any distress or distresses shall be made and taken for any sum or sums of money to be levied by virtue of this present act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed trespassers, on account of any defect or want of form in the warrant of distress or any proceedings thereon; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards committed by the party or parties distraining, but the person or persons complaining of any such irregularity shall and may recover full satisfaction for the special damage, (if any,) in any action for any such irregularity, if tender of sufficient amends shall not be made by or on behalf of the party distraining before such action be commenced.

Notices of action
against jus-
tices, mini-
sters, church-
wardens, &c.

“LIV. And be it further enacted, that no action, suit, or proceeding, shall be commenced or prosecuted against any justice of the peace, or against any incumbent or curate, or licensed minister acting as such, or against any churchwarden or chapelwarden, or other person or persons, for or by reason of any act, matter, or thing, done in pursuance or execution of or authorized by this present act, until after the expiration of thirty days' notice given to him or them, nor after a sufficient satisfaction or tender of amends shall have been made to the party or parties aggrieved, nor after the expiration of three calendar months next after such act, matter, or thing done; and every such action or suit shall be brought in the county, county of a city or town, where the cause of action shall have arisen, and not elsewhere; and the defendant and defendants in any such action shall and may, at his election, plead specially, or shall or may plead the general issue, not guilty, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance of this act; and if any replevin shall be brought for any cattle, goods, or chattels, seized or distrained by virtue of this act, it shall be lawful and sufficient for any person or persons who shall be defendant or defendants or avowant or avowants in any such replevin, to avow, plead, or make cognizance generally, that he or they took the same cattle, goods, or chattels, as a distress, by force of the statute in that case made and provided, without more particularly setting forth this act or the cause of making or detaining any such distress, or making any other more special plea, avowry, or cognizance; and if it shall appear that the matter on which the cause of action arose was done, or that the distress replevied was made in pursuance of or by authority of this act, or that such action or suit shall have been brought before thirty days' notice thereof was given as aforesaid, or after a sufficient satisfaction made or tendered as aforesaid; or after the time limited as aforesaid for bringing the same, or shall be brought in any other county, county of a city or town, than as aforesaid, the jury shall find for the defendant or defendants, avowant or avowants; and upon such verdict, or if the plaintiff or plaintiffs be nonsuited, or discontinue his, her, or their action, suit, or prosecution after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants, avowant or avowants, shall recover double costs, and have such remedy for the same as any defendant or defendants hath or have in other cases of costs given by law: provided always, that nothing herein contained shall be deemed, taken, or construed to deprive any such defendant or defendants, or avowant or avowants, of the benefit and protection of the act made in the parliament of Ireland in the tenth year of King Charles the First, intituled, ‘An Act for Ease in pleading against troublesome and contentious Suits prosecuted against Sheriffs, Justices of the Peace, Mayors, Constables, and certain other Officers, for the lawful Execution of their Office,’ or of any other act of parliament.

Limitation of
action three
months.

General issue.

Avowry.

Double costs.

10 Car. 1. [Ir.]

Limitation of
actions on
proceedings

“LV. And be it further enacted, that from and after the commencement of this act, no action, suit, civil bill process, complaint, distress, or proceeding shall be commenced, brought, exhibited, lodged, made, or taken for the recovery or

collection of any sum or sums assessed or apportioned on the inhabitants of any parish, union, or chapelry, under the provisions of this act, unless such action, suit, civil bill process, complaint, distress, or proceeding be commenced, brought, exhibited, lodged, made, or taken within six years next after such sum or sums shall have become due and payable.

STAT. 7 GEO.
4, c. 72. [IR.]
for recovery of
assessments.

“LVI. And be it further enacted, that this act may be amended, altered, or repealed in this present session of parliament.

Amendment of
act.

“LVII. And be it further enacted, that this act shall take effect and shall commence from and immediately after the first day of January one thousand eight hundred and twenty-seven.”

Commence-
ment of act.

CLXVIII. STAT. 7 GEORGII 4, c. 73. [IRELAND.] A.D. 1826.

STAT. 7 GEO.
4, c. 73. [IR.]

“An Act to consolidate the Laws in force in Ireland for the Disappropriation of Benefices annexed to Dignities, and for the Appropriation of others in their stead, and for uniting Benefices with Dignities; and to make further Provisions for the like Purposes.”

“Whereas it is desirable that certain provisions contained in several acts in force in Ireland, relating to the appropriation or disappropriation of benefices, and uniting benefices with dignities, should be consolidated and embodied together in one act; and that certain powers should be given to the lord lieutenant or other chief governor or governors, and his majesty’s privy council in Ireland, with respect to the disappropriation of rectories or parts of rectories, and the rectorial tithes thereof, belonging to deans, archdeacons, dignitaries, prebendaries, and canons of cathedral churches, and uniting them to their respective vicarages; be it therefore enacted by the king’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, so much and such parts of several acts, passed in the parliament of Ireland, shall be repealed, as are hereinafter mentioned; that is to say, so much of an act passed in the parliament of Ireland, in the second year of the reign of King George the First, intituled, ‘An Act for real Union and Division of Parishes,’ as relates to the uniting or appropriating of any benefice or benefices to any dignity or prebend, or as relates to any dignitary or prebendary to whose dignity or prebend any benefice shall be united, or as relates to the disappropriation of any rectory by the owner or proprietor of any rectory appropriate, or as relates to the enrolment of any appropriations; and also so much of an act made in the parliament of Ireland in the tenth year of the reign of the said King George the First, (for explaining and amending the said first-recited act, and for other purposes,) as relates to the uniting or appropriating of any benefice or benefices to any dignity or prebend, or to the consent of his majesty, his heirs and successors, to any such union; and also so much of another act passed in the parliament of Ireland in the said tenth year of the reign of the said King George the First, intituled, ‘An Act for amending an Act, intituled, ‘An Act for confirming the several Grants made by Her late Majesty of the First-fruits and Twentieth Parts, payable out of the Ecclesiastical Benefices in this Kingdom; and also for giving the Archbishops and other ecclesiastical Persons four years’ time for the Payment of First-fruits, and for incorporating the Trustees and Commissioners of the said First-fruits,’ as relates to the payment of first-fruits by appropriated benefices; and also so much of an act passed in the parliament of Ireland in the twenty-first year of the reign of King George the Second, intituled, ‘An Act for disappropriating Benefices belonging to Deans, Archdeacons, Dignitaries, and other Members of Cathedral Churches, and for appropriating others in their stead; and also for the Removal of the Sites of ruined Cathedral Churches,’ as relates to the disappropriation of benefices belonging to deans, archdeacons, dignitaries, and other members of cathedral churches, and the appropriation of others in their stead, and as relates to the consent of his majesty, his heirs and successors, to the making of any union, appro-

So much of
recited acts as
relates to the
appropriation.
&c. of benefices
to dignities
repealed, viz.
2 Geo. 1, (1.)
c. 14, ss. 1, 2,
5, 6;

10 Geo. 1, (1.)
c. 6, ss. 1, 3;

10 Geo. 1, (1.)
c. 7, s. 4;

21 Geo. 2, (1.)
c. 8, ss. 1, 5, 11.

STAT. 7 GEO.
4, c. 73. [Ia.]

Where benefices appropriated to deaneries, &c. are inconveniently situated, lord lieutenant, &c. with consent of the patron, may disappropriate them and appropriate others;

or may unite such benefices to other parishes; or erect them into separate benefices. General saving of rights.

Lord lieutenant and council, &c. may appropriate benefices with cure to dignities without cure, &c. General saving of rights.

For determining the right of presentation where there are distinct patrons of the benefices, &c. united.

priation, or disappropriation; and so much and such parts as aforesaid of the said several acts respectively are hereby repealed accordingly.

“II. And be it further enacted, that from and after the passing of this act, whenever it shall happen that any dean, archdeacon, dignitary, prebendary, or canon of any cathedral church in Ireland, shall have one or more benefice or benefices appropriated to any such deanery, archdeaconry, dignity, prebend, or canonry, situated at great distances from such deanery, archdeaconry, dignity, prebend, or canonry, or from each other, it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, with the assent of the major part of his majesty's privy council in Ireland, in council assembled, six at least assenting, and with the advice and approbation of the archbishop of the province and bishop of the diocese, certified under their hands and archiepiscopal or episcopal seals, and with the consent of the king's majesty, where he shall be patron, signified in such manner as hereinafter directed, and with the consent of all other patrons, and of all incumbents, certified under their hands and seals respectively, and attested by two or more credible witnesses, to disappropriate such benefice or benefices, and to disunite the same from such deanery, archdeaconry, dignity, prebend, or canonry, and to unite and appropriate to such deanery, archdeaconry, dignity, prebend, or canonry, any other parish or parishes, of a value at least equal to such disappropriated benefice or benefices, and which may be contiguous or convenient to each other, or to such deanery, archdeaconry, dignity, prebend, or canonry, and afterwards to unite such disappropriated benefice or benefices to such other parish or parishes, or to unite such other parish or parishes to them, or any of them, as lie convenient for such an union, or to erect such disappropriated benefice or benefices into a separate and distinct benefice, or into separate and distinct benefices; saving always to all deans, deans and chapters, archdeacons, dignitaries, prebendaries, and canons, and all other incumbents, at the time of any such union, appropriation, or disappropriation, during their respective incumbencies, and to all patrons and ordinaries, all their respective rights, titles, and interests in and to such united or appropriated or disappropriated benefices, or to any of them; and saving to any and every archbishop and bishop, register and schoolmaster, their respective dues payable out of such parish so united; saving also to all tenants who have any lease or leases of any glebes or tithes belonging to any part of such union, or appropriation or disappropriation, all their rights and interests during their respective leases.

“III. And be it further enacted, that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, with the assent, advice, approbation, and consent of his majesty's privy council, and of such persons and in such manner as is hereinbefore directed, to unite or appropriate any benefice or benefices having actual cure of souls to a dignity or prebend without cure, or to unite and appropriate any benefice or benefices without cure of souls to a dignity or prebend having actual cure of souls annexed; saving to every dean, dignitary, prebendary, and incumbent, at the time of such union or appropriation, during their respective incumbency, and to the respective patrons and ordinaries, all their right, title, and interest in and to such united or appropriated benefices; and saving also all rights to the dean and chapter of each cathedral church, and to the prebendary of the prebend to which any benefice with cure of souls, or without cure of souls, shall be united or appropriated.

“IV. And be it further enacted, that where any of the deaneries, archdeaconries, dignities, prebends, canonries, parishes, or benefices, to be united or appropriated as aforesaid, shall have several and distinct patrons, and that the king's majesty, his heirs and successors, is, are, or shall be entitled to the presentation to any of them, in such case his majesty, his heirs and successors, shall immediately from and after such union, upon the then first vacancy, have the first presentation of an incumbent unto such union, by the name by which it shall be called in the instrument erecting the same, and that the lord lieutenant or other chief governor or governors, and his majesty's privy council in Ireland, with the advice and approbation of the

archbishop of the province and bishop of the diocese, certified in the manner aforesaid, shall divide and settle the patronage by turns afterwards amongst the several patrons, giving a right to each of them to present oftener or seldomer, according to the true yearly value of the respective parish or parishes whereof they are patrons, the consent of each patron being first had thereto, and entered in the instrument erecting such union, and that such settlement shall be final and binding to all patrons, whether ecclesiastical or lay patrons, and to all parties, for ever.

“V. Provided always, and be it enacted, that any owner or proprietor of any rectory impropriate, having the patronage of the vicarage of the church of such rectory, shall not, by presenting in his turn a clerk to any union, under or by virtue of this act, be judged in law to disappropriate his rectory, unless such person making such presentation shall, by express words contained therein, plainly signify his design and intent to make such disappropriation, and that such presentation be under the hand and seal of the patron so presenting, attested by two or more credible persons; any law, statute, or usage to the contrary notwithstanding.

“VI. And whereas, in many places in Ireland, deans, archdeacons, dignitaries, prebendaries, and canons of cathedral churches have one or more rectory or rectories, or part or parts of one or more rectory or rectories or parishes, and the rectorial tithes thereof respectively, annexed and appropriated to one deanery, archdeaconry, dignity, prebend, or canonry, within which rectories there are vicars endowed, so that such dean, archdeacon, dignitary, prebendary, or canon have not the actual cure of souls within the said parishes or rectories or part of rectories so appropriated to their dignities, the actual cure being in the respective vicars: and whereas the vicarial tithes of such parishes as aforesaid, in which there are vicarages endowed, are often of very inconsiderable value, and inadequate in many instances to the suitable maintenance of their respective vicars, by whom they are received: and whereas it will be beneficial, that the rectorial tithes or the parts thereof of the said several and respective parishes or rectories so as aforesaid appropriated to such deanery, archdeaconry, dignity, prebend, or canonry, should be disappropriated, disunited, and divested out of such dean, archdeacon, dignitary, prebendary, or canon, and vested in the respective vicars of the said parishes: be it therefore enacted, that from and after the passing of this act it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, and his majesty's privy council there, with the assent, advice, approbation, and consent of all such persons, and in such manner as is hereinbefore mentioned, to disappropriate, disunite, and divest any rectory or rectories, or part or parts of any rectory or rectories, and the rectorial tithes thereof, from and out of any such deanery, archdeaconry, dignity, prebend, or canonry, and the dean, archdeacon, dignitary, prebendary, or canon thereof respectively, and to unite any such rectory or rectories to their respective vicarages, so that each and every of such rectories, or parts of rectories, when so disappropriated, shall, with its vicarage, form a distinct parish or benefice; and also, in lieu of any rectory or rectories, or part thereof, so disunited, to unite and appropriate to such deanery, archdeaconry, dignity, prebend, or canonry, any benefice or benefices, with cure of souls, in value at least equal to the rectory or rectories, or part or parts of such rectory or rectories, so then disappropriated from such deanery, archdeaconry, dignity, prebend, or canonry; saving always to all deans, deans and chapters, archdeacons, dignitaries, prebendaries, and canons, and all other incumbents, at the time of such disappropriation or union respectively, during the respective incumbencies, and to all patrons and ordinaries, all their respective rights, titles, and interests in and to any such disappropriated rectory or rectories, or part or parts thereof, or to such united benefices, or to any of them; and saving also to every archbishop and bishop, register and schoolmaster, their respective dues, payable out of any and every such parish, rectory, or part thereof, or other benefice; saving also to all tenants who have any lease or leases of any glebe or tithes belonging to any part of such disappropriation, union, parish, rectory, or benefice, all their right and interest during their respective leases.

STAT. 7 GEO.
4, c. 73. [18.]

Owner of rectory impropriate shall not, by presenting to union, disappropriate his rectory by implication.

Lord Lieutenant and council empowered to disunite the rectorial tithes from any dignity, and to unite them to their vicarages;

and to unite other benefices to the dignity.

Saving of rights.

STAT. 7 GEO.
4, c. 73. [I.R.]

Lord lieutenant and council may, by the same instrument disunite benefices or rectories from dignities, and unite such rectories to their vicarages, and appropriate benefices to dignities in lieu of disappropriations.

Disappropriated rectories shall be in the same patronage as the vicarage;

and appropriated benefices in the same patronage as the deanery.

Lord lieutenant and council, &c. may direct the time and manner in which appropriation or disappropriation shall take effect.

If no time specified, appropriation, &c. shall not take effect until vacancy of dignity.

Dignitary not to be discharged from residence on benefice, but shall be subject to duties, &c. as a dignitary.

“VII. Provided always, and be it enacted, that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, and his majesty’s privy council in Ireland, if they shall so think fit, with the assent, advice, approbation, and consent of such persons, and in such manner as is hereinbefore mentioned, by the same instrument and at the same time that they shall disappropriate any benefice or benefices from any deanery, archdeaconry, dignity, prebend, or canonry, by virtue of this act, to disappropriate, disunite, and divest any rectory or rectories, or part or parts of any rectory or rectories, and the rectorial tithes thereof, from and out of any such dean, archdeacon, dignitary, prebendary, or canon, and reunite them to their respective vicarages, and to appropriate to such deanery, archdeaconry, dignity, prebend, or canonry, any benefice or benefices with cure of souls; and that in such case it shall be sufficient, if the benefice or benefices so to be appropriated in the place and stead of such rectory or rectories, or part or parts of such rectory or rectories so disappropriated, shall be equal in value to the benefice, or to the rectory or part of a rectory so then disappropriated, or to both together, or to the benefices or rectories, or parts of rectories, or to all together; anything in this act contained to the contrary notwithstanding.

“VIII. And be it further enacted, that every such rectory or part of a rectory, when so disappropriated as aforesaid, and united to their respective vicarages under this act, shall become, and shall for ever remain, from the time when such union shall take effect, in the gift and at the disposal of the patron or patrons who was or were entitled to the presentation to such respective vicarages before and at the time of such union; and that every benefice so to be appropriated as aforesaid to any deanery, archdeaconry, dignity, prebend, or canonry, shall, from the time when such union and appropriation shall take effect, be and remain in the gift and at the disposal of the patron or patrons, whether the king’s majesty or any other person, who at the time when such appropriation as aforesaid shall take effect shall be entitled to the presentation or appointment to the deanery, archdeaconry, dignity, prebend, or canonry, to which such benefice or benefices shall be so appropriated.

“IX. And be it further enacted, that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland, and his majesty’s privy council there, if they shall think proper so to do, with the advice and consent of the archbishop of the province and bishop of the diocese, certified in manner as aforesaid, and with the consent of the king’s majesty, when he shall be patron, certified in such manner as by this act is directed, and with the consent of all other patrons and of all incumbents, certified under their hands and seals respectively, and attested by two or more credible witnesses, in and by the instrument by which any union or appropriation, or disunion or disappropriation, shall be made by virtue of this act, to direct, regulate, and appoint the time or times when, and the manner, conditions, and regulations in, on, and under which, according to the consent so given as aforesaid, any such union or appropriation, or disunion or disappropriation, shall first operate and take effect, whether during the incumbency of any dean, archdeacon, dignitary, prebendary, or canon, or not; and in case no direction, regulation, or appointment shall be expressly made in manner aforesaid, as to the time or times when any such union or appropriation, or disunion or disappropriation, shall first operate and take effect, the same shall not operate or take effect until such time as the deanery, archdeaconry, dignity, prebend, or canonry to which such union or appropriation, or disunion or disappropriation, shall relate, shall become vacant and destitute of an incumbent.

“X. Provided always, and be it enacted, that every dean, archdeacon, dignitary, prebendary, or canon, to whose dignity, prebend, or canonry, any benefice with cure of souls shall be united in pursuance of this act, shall not be discharged of residence in the church united to such dignity, prebend, or canonry, but shall be obliged to such residence as is required by an act passed in the fifth year of his present majesty, intituled, ‘An Act to consolidate and amend the Laws for enforcing the Residence of Spiritual Persons on their Benefices; to restrain Spiritual

Persons from carrying on Trade or Merchandize; and for the Support and Maintenance of Stipendiary Curates in Ireland; and every such dean, archdeacon, dignitary, prebendary, or canon, shall also be and remain subject, as a dignitary, prebendary, or canon, of such cathedral church, to all jurisdictions, duties, and penalties, in like manner as such dignitary, prebendary, or canon was subject to at the time of making such union.

STAT. 7 GEO.
4, c. 73. [Ir.]

“XI. And be it further enacted, that in all unions or appropriations, and in all disunions or disappropriations to be made by virtue of this act, of any dignities or benefices, the patronage whereof is or shall be in the king’s majesty, his heirs, or successors, the consent of the lord lieutenant or other chief governor or governors for the time being, under his or their hands and seals, to the making of such union or appropriation, or disunion or disappropriation, shall be to all intents and purposes as good and valid in law as if the consent of his majesty, his heirs, and successors, were thereunto signified by letters patent under the great seal of Ireland.

The king’s assent, as patron, may be signified by the lord lieutenant.

“XII. And be it further enacted, that where any benefice or benefices shall be united or appropriated to any dignity or prebend, in pursuance of this act, and the incumbent of such benefice or benefices shall die, resign, or be removed, then the next incumbent or person succeeding in the place of him so dying, resigning, or being removed, shall be chargeable with, and shall accordingly pay the first-fruits of such benefice or benefices so united and appropriated, as if he were legally collated or instituted and inducted to the same; and to the end that such incumbent, dignitary, or prebendary, may be respectively charged with such first-fruits, the archbishops and bishops of Ireland shall, and they are hereby respectively required, each in their respective dioceses, to make and return to the first-fruits office a certificate of the death, removal, or resignation of any such incumbent or incumbents, of such benefice or benefices so united or appropriated, and the name of the next incumbent or person succeeding in the place of him so dying, resigning, or being removed as aforesaid, within such time and in such and the same manner as certificates are or usually have been made and returned upon the institution or collation of incumbents to livings or benefices in Ireland.

Where benefice is united to a dignity, incumbent, &c. succeeding shall pay the first-fruits.

Bishops shall return certificate of death, &c. of incumbent, and the name of the successor, &c.

“XIII. And be it further enacted, that all and every union or appropriation, or disunion or disappropriation, which shall be made by virtue of this act, shall be enrolled in the rolls office of the high court of Chancery in Ireland, within six calendar months next after the making thereof, for the enrolment whereof respectively the fee of thirteen shillings and four-pence shall be paid, and no more; and that every instrument under the hands of the lord lieutenant or other chief governor or governors of Ireland, and his majesty’s privy council there, testifying any such union, appropriation, or disappropriation, shall contain therein a clause or proviso that the same shall be enrolled within six calendar months after the date thereof, or else to be void.”

Unions, &c. shall be enrolled in Chancery within six months, &c.

CLXIX. STAT. 7 GEORGII 4, c. 74(1). [IRELAND.] A.D. 1826.

“An Act for consolidating and amending the Laws relating to Prisons in Ireland.”

STAT. 7 GEO.
4, c. 74. [Ir.]

“LXVIII. And be it further enacted, that it shall and may be lawful for each and every grand jury in Ireland, and they are hereby required at any assizes or presenting term, to appoint a proper and discreet person, being duly ordained in holy orders and of the established church, to be chaplain of the several gaols of and in their respective counties, counties of cities and counties of towns; and it shall and may be lawful for every such grand jury, if they shall be so required by the court, also to appoint a proper and discreet person, being a protestant dissenting minister, to be protestant dissenting chaplain thereof; and also if they shall be so required by the court, to appoint a priest or clergyman of the Roman catholic church, to be Roman catholic chaplain thereof: provided always, that every person so appointed shall be approved of by the court, and that where there is only one gaol of such county, county of a city or county of a town, in the appointment of such chaplain preference shall be given to some clergyman of the established church officiating

Appointment of chaplains to county gaols.

Proviso for approval by the court.

(1) The general provisions of this statute were amended by Stat. 1 & 2 Gul. 4, c. 48, and Stat. 6 & 7 Gul. 4, c. 51.

STAT. 7 GEO.
4, c. 74. [12.]

Duty of
chaplains.

within the parish in which the gaol shall be situated, if duly qualified; and in like manner to some protestant dissenting minister, and some clergyman of the Roman catholic church, if duly qualified, acting as such within the said parish.

“LXIX. And be it further enacted, that every such chaplain shall read prayers in the said gaol for which he shall be appointed, on every Sunday in the year; to wit, the protestant chaplain of the established church to such of the prisoners as shall be protestants of the established church, and the protestant dissenting minister to such of the prisoners who shall be protestant dissenters, and the Roman catholic chaplain to such of the prisoners as shall be Roman catholics; and that every such chaplain shall likewise visit each of the said prisons twice at least in every week, exclusive of his attendance on Sunday; that on such visits he shall go into every room and cell in the prison wherein any prisoner so within his charge shall be confined, and converse with and exhort such of the said prisoners respectively as are willing to listen to his admonitions; and that each of the said chaplains shall attend every malefactor in their respective prisons who shall be within his charge as aforesaid, or who may desire his assistance, previous to and down to the time of his execution, in order to administer to such prisoner or prisoners the functions of his holy office; and that every such chaplain shall by alternate weeks, on the days appointed for the delivery of provisions or serving the same to the prisoners, inspect in his turn the bread or other provisions provided for any prisoner of whatsoever religion, and take care that the same are of good and wholesome quality, and of sufficient weight; and every such chaplain shall keep a journal in which he shall enter the time of his attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, to be produced when required to the board of superintendence.

Salaries to
chaplains.

“LXX. And be it further enacted, that it shall and may be lawful for the grand jury, at the spring assizes and Easter term in every year after such appointment, to present a reasonable sum, not exceeding the sum of one hundred pounds and not being less than fifty pounds, in the county and county of the city of Dublin, and not exceeding fifty pounds nor being less than thirty pounds within any other county, or county of a city, or county of a town in Ireland, for every such chaplain, as a recompense for his services aforesaid; provided it shall fully appear to the said grand juries respectively, and to the court or judge, that such chaplains duly and regularly executed the several duties of their said offices respectively; and that the sums presented for all the chaplains aforesaid in one prison or district shall be of the same amount, unless the share or any part of the share of either shall at any time be withheld by reason of any misconduct or neglect of duty.

Where there
are more than
two gaols in
any county,
&c. more than
one chaplain
may be
appointed.

“LXXI. Provided always, and be it enacted, that in any case where it shall happen that there shall be more than two gaols of and within any county, county of a city, or county of a town, it shall be lawful for the grand jury of such county, county of a city, or county of a town, on the direction of the court, to appoint more than one chaplain for the same: provided always, that the whole sum to be given as a salary or salaries to any number of chaplains shall not exceed the amount of salary authorized to be paid to any one chaplain as aforesaid; and that a preference shall be given in the appointment of such chaplains to the clergy ordinarily officiating in the several parishes within which such gaols may be respectively situated, if properly qualified.”

STAT. 7 GEO.
4, c. 77.

CLXX. STAT. 7 GEORGII 4, c. 77 (1). A.D. 1826.

“An Act to extend to Charing Cross, the Strand, and Places adjacent, the Powers of an Act for making a more convenient Communication from Mary-le-bone Park; and to enable the Commissioners of His Majesty’s Woods, Forests, and Land Revenues to grant Leases of the Site of Carlton Palace.”

Commissioners
may take the
burial ground

“XXVIII. And be it further enacted, that it shall and may be lawful for the said commissioners acting in the execution of this act to take or use, for the purposes of this act, so much of the burial ground of the parish of Saint Martin in the

Fields as lies on the south side of the said church, as may be required for the purpose; and the ground so taken, and the fee-simple and inheritance thereof, shall be and are hereby vested in the king's majesty, his heirs and successors, for the purposes of this act.

STAT. 7 GEO.
4, c. 77.

of St. Martin
in the Fields.

"XXIX. And be it further enacted, that the said commissioners acting in execution of this act shall be and are hereby empowered and required, out of the monies to be applied for the purposes of this act, to purchase or otherwise provide a piece or parcel of ground, to be approved by the Lord Bishop of London and the vicar of the parish of Saint Martin in the Fields for the time being, to be appropriated in enlarging that part of the present burial ground as is situated on the north and east sides of the said church, such additional ground to be used as and for a burial ground for the parishioners of the said parish of Saint Martin in the Fields, and to procure the same to be consecrated and settled for that purpose, in such manner as the Lord Bishop of London for the time being, or such person as he shall appoint, shall direct; and to cause such burial ground to be made under pavement, and inclosed in such manner as the Lord Bishop of London and the vicar of the said parish of Saint Martin in the Fields for the time being shall approve: and the said commissioners shall cause a proper gate or gates to be erected as an entrance thereto, with locks and other fastenings; and such new burial ground, and the soil thereof, and the freehold and inheritance of the same in fee-simple, shall be vested in the same manner, and shall be subject to the same peculiar jurisdictions and visitations, as the present burial ground of the parish of Saint Martin in the Fields.

Commissioners
to provide a
new burial
ground.

"XXX. And be it further enacted, that the graves in the present burial ground of the parish of Saint Martin in the Fields, on the south side of the said church aforesaid, shall be as little disturbed, and as little damage shall be done to the grave stones therein, as reasonably may be.

The graves to
be disturbed as
little as may be.

"XXXI. And be it further enacted, that whenever it shall be necessary, in pursuance and execution of this act, to open or disturb any grave or graves, or any burial vault or vaults, in the said present burial ground of the parish of Saint Martin in the Fields, on the south side of the said church aforesaid, it shall be lawful for the heirs, executors, administrators, relations, or friends of any person or persons who shall have been interred or deposited in such grave or graves, vault or vaults, with the consent of the vicar and churchwardens of the said parish, or the major part of them, to remove and carry away the remains of any such person or persons, and place the same in such new burial ground, or any other churchyard or consecrated ground, in such manner as the Lord Bishop of London for the time being, or such person as he may appoint, shall direct; and that the expenses of such removing, carrying away, and placing (not exceeding in any one case the sum of ten pounds), shall be paid by the said commissioners acting in the execution of this act, out of the monies to be applied for the purposes of this act; and that the remains of such person or persons as shall have been interred or deposited in the graves or vaults so to be opened and disturbed as aforesaid, which shall not be removed or carried away as aforesaid, shall, (except such graves or vaults shall be finally closed up,) at the expense of the said commissioners acting in the execution of this act, to be paid out of the monies to be raised by virtue of this act, be removed from such graves or vaults into and be interred in such new burial ground as aforesaid, in such manner as the Lord Bishop of London for the time being, or such person as he shall appoint, shall direct.

Bodies dis-
turbed to be
removed.

"XXXII. And be it further enacted, that the grave stones laid in the said burial ground of the parish of Saint Martin in the Fields on the south side of the said church shall be removed into and put up and laid in such new burial ground as aforesaid, in such manner as the Lord Bishop of London for the time being, or such person as he shall appoint, shall direct, and the expense thereof defrayed by the said commissioners acting in the execution of this act, out of the monies to be raised by virtue of this act.

Grave stones
to be removed.

"XXXIII. And whereas the vicar of the said parish of Saint Martin in the Fields is seised and possessed of eleven messuages or dwelling houses, with their

Commissioners
may contract

STAT. 7 GEO.
4, c. 77.

with the vicar of St. Martin in the Fields for the conveyance of certain messuages belonging to the said vicarage, in exchange for messuages belonging to the crown.

appurtenances, situate, lying, and being in Saint Martin's lane, and the churchyard of and in the said parish of Saint Martin in the Fields aforesaid, belonging to the said vicarage, and part of the glebe thereof, ten of which said messuages or dwelling houses are subject to leases granted thereof by the said vicar or his predecessors for terms of forty years, commencing at different periods, renewable at the end of every fourteen years, under certain annual rents, amounting together to the sum of sixty pounds or thereabouts; and the other of the said messuages or dwelling houses is now in the occupation of the said vicar: and whereas the said several messuages or dwelling houses, with their appurtenances, are part of the premises described in the herein before-mentioned plan, and the same being required to carry into effect and complete the improvements herein before-mentioned, the said commissioners for executing this act have agreed with the said vicar, by and with the consent and approbation of the Lord Bishop of London, for a conveyance to be made to the said commissioners of all the right, title, and interest of the said vicar in and to the several messuages or dwelling houses and premises herein before-mentioned, in exchange for a conveyance by the said commissioners on the part of his majesty, his heirs and successors, to the said vicar and his successors, of freehold messuages or dwelling houses, buildings, and premises, belonging to the crown, situate within the cities of London or Westminster, the same being of equal rent and value; be it therefore enacted, that it shall and may be lawful for the said commissioners for executing this act, and for the vicar of the said parish of Saint Martin in the Fields for the time being, to contract and agree for a conveyance to the said commissioners of all the right, title, and interest of the said vicar in and to the said eleven several messuages or dwelling houses, with the appurtenances, so vested in him as aforesaid, in exchange for a conveyance by the said commissioners, on the part of his majesty, his heirs or successors, to the said vicar and his successors, of freehold messuages or dwelling houses and hereditaments belonging to the crown, situate and being in the said cities of London and Westminster, or one of them, of equal rent and value; and the said last mentioned messuages or dwelling houses and premises shall, when so conveyed as aforesaid, be held by the said vicar and his successors, to, for, and upon, and under and subject to such and the same trusts, ends, intents, and purposes, as the said several messuages or dwelling houses and hereditaments so to be conveyed by him to the said commissioners, in exchange as aforesaid, are now subject to; provided, that it shall not be lawful for the said vicar and his successors at any time hereafter to grant any lease or leases of the said several messuages or dwelling houses and hereditaments so to be conveyed to the said vicar in exchange as aforesaid, or any of them, without reserving to the said vicar and his successors for the time being for ever such clear annual rent or rents as shall be equal to one moiety or half part at least of the gross yearly value of the premises to be comprised in and demised by such lease or leases; such rents or rent to be made payable to the vicar of the said parish and his successors during the whole term or time of the continuance of such lease or leases respectively.

No lease to be granted by the vicar, of such messuages, without reserving a rent equal to half the value.

Churchwardens may place a bar or chain across the west end of the new street during divine service on Sundays, &c.

"XXXIV. Provided always, and be it further enacted, that it shall and may be lawful to and for the churchwardens of the parish of Saint Martin in the Fields aforesaid, and they are hereby authorized and empowered, to place or cause to be placed a bar or chain extending across the carriageway at the west end of the said new street to be made on the south side of the said church as aforesaid, in order to prevent noise by the passing and repassing of carriages along the said street during the time of divine service on Sundays, and on Christmas Day, Good Friday, and fast or thanksgiving days by proclamation; provided that such bar or chain shall not be used at any other time or times than during the time of divine service as aforesaid.

Indemnity to vicar, &c. for church dues.

"XLIV. And whereas by reason of the taking down of the several dwelling houses and other buildings required for the purposes of this act, a deficiency may arise in the produce of the annual stipends, Easter dues, obventions, or oblations, and also in the annual produce of church duties for burials, marriages, and christenings (usually called surplice fees and burial ground fees), and other perquisites

and payments payable in respect thereof to the vicars, rectors, churchwardens, clerks in orders, sextons, and other officers belonging to the respective churches of the parishes herein mentioned; be it therefore enacted, that the said commissioners shall yearly and every year pay and make good, or cause to be paid and made good, unto the vicars or rectors of the said respective parishes for the time being, for the use of themselves and the clerks in orders and other officers respectively, all such deficiencies as shall or may arise or happen by reason or means of anything done in the execution of this act, in the produce of the said annual stipends, Easter dues, oblations, or obventions, and church duties above mentioned, from and after Easter Tuesday which will be in the year of our Lord one thousand eight hundred and twenty-seven; which deficiencies shall be estimated and ascertained conclusively at or upon the average produce of such annual stipends, Easter dues, oblations, or obventions, and church duties respectively, for the three years immediately preceding Easter Tuesday one thousand eight hundred and twenty-six, compared with the produce thereof for each subsequent year, and the first yearly payment of which deficiencies shall be made on Easter Tuesday one thousand eight hundred and twenty-eight.”

STAT. 7 GEO.
4, c. 77.

CLXXI. STAT. 7 GEORGII 4, CAP. CXVI. A.D. 1826.

STAT. 7 GEO.
4, CAP. CXVI.

“An Act for extinguishing Tithes, and customary Payments in lieu of Tithes, within that Part of the Parish of Saint Botolph without Aldersgate which is situate in the City of London, and for making Compensation in lieu thereof; and for increasing the Provision for the Incumbent of the same Parish.”

CLXXII. STAT. 7 & 8 GEORGII 4, CAP. I. A.D. 1827.

STAT. 7 & 8
GEO. 4,
CAP. I.

“An Act for building a Church or Chapel of Ease within the Township of Oulton-cum-Woodlesford, in the Parish of Rothwell, in the West Riding of the County of York.”

CLXXIII. STAT. 7 & 8 GEORGII 4, cap. x. A.D. 1827.

STAT. 7 & 8
GEO. 4, cap. x.

“An Act for vesting in the Dean and Chapter of the Cathedral Church of Saint Peter, in Exeter, certain Messuages and Lands situate within the Close of the said Cathedral Church, belonging to the Archdeacons of Totnes, Barnstaple, and Cornwall, founded in the said Cathedral Church, in consideration of certain perpetual yearly Sums to be payable to the said several Archdeacons and their Successors; and for enabling the said Dean and Chapter to grant Leases of the same Premises.”

CLXXIV. STAT. 7 & 8 GEORGII 4, CAP. XXIII. A.D. 1827.

STAT. 7 & 8
GEO. 4,
CAP. XXIII

“An Act for providing a further Maintenance for the Rector of the Parish of Saint John Horselydown, within the Town and Borough of Southwark, in the County of Surrey.”

CLXXV. STAT. 7 & 8 GEORGII 4, c. 25 (1). A.D. 1827.

STAT. 7 & 8
GEO. 4, c. 25.

“An Act for the Relief of certain Spiritual Persons and Patrons of Ecclesiastical Preferments from certain Penalties; and rendering valid certain Bonds, Covenants, or other Assurances, for the Resignation of Ecclesiastical Preferments.”

“Whereas by an act made and passed in the thirty-first year of the reign of her late majesty Queen Elizabeth, intituled, ‘An Act against Abuses in Elections of Scholars and Presentations to Benefices,’ it is enacted in the words or to the effect following; to wit, ‘For the avoiding of simony and corruption in presentations, collations, and donations of and to benefices, dignities, prebends, and other livings and promotions ecclesiastical, and in admissions, institutions, and inductions to the same, be it further enacted by the authority aforesaid, that if any person or persons, bodies politic and corporate, shall or do at any time after the end of forty

31 Eliz. c. 6.

STAT. 7 & 8
GEO. 4, c. 25.

No presentation to any spiritual office, made before 9th April, 1827, shall be void on account of any agreement to resign when another person, specially named, shall become qualified to take the same.

days next after the end of this session of parliament, for any sum of money, reward, gift, profit, or benefit, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance of or for any sum of money, reward, gift, profit, or benefit whatsoever, directly or indirectly present or collate any person to any benefice with cure of souls, dignity, prebend, or living ecclesiastical, or give or bestow the same for or in respect of any such corrupt cause or consideration, that then every such presentation, collation, gift, and bestowing, and every admission, institution, investiture, and induction thereupon, shall be utterly void, frustrate, and of none effect in law; and that it shall and may be lawful to and for the queen's majesty, her heirs and successors, to present, collate unto, or give or bestow every such benefice, dignity, prebend, and living ecclesiastical, for that one time or turn only; and that all and every person or persons, bodies politic and corporate, that from thenceforth shall give or take any such sum of money, reward, gift, or benefit, directly or indirectly, or that shall take or make any such promise, grant, bond, covenant, or other assurance, shall forfeit and lose the double value of one year's profit of every such benefice, dignity, prebend, and living ecclesiastical; and the person so corruptly taking, procuring, seeking, or accepting any such benefice, dignity, prebend, or living, shall thereupon and from thenceforth be adjudged a disabled person in law to have or enjoy the same benefice, dignity, prebend, or living ecclesiastical; and whereas since the passing of the said act many spiritual persons, or others, before or after the presentation, or collation, or appointment by donation, of spiritual persons to spiritual offices, being benefices with cure of souls, dignities, prebends, or livings ecclesiastical, have made, given, or entered into certain engagements by promise, agreement, grant, bond, covenant, or other assurance, to or with the patron or patrons of such spiritual offices, or to or with some other person or persons, for the resignation of such spiritual offices, to the intent or purpose that some person specially named or described in such engagement, or one of two persons so specially named or described, should be presented, collated, or nominated to such spiritual offices respectively, or that the same should be given or bestowed to or upon him, or for the resignation thereof upon notice or request, or otherwise, when a person, or one of two persons, so specially named or described, should become qualified by age or otherwise to accept and take the same; and whereas it has lately been adjudged and determined in law that such engagements as aforesaid come within the intent and meaning of the said recited act; and whereas the spiritual persons and patrons, and other persons, who have been parties to such engagements, will suffer great hardship and detriment unless they be relieved from the pains, penalties, forfeitures, loss, or disabilities to which they have erroneously, but without having wilfully acted in contravention of the said recited act, rendered themselves liable, by reason of having given or entered into, or accepted or taken, such engagements; for remedy thereof be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that no presentation, collation, gift, or bestowing of any such spiritual office to or upon any spiritual person, before the ninth day of April in the present year of our Lord one thousand eight hundred and twenty-seven, nor any admission, institution, investiture, or induction thereupon, shall be void, frustrate, or of no effect in law, for or by reason of any such engagement made, given, or entered into by such spiritual person, or any other person or persons, to or with the patron or patrons of such spiritual office, or to or with any other person or persons, for the resignation of the same, to the intent or purpose manifested by the terms of such engagement, that some person specially named or described therein, or one of two persons so specially named or described, should be presented, collated, or nominated to such spiritual office, or that the same should be given or bestowed to or upon him, or for the resignation thereof upon notice or request, or otherwise, when a person, or one of two persons, so specially named or described, should become qualified, by age or otherwise, to accept and take the same; and that it shall not be lawful for the king's most excellent majesty, his heirs or successors, for or by reason of such

engagement as aforesaid, to present or collate unto, or give or bestow such spiritual office; and that such spiritual person, and patron or patrons, or other person or persons respectively, shall not be liable to any pains, penalty, forfeiture, loss, or disability, nor to any prosecution or other proceeding, civil, criminal, or penal, in any court ecclesiastical or temporal, for or by reason of his, her, or their having made, given, or entered into, or accepted or taken, such engagement as aforesaid; and that every such presentation or collation, or gift, or bestowing, before the said ninth day of April in the present year of our lord one thousand eight hundred and twenty-seven, and every admission, institution, investiture, and induction thereupon, shall be as valid and effectual in the law, to all intents and purposes whatsoever, as if such engagement had not been made, given, or entered into, or accepted or taken; anything in the said recited act, or in any other act, statute, or canon, or any law to the contrary in anywise notwithstanding.

“II. And be it further enacted, that every such engagement which hath been made, given, or entered into, at any time before the said ninth day of April, in the present year of our Lord one thousand eight hundred and twenty-seven, for the resignation of any benefice with cure of souls, dignity, prebend, or living ecclesiastical, to the intent or purpose, manifested by the terms of such engagement, that some person specially named or described therein, or one or two persons so specially named or described, should be presented, collated, or nominated to such spiritual office, or that the same should be given or bestowed to or upon him, or for the resignation thereof upon notice or request, or otherwise, when a person, or one of two persons, so specially named or described, should become qualified, by age or otherwise, to accept and take the same, shall be good, valid, and effectual in the law to all intents and purposes whatsoever; any thing in the said recited act, or in any other act, statute, or canon, or any law to the contrary in anywise notwithstanding.

“III. Provided always, that nothing in this act contained shall extend, or be construed to extend to the case of any engagement which shall not have been made, given, or entered into, really and *bona fide*, to the intent or purpose aforesaid, and no other: provided also, that nothing herein contained shall be deemed compulsory upon the ordinary to accept the resignation.

“IV. Provided always, and be it further enacted, that in every case where any such spiritual office shall, after the passing of this act, be resigned, pursuant to any such engagement, and the person, or one of the two persons, so specially named or described therein, shall not be presented, collated, nominated, or appointed by donation to such spiritual office within six calendar months next after such resignation, the resignation which shall so have been made pursuant to such engagement shall to all intents and purposes be void and of no effect; and the spiritual person who shall so have resigned shall, without any act or form, and as if such resignation had not been made, be deemed and taken to all intents and purposes to be and to have continued the incumbent actually in possession of such spiritual office, notwithstanding such resignation, and although within the said six months any other person may have been presented, collated, nominated, instituted, or inducted thereto, or received investiture thereof, provided such person so resigning shall not by reason of any other act or thing have become disqualified to hold the same.

“V. Provided also, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend to the case of any such engagement, upon or with respect to which any action, suit, bill, plaint, or information, shall have been brought, sued out, or commenced and prosecuted before the ninth day of April in this present year.”

STAT. 7 & 8
GEO. 4, c. 25.

Persons making any such agreement, not subject to any penalty on account thereof.

All such engagements entered into before 9th April, 1827, valid and effectual in law.

Engagements not *bona fide* made with such intent.

If the person so specially named be not presented to such spiritual office within six months, the resignation shall be void.

Proviso for proceedings already commenced.

CLXXVI. STAT. 7 & 8 GEORGH 4, c. 26. [IRELAND.] A.D. 1827.

“An Act for disappropriating, disuniting, and divesting the Rectory and Rectorial Tithes of the Parish of Youghal from and out of the Bishopric of the Diocese of Cloyne, in Ireland, whereby the Incumbent of such Rectory should have the actual Cure of Souls in the said Parish.”

“Whereas the wardenship of the college of Youghal and the rectory of the parish of Youghal, within the diocese of Cloyne, are perpetually united, annexed,

STAT. 7 & 8
GEO. 4, c. 26.
[Ire.]

STAT. 7 & 8
GEO. 4, c. 26.
[Ia.]

The rectory
and rectorial
tithes of the
parish of
Youghal shall
be disunited
from the
bishopric of
Cloyne, and
become a be-
nefice with
cure in the
patronage of
the bishop.

Public act.
2 Geo. 1, (I.)
c. 14, s. 16.

and appropriated to the bishopric of the diocese of Cloyne, and the bishops for the time being of the said diocese have received the rectorial tithes of the said parish, and have provided for the cure of souls in the said parish by two resident curates there, appointed by such bishops: and whereas it would be highly beneficial to the cure of souls in the said parish, that the said rectorial tithes of the said parish as aforesaid annexed and appropriated to the bishopric of the said diocese, should be disappropriated, disunited, and divested from and out of the bishopric of the said diocese of Cloyne, and that the said parish should be a rectory or benefice with cure of souls in the collation of the Bishop of Cloyne, being warden of the said college of Youghal for the time being: may it therefore please your majesty, upon the petition of the lord bishop for the time being of the diocese of Cloyne, and warden of the college of Youghal, and the humble petition of the two resident curates of the said parish of Youghal for the time being, that it may be enacted, and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the expiration of six calendar months from and after the passing of this act, the rectory and rectorial tithes of the said parish of Youghal, so as aforesaid heretofore appropriated and united to the bishopric of the said diocese of Cloyne, shall become and be actually disappropriated, disunited, and divested from and out of the bishopric of the said diocese of Cloyne; and that the said rectory, when so disappropriated and disunited, shall be and become a rectory, parish, and collative benefice, with cure of souls, in the patronage and gift of the said Bishop of Cloyne, being warden of the said college of Youghal, and his successors from time to time for the time being; and that from and after the expiration of six calendar months from and after the passing of this act, the said Bishop of Cloyne and his successors, being wardens of the said college of Youghal, shall have the right of patronage and collation to the said rectory, and shall and may, from and after the expiration of six calendar months from and after the passing of this act, and so from time to time whenever the said rectory shall become or be vacant, collate any person to be rector and incumbent of the said parish or rectory, and shall and may cause such incumbent to be instituted and inducted into such rectory; and every such person so collated, instituted, and inducted, shall be and become rector and incumbent of such rectory, parish, and benefice, and shall have cure of souls in such rectory, parish, and benefice, and shall be entitled to the rectorial tithes, and to all other emoluments and profits of the said rectory, parish, and benefice, disappropriated and disunited from the bishopric of the said diocese.

"II. And whereas, by an act made in the parliament of Ireland in the second year of the reign of King George the First, intituled, 'An Act for the real Union and Division of Parishes,' it is among other things enacted, that all acts of parliament for the uniting or disuniting of particular parishes or parts of parishes, or erecting particular churches, shall be deemed as public and general acts in all courts and by all persons, and that no fees shall be paid or taken by any person or persons for passing any such act of parliament: and whereas it is expedient that a like provision should be made in this case, be it therefore enacted, that this present act is and shall be deemed a public and general act, and shall be judicially taken notice of as such in all courts, and by all judges, justices, and others, without being specially pleaded; and that no fees shall be paid or taken by any person or persons for the passing the same."

STAT. 7 & 8
GEO. 4, c. 28.

CLXXVII. STAT. 7 & 8 GEORGII 4, c. 28. A.D. 1827.

"An Act for further improving the Administration of Justice in Criminal Cases in England."

"VI. And be it enacted, that benefit of clergy with respect to persons convicted of felony shall be abolished. . . ."

CLXXVIII. STAT. 7 & 8 GEORGH II. c. 29 (1). A.D. 1827.

STAT. 7 & 8
Geo. 4, c. 29.

"An Act for consolidating and amending the Laws in England relative to Larceny, and other Offences connected therewith."

"IV. (2) And, with regard to the place and mode of imprisonment for all indictable offences punishable under this act, be it enacted, that where any person shall be convicted of any felony or misdemeanour punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet.

The court may for all offences within this act, order hard labour or solitary confinement.

"X. (3) And be it enacted, that if any person shall break and enter any church (4) or chapel (5), and steal therein any chattel (6), or having stolen any

Sacrilege, when capital.

(1) *Vide* Stat. 2 & 3 Gul. 4, c. 62; Stat. 3 & 4 Gul. 4, c. 44; Stat. 5 & 6 Gul. 4, c. 81; Stat. 6 & 7 Gul. 4, c. 4; and Stat. 7 Gul. 4 & 1 Vict. c. 90, s. 5.

(2) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 90, s. 5, as to the limitation of solitary confinement.

(3) Repealed by Stat. 5 & 6 Gul. 4, c. 81.

(4) *Church*.—The tower of a parish church, having an internal communication with, and not being separated from, the body of the church, is a part of the church, within the meaning of Stat. 7 & 8 Geo. 4, c. 29. Upon an indictment for breaking into a parish church, and stealing two surplices and a scarf, it appeared, that the surplices and scarf were stolen from a box kept in the church tower; the tower was built higher than the church, and had a separate roof, but it had no outer door, the only way of going into it, being through the body of the church, from which the tower was not separated by a door or partition of any kind: it was objected, that the stealing of these articles deposited in the tower was not sacrilege; but it was held, that a tower, circumstanced as such tower was, must be taken to be part of the church, and that the stealing of these articles in the tower was a stealing in the church, within the meaning of Stat. 7 & 8 Geo. 4, c. 29, s. 10. *Res v. Wheeler*, 3 C. & P. 585.

(5) *Chapel*.—The word "chapel," in Stat. 7 & 8 Geo. 4, c. 29, s. 10, means a chapel where the rites and ceremonies of the church of England are performed, and does not include the chapels of dissenters. Upon an indictment for breaking and entering a chapel, which, upon the evidence, turned out to be a dissenting chapel; Mr. Justice Gaselee and Mr. Baron Vaughan were of opinion, that as dissenting chapels were mentioned expressly in Stat. 7 & 8 Geo. 4, c. 30, which makes the burning of churches, &c. a capital offence, and were not mentioned in Stat. 7 & 8 Geo. 4, c. 29, s. 10, which stands in the statute book, as the chapter next preceding it, the omission must have been intentional, and consequently, that a dissenting chapel was not within Stat. 7 & 8 Geo. 4, c. 29, s. 10. *Res v. Warren*, 6 C. & P. 335, note (a). *Vide etiam Res v. Richardson*, 6 Ibid. 335. *Res v. Nixon*, 7 Ibid. 442. It should seem, that these cases are not applicable to the Irish act. 1 Russell on Crimes by Greaves, 844.

(6) *Any chattel*.—The words "any chattel," would probably be deemed to extend to articles in a church or chapel, though not used for divine service. The words "any goods," in the repealed statute, 1 Edw. 6, c. 12, were held not to be confined to goods used for divine service, but to extend to articles used in the church to keep it in proper order; and it was considered, that such articles were under the protection of the statute, whilst the church was in a course of being repaired, if they had not been brought in merely for the purpose of such repairs. Whilst a church was being repaired, the prisoner stole from it a pot used to hold charcoal for airing the vaults, and a snatch-block, used to raise weights, if the bells wanted repair. These articles had been kept in the church for years, and were not brought in for the repairs which were then in progress. Upon a case reserved, the judges were unanimous, that such goods were under the protection of the statute, and that a capital sentence ought to be passed upon the prisoner, as they thought, that the violation of the sanctity of the place, was what the statute was intended to prevent. *Res v. Rourke*, cit. Ibid. 845.

The word "chattel" does not include anything affixed to the freehold. Upon an indictment for breaking into a chapel, and stealing a bell and divers other articles, it appeared, that the bell was the only thing not fixed in the chapel, and it was held, that the case must be confined to the stealing of the bell; for although the same statute, by the forty-fourth section, enacted, that stealing fixtures might be the subject of larceny, yet it did not say that fixtures should be considered as chattels, which they must be, to bring them within the section, upon which that indictment was founded. *Res v. Nixon*, 7 C. & P. 442.

The goods of a dissenting chapel, vested in trustees, cannot be described as the goods of a servant, who has merely the care of the chapel and the things in it, to clean and keep them in order, though he have the key of the chapel, and no person except the minister have another key. *Res v. Hutchinson*, R. & R. 412. But books belonging to a society of dissenters, and stolen from their chapel, may be described as the property of one of the members of the society,

STAT. 7 & 8
GEO. 4, c. 29.

The stealing,
&c. of records
and other
proceedings
of courts of
justice.

chattel in any church or chapel, shall break out of the same, every such offender, being convicted thereof, shall suffer death as a felon.

"XXI. And be it enacted, that if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy, any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminated, in any such court, or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever of or belonging to any court of equity, or relating to any cause or matter begun, depending, or terminated, in any such court, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the court shall award, and it shall not in any indictment for such offence be necessary to allege that the article in respect of which the offence is committed is the property of any person, or that the same is of any value.

The stealing,
&c. of wills.

"XXII. And be it enacted, that if any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the court may award, as hereinbefore last mentioned; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value.

The stealing
of writings
relating to real
estate.

"XXIII. And be it enacted, that if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the court may award as hereinbefore last mentioned; and in any indictment for such offence it shall be sufficient to allege the thing stolen to be evidence of the title, or of part of the title, of the person or of some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate, or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value.

Principals in
the second
degree and
accessories.

"LXI. (1) And be it enacted, that in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal

by name, "and others." Upon an indictment for stealing a Bible and hymn-book, the property of J. Bennett and others, it appeared that the books had been presented to the society of Wesleyan methodists, from whose chapel they had been stolen, and they had been bound at the expense of the society; Bennett was one of the trustees of the chapel, and a member of the society, but no trust deed was produced: it was held, that as Bennett was one of the society, the property in the books was well laid in him "and others." *Rex v. Boulton*, 5 C. & P. 537.

It has been holden that where the bells, books, or other goods belonging to a church, are stolen, they may be laid in the indictment to be the goods of the parishioners. 1 Hawk. P. C. c. 33, s. 45. 2 East. P. C. c. 16, s. 69, p. 631. And it is said, that he who takes away the goods of a chapel or abbey, in time of vacation, may be indicted, in the first case, for stealing *bona capelle*, being in the custody of such and such; and,

in the second, for stealing *bona domus et ecclesie*, &c. Ibid. 1 Russell on Crimes by Greaves, 845.

(1) Mr. *Lonsdale*, (Cr. L. 130,) treats Stat. 7 & 8 Geo. 4, c. 29, s. 61, as repealed, so far as relates to principals in the second degree and accessories before the fact, but subsisting as to accessories after the fact; but as the words are "any felony punishable under this act," and as sacrilege is not now punishable under Stat. 7 & 8 Geo. 4, c. 29, it may be doubted, whether the accessories after the fact are punishable under this section. If they are not, it should seem, that they are punishable under Stat. 7 & 8 Geo. 4, c. 28, ss. 8 & 9, and Stat. 7 Gul. 4 & 1 Vict. c. 90, s. 5, as for a felony, for which no punishment is specially provided. 1 Russell on Crimes, by Greaves, 846.

The proceedings for the trial of accessories are regulated by Stat. 7 Geo. 4, c. 64, ss. 9, 10, & 11. Ibid.

in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, (except only a receiver of stolen property,) shall on conviction be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure, the commission of any misdemeanor, punishable under this act, shall be liable to be indicted and punished as a principal offender."

STAT. 7 & 8
GEO. 4, c. 29.

Abettors in
misdemeanors.

CLXXIX. STAT. 7 & 8 GEORGII 4, c. 30(1). A.D. 1827.

"An Act for consolidating and amending the Laws in England relative to malicious Injuries to Property."

STAT. 7 & 8
GEO. 4, c. 30.

"Whereas various statutes now in force in that part of the United Kingdom called England, relative to malicious injuries to property, are by an act of the present session of parliament repealed, from and after the last day of June in the present year, except as to offences committed before or upon that day; and it is expedient that the provisions contained in those statutes should be amended and consolidated into this act, to take effect at the same time as the said repealing act: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall commence on the first day of July in the present year.

Commence-
ment of act.

"II. And be it enacted, that if any person shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons disentering from the united church of England and Ireland, duly registered or recorded, or shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop oast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon.

Setting fire to
a church,
chapel, house,
or certain
buildings.

"VIII. And be it enacted, that if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish (2), pull down, or destroy, or begin to demolish, pull down, or

Rioters de-
molishing, &c.
a church,

(1) *Vide* Stat. 2 & 3 Gul. 4, c. 72; Stat. 5 & 6 Gul. 4, c. 81; and Stat. 6 & 7 Gul. 4, c. 4.

(2) *Demolish*:—If rioters, after proceeding a certain length, leave off of their own accord, before the act of demolition be completed, that is evidence from which a jury may infer that they did not intend to demolish the house.

A party of rioters came to a house about midnight, and in a riotous manner burst open the door, broke some of the furniture, all the windows, and one of the window-frames, and then went away, there being nothing to hinder them from doing more damage: it was held, that although the breaking and damage done was a sufficient beginning to demolish the house, yet unless the jury were satisfied, that the ultimate object was to destroy the house, and that, if they had carried their intentions into full effect, they would, in point of fact, have demolished it, it was not a beginning to demolish within the act. *Res v. Thomas*, 4 C. & P. 237. *Regina v. Howell*, 9 Ibid. 437. So where a mob pursued a person to a public house, where he took refuge, and the doors and windows were all secured, and the mob demanded that he should be given up to them, or they would pull the house down, and the front door and lower windows were beaten in, and the shutters and frames of some of them

much broken, and part of the mob entered the house and did much damage to the furniture, but in about twenty minutes, being unable to find the person, who had there taken refuge, and a rumour being spread that the mayor was coming, they went away: it was held, that this offence was not within the act; for the persons committing the outrage must have the intention of destroying the house, before they can be charged with a felonious beginning to demolish, and here they had no such intention, but their intention was to get possession of the person who had entered the house. *Res v. Price*, 5 Ibid. 510.

But if rioters are interrupted in the work of demolition by the police or any other force, that is evidence to show, that they were compelled to desist from that which they had designed, and it is for the jury to infer, that they had begun to demolish within the meaning of the act. A party of coal-whippers, having a feeling of ill-will to a coal-lumper, who had paid less than the usual wages, created a mob, riotously went to the house where he kept his workshop, cried out that they would murder him, threw stones, brickbats, &c., broke windows and partitions, and threw down part of a wall in a yard, and continued, after no success, throwing stones at the house, till they were compelled to desist by the presence of the

STAT. 7 & 8
Geo. 4, c. 30.

chapel, house,
or certain
buildings, or
any machinery
in any manu-
factory or
mine.

destroy, any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of England and Ireland, duly registered or recorded, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop east, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture or in any branch thereof, or in any steam engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon.

Principals in
the second
degree and
accessories.

“XXVI. And be it enacted, that in the case of every felony punishable under this act every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender.”

Abettors in
misdemeanors.

police: it was held, that this case was distinguishable from *Rex v. Thomas*, (4 C. & P. 237,) because the mob did not leave off voluntarily, but after the threats of the police, and that they might be convicted of beginning to demolish the house, though their principal object was to injure the lumper, provided it was also their object to demolish the house. *Rex v. Batt*, 6 *Ibid.* 329. The beginning to pull down, means not simply a demolition of a part, but a part with an intent to demolish the whole. In *Ashton's case*, (1 *Lewin C. C.* 296,) the prisoners were indicted for beginning to demolish a building used in carrying on a trade. It appeared that they began by breaking the windows and doors, and having afterwards entered the house, they set fire to the furniture, but no part of the house was burnt. Mr. Justice *Parke* directed the jury, that, “The beginning to pull down, means not simply a demolition of a part, but a part with an intent to demolish the whole. It is for you to say if the prisoners meant to stop where they did, and do no more; because if they did, they are not guilty; but if they intended, when they broke the windows and doors, to go farther, and destroy the house, then they are guilty of a capital offence. If they had the full means of going further, and were not interrupted, but left off of their own accord, it is evidence from which you may judge, that they meant the work of demolition to stop where it did. If you think that they originally came there without intent to demolish, and the setting fire to the furniture was an afterthought, but with that intent, then you must acquit, because no part of the house having been burnt, there was no beginning to destroy the house. If they came originally without such intent, but had afterwards set fire to the house, then the offence would be arson. If you have doubts, whether they originally came with a purpose to demolish, you may use the setting fire to the furniture under such circumstances, and in such manner, as that the necessary consequence, if not for timely interference, would have been the burning of the house, as evidence to show, that they had

such intent, although they began to demolish in another manner.”

If a person forms part of a riotous assembly at the time the act of demolition commences, or if he wilfully joins such riotous assembly, so as to co-operate with them whilst the act of demolition is going on, and before it is completed, in either case he comes within the description of the offence, although he may not have assisted with his own hand in the demolition of the building. *Per Chief Justice Tindal*, *Bristol Special Commission*, 5 C. & P. 265, *in not*.

In order to prove that there was a beginning to demolish the house, it must be proved that some part of the freehold was destroyed; it is not therefore sufficient to prove that the window-shutters were demolished. *Regina v. Howell*, 9 *Ibid.* 437.

Although setting fire to a house is a substantive felony, yet if fire be made the means of attempting to destroy a house, it is as much a beginning to demolish, as if any other mode of destruction were resorted to. *Ibid.*

“It is a malicious act in contemplation of law, when a man wilfully does that which is illegal, and which, in its necessary consequence, must injure his neighbour; and it is unnecessary to observe, that the setting fire to another's house, whether the owner be a stranger to the prisoner, or a person against whom he had a former grudge, must be equally injurious to him; nor will it be necessary to prove, that the house which forms the subject of the indictment in any particular case, was that which was actually set on fire by the prisoner. It will be sufficient to constitute the offence, if he is shewn to have feloniously set on fire another house, from which the flames communicated to the rest. No man can shelter himself from punishment, on the ground that the mischief which he committed was wider in its consequences than he originally intended.” *Per Chief Justice Tindal*, *Bristol Special Commission*, 5 *Ibid.* 267, *in not*.

The foregoing principles, although applied to the demolition of houses, are equally applicable to the demolition of churches.

CLXXX. STAT. 7 & 3 GEORGII 4, c. 31 (1). A.D. 1827.

STAT. 7 & 8
GEO. 4, c. 31.

"An Act for consolidating and amending the Laws in England relative to Remedies against the Hundred."

"II. And be it enacted, that if any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of England and Ireland, duly registered or recorded, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam-engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, shall be feloniously demolished, pulled down, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together, in every such case the inhabitants of the hundred, wapentake, ward, or other district in the nature of a hundred, by whatever name it shall be denominated, in which any of the said offences shall be committed, shall be liable to yield full compensation to the person or persons damnified by the offence, not only for the damage so done to any of the subjects hereinbefore enumerated, but also for any damage which may at the same time be done by any such offenders to any fixture, furniture, or goods whatever, in any such church, chapel, house, or other of the buildings or erections aforesaid.

The hundred shall make full compensation for the damage done by rioters in certain cases.

"III. Provided always, and be it enacted, that no action or summary proceeding, as hereinafter mentioned, shall be maintainable by virtue of this act, for the damage caused by any of the said offences, unless the person or persons damnified, or such of them as shall have knowledge of the circumstances of the offence, or the servant or servants who had the care of the property damaged, shall within seven days after the commission of the offence go before some justice of the peace residing near and having jurisdiction over the place where the offence shall have been committed, and shall state upon oath before such justice the names of the offenders if known, and shall submit to the examination of such justice touching the circumstances of the offence, and become bound by recognizance before him to prosecute the offenders when apprehended: provided also, that no person shall be enabled to bring any such action, unless he shall commence the same within three calendar months after the commission of the offence.

Party damnified to comply with certain conditions.

"IV. And be it enacted, that no process for appearance in any action to be brought by virtue of this act against any hundred or other like district shall be served on any inhabitant thereof, except on the high constable or some one of the high constables, (if there be more than one,) who shall within seven days after such service give notice thereof to two justices of the peace of the county, riding, or division in which such hundred or district shall be situate, residing in or acting for the hundred or district; and such high constable is hereby empowered to cause to be entered an appearance in the said action, and also to defend the same on behalf of the inhabitants of the hundred or district, as he shall be advised; or, instead of defending the same, it shall be lawful for him, with the consent and approbation of such justices, to suffer judgment to go by default; and the person upon whom, as high constable, the process in the action shall be served, shall, notwithstanding the expiration of his office, continue to act for all the purposes of this act until the termination of all proceedings in and consequent upon such action; but if such person shall die before such termination, the succeeding high constable shall act in his stead.

Limitation of time for actions.

Process in the action against the hundred to be served on the high constable, who may defend, or let judgment go by default, as advised.

"V. And be it enacted, that in any action to be brought by virtue of this act against the inhabitants of any hundred or other like district, or against the inhabitants of any county of a city or town, or of any such liberty, franchise, city, town, or place, as is hereinafter mentioned, no inhabitant thereof shall, by reason

Inhabitants of the hundred competent witnesses.

(1) Vide Stat. 2 & 3 Gal. 4, c. 72.

STAT. 7 & 8
GEO. 4, c. 31.

Mode of proceeding in cases where the damage does not exceed 30*l*.

Such cases to be settled by the justices at a special petty sessions.

Penalty on high constable for neglect.

Proceeding in case of damage to a church or chapel.

In case of damage to property belonging to a corporation.

of any interest arising from such inhabitancy, be exempted or precluded from giving evidence either for the plaintiff or for the defendants.

"VIII. And whereas it is expedient to provide a summary mode of proceeding where the damage is of small amount; be it therefore enacted, that it shall not be lawful for any person to commence any action against the inhabitants of any hundred or other like district, where the damage alleged to have been sustained by reason of any of the offences in this act mentioned shall not exceed the sum of thirty pounds, but the party damnified shall, within seven days after the commission of the offence, give a notice in writing of his claim for compensation, according to the form in the schedule hereunto annexed, to the high constable or some one of the high constables (if there be more than one) of the hundred or other like district in which the offence shall have been committed; and such high constable shall, within seven days after the receipt of the notice, exhibit the same to some two justices of the peace of the county, riding, or division in which such hundred or district shall be situate, residing in or acting for such hundred or district, and they shall thereupon appoint a special petty session of all the justices of the peace of the county, riding, or division, acting for such hundred or district, to be holden within not less than twenty nor more than thirty days next after the exhibition of such notice, for the purpose of hearing and determining any claim which may be then and there brought before them on account of any such damage; and such high constable shall, within three days after such appointment, give notice in writing to the claimant, of the day and hour and place appointed for holding such petty session, and shall within ten days give the like notice to all the justices acting for such hundred or district; and the claimant is hereby required to cause a notice in writing, in the form in the schedule hereunto annexed, to be placed on the church or chapel door, or other conspicuous part of the parish, township, or place in which such damage shall have been sustained, on two Sundays preceding the day of holding such petty session.

"IX. And be it enacted, that it shall be lawful for the justices, not being less than two, at such petty session or any adjournment thereof, to hear and examine upon oath or affirmation the claimant, and any of the inhabitants of the hundred or other like district, and their several witnesses, concerning any such offence, and the damage sustained thereby; and thereupon the said justices, or the major part of them, if they shall find that the claimant has sustained any damage by means of any such offence, shall make an order for payment of the amount of such damage to him, together with his reasonable costs and charges, and also an order for payment of the costs and charges (if any) of the high constable or inhabitants, and shall direct such order or orders to the treasurer of the county, riding, or division in which such hundred or district shall be situate, who shall pay the same to the party or parties therein named, and shall be reimbursed for the same in the manner hereinbefore directed.

"X. And be it enacted, that if any high constable shall refuse or neglect to exhibit or give such notice as is required in any of the cases aforesaid, it shall be lawful for the party damnified to sue him for the amount of the damage sustained, such amount to be recovered by an action on the case, together with full costs of suit.

"XI. And be it enacted, that every action or summary claim to recover compensation for the damage caused to any church or chapel by any of the offences in this act mentioned, shall be brought in the name of the rector, vicar, or curate of such church or chapel, or in case there be no rector, vicar, or curate, then in the names of the church or chapelwardens, if there be any such, and if not, in the name or names of any one or more of the persons in whom the property of such chapel may be vested; and the amount recovered in any such case shall be applied in the rebuilding or repairing such church or chapel; and where any of the offences in this act mentioned shall be committed on any property belonging to a body corporate, such body may recover compensation against the hundred or other like district, in the same manner and subject to the same conditions as any person damnified is by this act enabled to do: provided always, that the several condi-

tions which are hereinbefore required to be performed by or on behalf of any person damnified, may, in the case of a body corporate, be performed by any officer of such body on behalf thereof." STAT. 7 & 8
GEO. 4, c. 31.

"SCHEDULE.

"Form of Notice to the High Constable of a Hundred or other like District, or to the Peace Officer of a County of a City or Town, or of a Liberty, Franchise, City, Town, or Place.

"To the high constable [or to one of the high constables] of, &c.
[or to a peace officer of, &c.]

"I hereby give you notice, that I intend to claim compensation from the inhabitants of [here specify the hundred or other like district, or county of a city, &c., or liberty, franchise, &c., as the case may be], on account of the damage which I have sustained by means of [here state the offence, the time and place where it was committed, and the nature and amount of the damage]; and I hereby require you, within seven days after your receipt of this notice, to exhibit the same to some two justices of the peace of the county [riding or division] of residing in or acting for the said hundred, &c., [or if in a liberty, franchise, &c. where the justices of the county, riding, or division have no jurisdiction, then say, to some two justices of the peace of, naming the liberty, franchise, &c.], [or if in a county of a city, &c. then say, to some two justices of the peace of, naming the county of the city, &c.], in order that they may appoint a time and place for holding a special petty session to hear and determine my claim for compensation by virtue of an act passed in the seventh and eighth years of the reign of King George the Fourth, intituled, 'An Act for consolidating and amending the Laws in England relative to Remedies against the Hundred;' and you are required to give me notice of the day, hour, and place appointed for holding such petty session within three days after the justices shall have appointed the same. Given under my hand this day of in the year of our Lord (Signed) A. B."

"Form of Notice to be placed on the Church or Chapel Door or other conspicuous Part of the Parish, Township, or Place, (as the case may be.)

"I hereby give notice, that I shall apply for compensation to the justices of the peace at a special petty sessions to be holden at on the day of next, at the hour of in the forenoon, on account of the damage which I have sustained by means of [here state the offence, the time and place where it was committed, and the nature and amount of the damage, in the same manner as in the preceding form]. Given under my hand this day of in the year of our Lord (Signed) A. B."

CLXXXI. STAT. 7 & 8 GEORGII 4, cap. xxxiii. A.D. 1827.

"An Act for facilitating the Execution of certain Trusts for Charitable and Public Purposes within the Town of Sheffield, in the County of York."

STAT. 7 & 8
GEO. 4, cap.
xxxiii.

CLXXXII. STAT. 7 & 8 GEORGII 4, c. 34 (1). [IRELAND.] A.D. 1827.

"An Act to amend the Acts relating to the Provision of Ministers in Cities and Corporate Towns in Ireland."

STAT. 7 & 8
GEO. 4, c. 34.
[Ir.]

"Whereas by an act made in the parliament of Ireland in the session holden in the seventeenth and eighteenth years of the reign of King Charles the Irish act,
17 & 18 Car. 2,
c. 7.

(1) Stat. 17 & 18 Car. 2, c. 7 [Ir.], which was amended by Stat. 7 & 8 Geo. 4, c. 34 [Ir.], is as follows:

Church of St. Andrew's, in the Suburbs of the City of Dublin, presentative for ever.

"An Act for Provision of Ministers in Cities, Corporate Towns, and making the

"In most humble manner praying and beseeching your most excellent majesty,
4 S 2

STAT. 7 & 8 Second, among other things for provision of ministers in cities and corporate
 GEO. 4, c. 34. towns in Ireland, it is enacted, that it shall be lawful for the lord lieutenant or
 [Ia.]

the lords spiritual and temporal, and commons in this present parliament assembled, that whereas there are small or no tithes or other duties settled by law upon the incumbents who have actual cure of souls in the city and suburbs of Dublin, and the liberties thereunto adjoining, and in other cities, towns corporate of this your majesty's kingdom of Ireland: that it may be therefore enacted, and be it hereby enacted by your most excellent majesty, by and with the consent of the lords spiritual and temporal, and the commons in parliament assembled, and by the authority of the same, that it shall and may be lawful for the lord lieutenant, or other chief governor or governors, and six or more of your majesty's privy council of this kingdom, to allot, ascertain, set forth, and charge, or cause to be allotted, ascertained, set forth, and charged, any sum or sums of money to be paid unto the several and respective incumbents, and their respective successors within the said city and suburbs of Dublin, and liberties thereunto adjoining, and other cities and towns corporate in this kingdom, who have actual cure of souls in each parish respectively, out of each house and houses belonging to the said parish, whether it be by apportioning the said money and payment according to the yearly value of each house, or otherwise, so as the same payment do not exceed twelpence sterling for every pound of the yearly value of each house, such yearly value always to be intended as the same shall be valued upon oath by persons to be nominated in that behalf, and authorized by commission under the great seal of this kingdom, by direction of the lord lieutenant or other chief governor or governors for the time being of this your majesty's kingdom; in which valuation, if it shall happen that any house be valued above sixty pounds sterling per annum, yet the said commissioners, or other persons to be intrusted in the said valuations, are to return such house but at sixty pounds per annum; which said commission or commissions are from time to time returned under the hands and seals of the commissioners to the clerk of the council for the time being; and after such allotment so made, and sum or sums of money ascertained, charged and set forth to be paid as aforesaid, and approved by the lord lieutenant, or other chief governor or governors, and council of this kingdom, such charge of each inhabitant of each house, shall be as good and effectual in law, as if the very same sum or sums which shall be so charged, had been particularly expressed and enacted to be paid out of each house; and the sum so allotted or charged upon each inhabitant shall be received by the churchwardens respectively, and by them paid to the several and respective incumbents, and their successors, by four equal portions every year, *viz.* the feast of the Nativity of our Blessed Lord and Saviour, the feast of the Annunciation of the Blessed Virgin Mary, the feast of St. John the Baptist,

and the feast of St. Michael the Archangel, by the inhabitants, or respective inhabitants thereof; and in case any inhabitant shall, upon demand by the churchwardens of the respective parishes, refuse or delay to pay such sum or sums of money as shall be so allotted or charged upon the house wherein he dwelleth, at any of the days or times aforesaid, that then it shall and may be lawful for the said churchwardens of each parish to enter into the said house and distrain on the several and respective persons so in arrear for the same, and the distress or distresses to carry away and sell to pay to the incumbent such money as shall be due unto him, and to deliver the remainder unto the said inhabitant; and if the churchwardens shall fail to do their duties therein, then, and in such case, such churchwardens to be punished for their neglects, as the lord lieutenant, or other chief governor or governors and council of this kingdom shall think fit.

"II. Provided always, that no commission by virtue of this act shall be directed or issue for valuation into any one parish of any houses hereafter to be built, more or oftener than once in three years.

"III. And whereas the parish church of St. Andrew's in the county of the city of Dublin, hath been wholly demolished for these many years past, and no effectual care hitherto taken for the rebuilding thereof, whereby the inhabitants of the said parish, and of Lazar, *alias* Laxie-hill, have had no place within themselves for the public service of God, to the great dishonour of God, and the discomfort of the people: may it therefore please your most excellent majesty, that for the honour of God, and accommodation of the inhabitants aforesaid, it be enacted by your majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, that the ambite and tract of ground commonly called the Stane, *alias* Lazar, *alias* Laxie-hill, be constituted and made part of the parish of St. Andrew's aforesaid; and that the inhabitants of the said parish be hereby authorized, by contribution amongst themselves, to rebuild the said church, in such manner as shall be agreed upon by them, or the major part of them; and that the said parish church shall for the time to come be presentative as a vicarage by the lord chancellor of Ireland, the lord archbishop of Dublin, the vice-treasurer of his majesty's revenue, the lord chief justice of his majesty's court of Chief Place, the lord chief justice of his majesty's court of Common Pleas, the lord chief baron of his majesty's court of Exchequer, and the master of the Rolls, and their successors for the time being, or by any four or more of them, whereof the Lord Archbishop of Dublin to be always one: and that Richard Lingart, the now professor of divinity in Trinity college near Dublin, be and is hereby constituted the first vicar or incumbent thereof.

other chief governor or governors, and six or more of his majesty's privy council in Ireland, to allot, ascertain, set forth, and charge certain sums of money to be paid to the several incumbents within the city and suburbs of Dublin, and liberties thereunto adjoining, and other cities and towns corporate in Ireland, who have actual cure of souls in each parish respectively, out of the houses belonging to such parish respectively, according to the yearly value of each house, to be allotted and charged on the inhabitants in manner in the said act mentioned; and that the sum so allotted and charged shall be received by the churchwardens of each parish respectively, and by them paid to the several and respective incumbents; and in case of refusal or delay of payment such churchwardens are by the said act empowered to levy such sums by distress and sale; and on failure of their duties therein such churchwardens are punishable as in the said act is provided: and whereas by an act made in the parliament of Ireland in the thirty-third year of the reign of King George the Third, intituled, 'An Act respecting the Collection of Public Money to be levied in the County of the City of Dublin by Presentment,' the churchwardens in the respective parishes in the county of the said city are required to return to the treasurer of the public money an exact account of the gross sum of ministers' money payable by the inhabitants of each and every such parish: and whereas the performance of the duties required by the said acts by the churchwardens of parishes is in many respects grievous to such churchwardens; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that at any time after the passing of this act it shall and may be lawful for the several and respective incumbents, and their respective successors, within the city and suburbs of Dublin, and liberties thereunto adjoining, and within other cities and towns corporate in Ireland, who have actual cure of souls in each parish respectively, and such incumbents are hereby respectively authorized, empowered, and required from time to time, by any writing under the hand of any such incumbent

STAT. 7 & 8
GEO. 4, c. 34.
[12.]

33 Geo. 3, c. 56.

Incumbents
may appoint
collectors of
ministers' money
in Dublin
and other cities
and towns; and
such collectors

"IV. And be it further enacted by the authority aforesaid, that Arthur earl of Anglesey, his majesty's vice-treasurer, Sir John Temple, knight, master of the rolls, and Sir Maurice Eastace, knight, or the survivors of them, be and are hereby constituted and appointed churchwardens of the said parish for the first two years: and that they and their successors, churchwardens for the time being, be hereby empowered to rate and assess the several houses within the parish of St. Andrew's and Stane, *alias* Laxie-hill, in such manner as they shall think fit, with the consent of the said inhabitants, or the major part of them, at such meetings as shall be appointed to that purpose, for and towards the building of the said church, if the voluntary contributions already made, and to be made, will not do it; and for the relief of the poor, and other pious uses, as shall be thought necessary by the inhabitants of the parish, or the major part of them.

"V. And be it enacted, that the said churchwardens and their successors for the time being shall be a body corporate, and have power to sue and be sued by the name of the churchwardens of the parish of St. Andrew's, and by that name to purchase lands, tenements, and hereditaments of the yearly value of one hundred pounds sterling to the use of the said parish; the Statute of Mortmain, or any other law or statute to the contrary notwithstanding.

"VI. And whereas the rectory of the church of St. Andrew's aforesaid, together with certain houses and their back-sides, enclosed within the churchyard, have anciently

belonged to the precentor of the cathedral church of St. Patrick's, near Dublin, as part of the corps of his precentorship: in consideration thereof, be it enacted by the authority aforesaid, that the now precentor of St. Patrick's, Dublin, aforesaid, and his successors, shall be rector or rectors of the said parish, and shall have the yearly sum of ten pounds sterling appropriated, and be it hereby appropriated, unto him and them, to be paid unto him and them by the vicar or incumbent of the said church of St. Andrew's for the time being, in two equal proportions at two set times of the year, (that is to say,) five pounds at or upon the feast day of St. John the Baptist, and other five pounds at or upon the feast day of the Nativity of our blessed Lord and Saviour; the first payment to begin at or upon the first of the said feast days as shall happen to be full six months next after the induction of the first vicar or incumbent aforesaid.

"VII. And be it further enacted, that such punishment as by this act shall or may be imposed by the lord lieutenant, or other chief governor or governors and council for the time being, upon churchwardens for neglecting their duties required by this act, shall not extend to any other kind of punishment, than by one or more fine or fines, or imprisonment, not to exceed the sum of five pounds sterling for such respective offence, and such imprisonment not to exceed one month, at any one time, for any one offence, and the same to continue without bail or mainprize, if they shall so think fit."

STAT. 7 & 8
GEO. 4, c. 34.
[1a.]

shall have like
power in col-
lecting, &c.
such money,
as church-
wardens have
under recited
act.

respectively, to nominate and appoint any person or persons willing to act as such, to be a collector or collectors of all sums allotted or charged according to the said recited act of the seventeenth and eighteenth years of King Charles the Second, for ministers' money, upon the inhabitants of the respective houses in any and every such parish respectively; and every such collector so appointed shall collect and receive all sums so allotted or charged, and shall pay the same to the several and respective incumbents, in like manner as churchwardens are directed to do by the said recited act; and in case of refusal or delay of payment of any sums so allotted or charged, it shall be lawful for any and every such collector to levy and distrain for the same in like manner as churchwardens are empowered to do by the said recited act; and it shall be lawful for any and every such collector, and he and they is and are hereby authorized and empowered, to do and perform all such matters and things, and shall be subject to all such liabilities as any churchwarden or churchwardens is or are authorized or required to do or are subject to with respect to any sums so allotted or charged for ministers' money as aforesaid, under or by virtue of the said recited acts or either of them, or any other act or acts relating to such ministers' money, in force in Ireland immediately before the passing of this act."

STAT. 7 & 8
GEO. 4, c. 38.

CLXXXIII. STAT. 7 & 8 GEORGII 4, c. 38. A.D. 1827.

"An Act for discontinuing certain Presentments by Constables."

No constable
shall be re-
quired to make
presentments
respecting the
offences herein
mentioned.

"Whereas in some parts of England the petty constables of the several parishes have, from a very remote period, been required to appear at a petty session held previously to every general gaol delivery and quarter session for the county in which such parishes are situate, and to make and sign before the justice or justices of the peace attending such petty session certain presentments of various indictable and other offences: and whereas the said presentments are attended with considerable expense and loss of time, and have, in consequence of modern legislative provisions, become useless and improper: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, no petty constable shall be required at any petty session or elsewhere to make, nor shall any high constable be required at any general gaol delivery, great session, or general or quarter session of the peace in England to deliver any presentment respecting popish recusants, persons absenting themselves from their parish church or any other place of religious worship licensed by authority, rogues and vagabonds, inmates, retailers of brandy, ingrossers, forestallers, rogues, profane swearers and cursers, servants out of service, felonies, and robberies, unlicensed or disorderly alehouses, false weights and measures, highways and bridges, riots, routs, and unlawful assemblies, and whether the poor are well provided for, and the constables are legally chosen and sworn."

STAT. 7 & 8
GEO. 4, cap.
xli.

CLXXXIV. STAT. 7 & 8 GEORGII 4, cap. xli. A.D. 1827.

"An Act to authorize a Sale to the respective Land Owners of all Tithes and Rectorial Dues belonging to the Rectory of Stoke-upon-Trent, in the County of Stafford; for endowing two new Churches; and for other Purposes."

[Vide Stat. 58 Geo. 3, c. 45; Stat. 59 Geo. 3, c. 134; Stat. 3 Geo. 4, c. 72; Stat. 5 Geo. 4, c. 103; Stat. 47 Geo. 3, Sess. 2, cap. cxiv.; Stat. 27 Geo. 3, c. 62; Stat. 32 Geo. 3, c. 88. The rector empowered to contract for sale of the tithes of the rectory. Patron and ordinary to consent to contracts. s. 1. The words "tithes" and "rectorial dues," to include all payments except mortuaries and surplice fees. s. 2. Governors of Queen Anne's Bounty may contract for purchase of the tithes, &c., where incumbents have not. s. 6. Considerations for purchase (1) shall consist of money, land, or rent charge. s. 8. Where the consideration is land, the same to

(1) Considerations for purchase:—Vide *The Manchester and Birmingham Railway Tomlinson (Rector of Stoke-upon-Trent) v. Company*, 2 Railw. Ca. 104.

STATUTA GEORGII IV. A.D. 1820—1830.

be annexed to the rectory as part of the glebe. s. 10. Where the consideration is an annual rent, the same to be charged on messuages, &c., and payable to the rector and his successors, and to be subject to decennial revision according to the prices of corn, hay, and beef. s. 11. Rector empowered, with consent of the bishop and patron, to sell certain glebe lands. s. 22. Power to rector to lay out streets, and make roads, bridges, and drains on such glebe land; the same to be approved by the patron and ordinary. s. 23. Monies to be invested in the purchase of land, on the application of the rector, or patron, or ordinary. s. 31. Power to rector to grant leases of lands to be so purchased with consent of patron and ordinary. s. 32. Provisions for endowing two new churches as district rectories. s. 34. Divisions not to take place until after the incumbency of the present rector shall cease; but the advowsons of such new rectories to be saleable before such division; not to take away from the rector of Stoke-upon-Trent any glebe, tithes, &c. besides the particular endowments authorized by the act. s. 38. Commissioners for building new churches may accept donations towards providing parsonage houses for new rectories. s. 39. Power to the bishop, patron, and rector to appropriate purchased lands in exchange and satisfaction of the yearly rent-charge payable to the rectors of Newcastle-under-Lyme, Burslem, Bucknall, and Bagnall, with consent of the patron and rectors thereof. s. 41. In case of making Hanley and Lane End chapels in separate districts, a further endowment to be made to each out of purchase monies from Easter dues, offerings, &c., and laid out in lands. s. 42. Separations not to take place during the incumbencies of the present curates of Hanley and Lane End chapels without their consent, nor till after the death, &c. of the present rector of Stoke-upon-Trent. s. 45.]

CLXXXV. STAT. 7 & 8 GEORGII 4, c. 43(1). [IRELAND.] A.D. 1827.

"An Act to consolidate and amend the Laws in force in Ireland for Unions and Divisions of Parishes, and for uniting or disappropriating appropriate Parishes or Parts of Parishes, and to make further Provision with respect to the erecting Chapels of Ease, and making perpetual Cures."

"Whereas several acts have been passed in the parliament of Ireland for unions and divisions of parishes, and for uniting or disappropriating appropriate parishes or parts of parishes; and it is desirable that the provisions contained in such acts of parliament should be consolidated and amended: be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act the several acts hereinafter mentioned, or so much of such acts as is hereinafter specified or referred to, shall be repealed: that is to say, so much and such part only of an act passed in the second year of the reign of King George the First, intituled, 'An Act for real Union and Division of Parishes,' as relates to the real union and division of parishes; and also so much of an act passed in the eighth year of the reign of the said king, intituled, 'An Act for the better enabling the Clergy having Cure of Souls to reside upon their respective Benefices and for the Encouragement of Protestant Schools within this Kingdom of Ireland,' as relates to the endowing of churches with glebes in the case of unions of parishes; and also so much of an act passed in the tenth year of the reign of the said king, intituled, 'An Act for confirming the several Grants made by Her late Majesty of the First-fruits and Twentieth Parts payable out of Ecclesiastical Benefices in this Kingdom, and also for giving the Archbishops and other ecclesiastical Persons four years' time for the Payment of First-fruits, and for incorporating the Trustees and Commissioners of the said First-fruits,' as relates to the payment of first-fruits by divided parishes; and also so much of an act passed in the seventh year of the reign of King George the Second, intituled, 'An Act for continuing several temporary Statutes, and for other Purposes therein mentioned,' as relates to the sepa-

(1) Amended by Stat. 2 & 3 Gul. 4, c. 67.

STAT. 7 & 8
Geo. 4, c. 43.
[In.]

9 Geo. 2, c. 12;
7 Geo. 3, c. 9,
in part;

11 & 12 Geo. 3,
c. 16, in part;

13 & 14 Geo. 3,
c. 27, in part;

23 & 24 Geo. 3,
c. 49, in part.

Lord lieutenant, with assent of the privy council, bishop, patrons, &c. may divide or unite parishes.

Lord lieutenant, &c. may in like manner separate or unite glebes, and annex the same to parishes.

rating or uniting glebes belonging to parishes; and also the whole of an act passed in the ninth year of the reign of the said King George the Second, for explaining and amending the said first-recited act of the second year of King George the First; and also so much of an act passed in the seventh year of the reign of his late majesty King George the Third, for explaining and amending the said first-recited act of the second year of King George the First, and for other purposes, as relates to the payment of money for buildings or improvements made in glebes in the case of real union and division of parishes; and also so much of an act passed in the eleventh and twelfth years of the reign of his said late majesty, intituled, 'An Act for erecting parochial Chapels of Ease in Parishes of large extent, and making such Chapels, and those that are already erected, perpetual Cures, and for making a proper Provision for the Maintenance of perpetual Curates to officiate in the same; and also in like manner for making appropriate Parishes perpetual Cures,' as relates to the uniting or disappropriating appropriate parishes; and also so much of an act passed in the thirteenth and fourteenth years of his said late majesty, intituled, 'An Act to amend an Act passed in the eighth year of His present Majesty, intituled, An Act for erecting two Chapels of Ease in the Parish of Armagh, and making such Chapels, and those that are already in said Parish, perpetual Cures, and for making a proper Provision for the Maintenance of perpetual Curates to officiate in the same, and for other Purposes,' as relates to the uniting or disappropriating appropriate parishes; and also so much of an act passed in the twenty-third and twenty-fourth years of King George the Third, intituled, 'An Act for making appropriate Parishes belonging to Archbishops and Bishops perpetual Cures, and the better to enable such Archbishops and Bishops to endow and augment the Endowment of Vicarages and Curacies to them respectively appertaining; and to render more effectual the several Acts now in force to enable the Clergy having Cure of Souls to reside on their respective Benefices, and to build on their respective Glebe Lands,' as relates to the uniting or disappropriating of appropriate parishes; and the said several acts and parts of acts as aforesaid are hereby respectively repealed accordingly.

"II. And be it further enacted, that from and after the passing of this act, it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, with the assent of the major part of his majesty's privy council in Ireland in council assembled, six at least consenting, and with the advice and approbation of the archbishop of the province and the bishop of the diocese, certified under their hands and archiepiscopal and episcopal seals, with the consent of the respective patrons, certified under their hands and seals, attested by two or more credible witnesses subscribing thereunto, to divide old parishes, or to separate any parish or part of a parish heretofore united, in whatever manner such union may have been effected, and to unite parishes one to another, or any part of a parish to another parish, or part of a parish in perpetuity, and to erect such divided or united parishes or parts of parishes, into new parishes, with all parochial rights.

"III. (1) And be it further enacted, that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland, with such advice and approbation and in such manner as are hereinbefore mentioned, to divide and separate or to unite the glebe belonging to any parishes so divided and separated or united, and to annex such glebe, or any part or proportion thereof, to such divided or united parish or parishes or parts thereof, which shall be erected into new parishes or united to others; and that all such divisions and separations or unions of glebes shall be good, firm, and valid in law; and that such glebe, or such part thereof as shall be so annexed, shall be always deemed and taken to be the glebe or glebes of such newly-erected or united parish or parishes; and that the incumbents of any such newly-erected or united parish or parishes shall hold and enjoy such divided and separated or united part of such glebe, annexed to such newly-erected or united parish, in as full and ample manner to all intents and purposes as if such

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newly-erected or united parish had been an old parish, and as if such proportion of glebe had been always held with and enjoyed as the glebe belonging to such newly-erected or united parish or parishes, any law or usage to the contrary notwithstanding.

"IV. And be it further enacted, that where one or more parish or parishes, or part of one or more parish or parishes, shall be united to another parish or parishes, or to a part of any parish or parishes, in pursuance of this act, and the incumbent of any the said united parishes, or of the parish or parishes whereof part only shall be so united to any other parish or parishes, shall die, resign, or be removed, then the next incumbent or person succeeding in the place of him so dying, resigning, or being removed, shall be chargeable with and shall accordingly pay the first-fruits of such parish or parishes, or part of parish or parishes, so united, as if he were legally collated or instituted and inducted to the same; and to the end that such incumbent may be charged with such first-fruits, the archbishops and bishops of Ireland are hereby respectively required, each in his own diocese, to make and return to the first-fruits' office a certificate of the death, removal, or resignation of such incumbent or incumbents of any such parish or parishes, or part of parish or parishes, so united, and the name of the next incumbent or person succeeding in the place of him so dying, resigning, or being removed as aforesaid, together with the several and particular denominations of each divided and united parish or parishes, within such time and in such and the same manner as certificates are or usually have been made and returned upon the institution or collation of incumbents to livings or benefices in Ireland.

"V. And in order to prevent any disputes which might arise upon the apportioning the first-fruits, crown rents, port corn rents, pensions, procurations, synodals, and salaries payable to the schoolmasters of the diocesan schools by the several incumbents of such divided or united parishes, be it enacted, that upon the application of any incumbent of any such divided or united parish or parishes to the bishop of the diocese in which such divided or united parish lies, it shall be lawful for such bishop, and he is hereby empowered and directed, to inquire into the value of such parishes or parts of parishes as are separated and divided from the old parish, and erected into the new parish, and to settle and adjust the proportion of first-fruits, crown rents, port corn rents, pensions, procurations, and synodals, and the salaries of the said schoolmasters, which the incumbent of such old divided parish and newly-erected parish is to pay; which adjudication, being in writing, and signed and sealed by the said bishop, and registered in the register book of the said bishop, shall be the proportion which the incumbent of such newly-erected parish is to pay, and shall be binding and conclusive upon the several incumbents of such divided and united parish and parishes, and their successors; any law to the contrary notwithstanding.

"VI. And be it further enacted, that such adjudication being made by the bishop of the diocese in manner as aforesaid, a certificate of so much thereof as relates to the proportion of first-fruits, crown rent, and port corn rent, wherewith the said old divided parishes and new erected parishes are to be charged by the adjudication, shall be returned by the bishop of the diocese under his episcopal seal into his majesty's court of Exchequer, there to be filed of record; and such old divided parishes and newly-erected parishes shall be charged in all process to be issued out of the said court for first-fruits, crown rent, and port corn rent, according to the proportion certified as aforesaid, and not otherwise; any law or usage to the contrary notwithstanding.

"VII. And be it further enacted, that after presentation and institution or collation, and also induction of any clerk or incumbent to any such parish or part of parish which shall be then vacant and become part of such united parish, shall proceed to the election and appointment of churchwardens and other parish officers, as by law they might have done if the other part of such united parish had become void; which churchwardens and other parish officers shall from time to time be elected and appointed in manner required by law, as if such united parish had been an old parish, and as if such proportion of glebe had been always held with and enjoyed as the glebe belonging to such newly-erected or united parish or parishes, any law or usage to the contrary notwithstanding.

STAT. 7 & 8
GEO. 4, c. 43.
[1a.]

Incumbent of divided parish shall receive from his successor, a proportion of amount of such improvements, although exceeding two years' income.

On death or removal of incumbent of any newly-erected parish, the patron entitled to the first avoidance may present to such new parish.

Clerk so presented may be inducted;

and may qualify in any church in the vacant part, or in the old parish church, and enter on the cure of souls, &c.

On death or removal of the other incumbents, the clerk so presented shall be the full in-

other parish officers are in other parishes elected and appointed, till the other parts of such united parish shall become void; and after such avoidance the election and appointment of such churchwardens and other parish officers of such united parish shall be in the same manner, and at the same time, and by the same persons, as is required by law in the other parishes of the diocese in which such united or newly-erected parish lies and is situated.

“VIII. And be it further enacted, that where any large parish shall be divided in manner as in this act is mentioned, and that the incumbent of any such divided parish shall be entitled to receive any sum of money from his next successor in any such parish, in case the same had not been divided, on account of any purchase of glebe or addition to the glebe, or of any buildings or improvements made on the glebe of such parish, or any money paid by him to his predecessor on such account, according to the laws in force for that purpose, such incumbent shall have and be entitled to receive from his next successor in that part of such divided parish within which such additional glebe shall be situate, or on which such buildings and improvements shall have been made, the same sum as he would have been entitled to receive if the said parish had not been divided, although the sum so to be received should exceed two years' income of that part of the parish; and such incumbent, having paid such proportion of the said money, shall be entitled to receive such proportion of the money so to be paid from his successors, according to the laws in force for that purpose, in such manner as he ought in case such parish had not been divided.

“IX. And be it further enacted, that where any such union or unions shall be made by virtue of this act, and a new parish erected, and it shall happen that any incumbent enjoying any parish or part of a parish so united to any other parish or part of a parish constituting the newly-erected parish shall die or be removed, whereby the parish or part of a parish which such incumbent so dying or removed held and enjoyed is no longer an old parish or part of an old parish, but is become part of the united and newly-erected parish, it shall and may be lawful, from and after the death or removal of such incumbent, to and for the patron or patrons of such united and newly-erected parish, who by law is or are entitled to present or collate to the first turn upon the avoidance of such newly-erected parish, to present or collate his clerk to such newly-erected parish by the name or description which such newly-erected parish is distinguished or called by in the act of council establishing such union and erecting such parish, as if all the incumbents of such united and newly-erected parish were then dead or removed, and as if such united and newly-erected parish were then entirely void; and upon such presentation, and institution thereupon, or collation, the clerk so presented and instituted or collated shall be entitled to induction to the said united and newly-erected parish, as if all the incumbents were dead or removed, and may be inducted into the parish or part of a parish which shall be then void, without waiting for the death or removal of the other incumbent or incumbents, and may perform all matters and things for the qualifying or entitling himself, as by law is required, to the said united parish, in any church, if any such there be in that parish or part of a parish then become vacant, and in case there be no church upon such parish or part of a parish so vacant, then in the old parish church of the parish from whence such part of a parish is taken; and such clerk so presented and instituted or collated, and also inducted, shall then enter upon the cure of souls, and take and receive all such tithes, duties, or other profits, in such vacant parish or part of a parish, in as large and ample a manner as the old and former incumbent so dying or removed was by law entitled to have, take, and receive in such parish or part of a parish before it became void.

“X. And be it further enacted, that such clerk so presented and instituted or collated, and so inducted, in pursuance of this act, into such united or newly-erected parish, upon the death or removal of the other incumbent or incumbents of the other parishes or parts of a parish, constituting such union, and erected into the said new parish, as they respectively become void, shall and may enter upon the cure of souls, and take and receive such tithes, duties, and other profits, as the said

STATUTA GEORGH IV. A.D. 1820-1830.

former incumbent or incumbents so dying or removed was or were by law entitled to in such parish or part of a parish then become part of the said united or newly-erected parish; and such clerk so presented and instituted or collated, and inducted in pursuance of this act, to such united parish, and having performed all other matters and things which by law he was required to do and perform, shall, upon the death or removal of every such other incumbent, be full and lawful incumbent of all the said united and newly-erected parish, without any new presentation and institution, collation or induction, to all intents and purposes whatsoever, and shall have the same right, title, and interest in and to the said united and newly-erected parish, and to all tithes, duties, profits, and perquisites thereunto belonging or appertaining, in as large and ample manner as he could or might have had if such clerk had been separately presented and instituted, or collated and inducted, into every of the said parishes or parts of parishes, as they respectively became void, and as the old and former incumbents, or any of them, were by law entitled to have and receive the same.

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"XI. And be it further enacted, that in case of the death or removal of such clerk, instituted or collated and inducted in pursuance of this act, before the other parish or parts of a parish completing the said united or newly-erected parish shall become void by the death or removal of the incumbent or incumbents thereof, the patron or patrons of such united or newly-erected parish whose turn it shall be then to institute and present, or collate and induct, may in like manner institute and present, or collate and induct, to the said united or newly-erected parish, and such clerk so presented and instituted or collated, and also inducted, shall hold and enjoy the said united or newly-erected parish, or such parts of it as are then vacant, or which shall thereafter become vacant by the death or removal of the other incumbent or incumbents, in the same and as large and ample manner as the former incumbents presented and instituted, or collated and inducted, by virtue of this act, did, might, or could have held and enjoyed the same, and in like manner, so often as any part of such united and newly-erected parish shall become void by the death or removal of any such incumbent or incumbents, and until all the several parishes or parts of parishes so united shall become void, and fallen into the said united and newly-erected parish, so as to render the said union complete and perfect: saving to the other incumbents of the parishes or parts of parishes so united and made part of the said newly-erected parish, until the same shall become void, their several rights, titles, and interests in and to their respective parishes, or part or parts of parishes, during their respective incumbencies, as though no clerk had been presented and instituted, or collated and inducted, to such united and newly-erected parish, in pursuance of this act.

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"XII. And be it further enacted, that in case it shall happen that there shall not be any church upon any such parish or part of a parish so becoming vacant, then the person duly authorized to give induction shall and may deliver a sod or turf to such clerk, in the name of seisin and possession of such united and newly-erected parish, which is hereby declared to be a good and valid induction to all intents and purposes whatsoever.

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"XIII. And be it further enacted, that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, with the assent, approbation, and consent of such persons, and in such manner as in this act is hereinbefore required, mentioned, and directed, concerning the uniting or dividing of parishes or parts of parishes, to unite appropriate parishes, and to disappropriate appropriate parishes or part of such parishes, and to unite such disappropriate parishes or part of such parishes to another parish, and to erect such divided and united parishes into new parishes with all parochial rights.

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"XIV. Provided always, and be it enacted, that where the assent of the king's majesty, his heirs or successors, is to be given to the making any unions or divisions of parishes or parts of parishes, or of appropriate parishes or of parts of such parishes, or for establishing perpetual curacies and chapels of ease within districts to be respectively formed from contiguous portions of two or more adjoining parishes by virtue of this act, the consent of the lord lieutenant or other chief

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STAT. 7 & 8
GEO. 4, C. 43.
[1a.]

Consent of
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Archbishop,
&c. with con-
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and chapter,
&c. may unite
appropriate
parishes, not
exceeding 100l.
a year.

Persons who
before union
were obliged
to repair chan-
cels, shall after
union contri-
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to be settled by
consent, or by
order of lord
chancellor.

Impropriators
liable to pro-
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governor or governors of Ireland for the time being, under his and their hands and seals, to such unions and divisions, or establishment of perpetual curacies and chapels of ease, shall to all intents and purposes be as good and valid in law as if the consent of his majesty, his heirs or successors, was thereunto signified by letters patent under the great seal of Ireland; provided always, that such consent of the lord lieutenant, or other chief governor or governors as aforesaid, be enrolled in the rolls office of the high court of Chancery of Ireland within six calendar months after the date thereof; for the enrolment whereof three shillings and four pence and no more shall be paid, over and above the expenses usually paid to the engrossing clerk for the same.

“XV. And be it further enacted, that any disappropriation of appropriate parishes, in the manner hereinbefore mentioned, shall not be made in any diocese, unless with the consent of the dean and chapter, under their corporate seal, two thirds at least of the members of such chapter being present and consenting; or where there is not any dean and chapter, with the consent of the archdeacon and major part of the beneficed clergy of such diocese, to be testified in writing under their respective hands and seals.

“XVI. And be it further enacted, that when any parish or parishes appropriate belong to and are annexed to any archbishopric or bishopric in Ireland, it shall and may be lawful for any archbishop, with the consent of the dean and chapter of the diocese, and where there is not any dean and chapter, then with the consent of the major part of the beneficed clergy of the diocese, and also of the archbishop of the province and patron of such parish, under their hands and seals, to unite two or more of such appropriate parishes into one perpetual cure, and to unite one or more such appropriate parish or parishes to any one benefice or benefices contiguous thereto, provided the entire value of each of such respective unions do not exceed one hundred pounds by the year.

“XVII. And whereas in the union of the several parishes which may hereafter be united by virtue of this act there may be several appropriate rectories, and no vicarage within the same; and the rectorial tithes and other profits arising within such respective rectories are to remain, notwithstanding such union, payable to the appropriators or impropiators thereof, and who by reason thereof might by law be obliged to repair the respective chancels belonging to such rectories, and to find a sufficient curate or curates for the performance of divine service and for the cure of souls within the same, before such union; be it enacted, that wherever it shall happen in any union to be made by virtue of this act, that there shall be an impropriate or appropriate rectory within the same, the rector, impropiator, or possessor of which was, before the making of such union, by law obliged to repair the chancel belonging to the parish church of the said rectory, such rector, impropiator, or possessor respectively, his heirs, successors, and assigns, shall, from and after such union so made by virtue of this act, during the continuance of such union, be discharged from repairing of such chancel respectively, and shall, in lieu and instead of repairing the chancel of such rectory, be obliged to contribute a rateable share or proportion, according to the value of the profits arising out of such rectories, to and for the repair of the new chancel of the said united parishes; and such rateable share or proportion shall be settled and adjusted by consent of all parties concerned in interest before such union be made; or in case of any failure of such consent, then such share or proportion shall be ascertained by a decree or order of the court of Chancery in Ireland, on proper application thereto: and if any other person was obliged to repair the chancel of any of the other parish churches so united before such union, every such person and his successors shall be obliged to pay a rateable share towards the repair of the new chancel.

“XVIII. And whereas in some impropriate parishes the impropiators or possessors of the tithes of such parishes are obliged by law to find a curate to serve the cure of the said parishes; be it therefore enacted, that in case such parishes so appropriate or impropriate shall be united pursuant to this act to any other parish or parishes, such impropiator or possessor shall be discharged of and from finding a curate for such parishes so united, and shall be only obliged to contribute his

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proportion rateably with the other parishes to which such inappropriate or appropriate parish shall be united, for the maintenance and support of the curate or minister of such united parishes, and which rateable share or proportion shall be settled and adjusted in like manner as is hereinbefore directed with respect to the repair of churches.

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"XIX. And be it further enacted, that when two or more churches or parishes shall be united into one in pursuance of this act, having formerly had distinct patrons, in such cases the lord lieutenant or other chief governor or governors of Ireland for the time being, and council as aforesaid, with the advice and approbation of the respective archbishop and bishop in whose province and diocese the said churches were situate, shall divide the patronage by turns among the patrons, giving to each of them a right to present oftener and seldomer, according to the true yearly value of the respective parish or parishes whereof they are patrons, the consent of each patron being first had and entered in the instrument for erecting the said union; and such settlement or settlements as aforesaid shall be final and binding to all patrons, whether ecclesiastical or lay patrons, and to all parties, for ever; reserving always unto every archbishop and bishop, registrars and school-masters, their respective dues payable out of every such parish so united: provided always, that where the king's majesty, his heirs and successors, is or shall be entitled to the presentation of any of the said parish churches so to be united, he and they shall, from and immediately after such union, upon the then first vacancy, have the first presentation of an incumbent unto such united church, and afterwards, upon the then next vacancy, the other respective patrons severally, as the lord lieutenant or other chief governor or governors and council aforesaid, with the advice and approbation aforesaid, shall direct and appoint, regard being had to the respective values of the several parishes so to be united as aforesaid; and so in course respectively in manner aforesaid.

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"XX. And be it further enacted, that no owner or proprietor of any rectory inappropriate, having the patronage of the vicarage of the church, shall, by only presenting in his turn a clerk to any union made by virtue of this act, be judged in law to disappropriate his rectory, unless such person making such presentation shall, by express words contained therein, plainly signify his design and intent to make such disappropriation, and that such presentation be under the hand and seal of the patron so presenting, attested by two or more credible persons; any former law or usage to the contrary notwithstanding.

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"XXI. And be it further enacted, that from and after the passing of this act, any archbishop or bishop of any diocese in Ireland who shall unite any two or more benefices or parishes together, shall, within fourteen days after making the order of such union, report the same, together with the reasons for making such union, to the lord lieutenant in council; and if such union be not disapproved by the lord lieutenant in council within six weeks from the date of such order being received at the council office in Dublin Castle, such union shall be valid and effectual to all intents and purposes whatsoever; but that all and every archiepiscopal or episcopal union of benefices or parishes which shall not be so reported, or which shall be within such period as aforesaid disapproved by the lord lieutenant in council, shall be null and void, without any suit, judgment, or process of law.

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"XXII. And be it further enacted, that all real unions and divisions to be made by virtue of this act shall be enrolled in the rolls office of the high court of Chancery in Ireland within six calendar months after the making thereof, for the enrolment whereof respectively the fee of three shillings and four-pence and no more shall be paid, over and above the expenses usually paid to the ingrossing clerk for the same; and every instrument under the hands of the lord lieutenant or other chief governor or governors of Ireland, and council, testifying such union or division, shall contain in it a clause or proviso that the same shall be enrolled in six calendar months after the date thereof, or else to be void and of no effect.

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"XXIII. And whereas by the said act passed in the parliament of Ireland in the eleventh and twelfth years of the reign of his late majesty King George the

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STAT. 7 & 8
GEO. 4, c. 43.
[Ic.]

Churches or
chapels may be
erected by
archbishops or
bishops, in
districts con-
sisting of con-
tiguous por-
tions of
parishes.

Districts shall
be ascertained
by an instru-
ment under
the episcopal
seal; subject
to approval by
lord lieutenant.

Such districts
to be distinct,
and the
churches or
chapels to be
deemed perpe-
tual cures.
Curates thereof
shall be capable
of receiving
emoluments,
&c.

Curates may
build on glebe,
and receive his
proportion
from succes-
sors.

Third, intituled, 'An Act for erecting Parochial Chapels of Ease in Parishes of large Extent, and making such Chapels, and those that are already erected, Perpetual Cures; and for making a proper Provision for the Maintenance of Perpetual Curates to officiate in the same, and also in like manner for making Appropriate Parishes Perpetual Cures,' it is enacted, that it shall and may be lawful to and for the several archbishops and bishops of Ireland, and their successors, to erect or cause to be erected new churches or chapels in convenient places within such parishes, as to the said archbishops and bishops respectively shall seem proper: and whereas many parishes in Ireland are not sufficiently large, severally and separately, to support chapels of ease; be it enacted, that from and after the passing of this act it shall and may be lawful for the several archbishops and bishops of Ireland, and their successors, within their respective dioceses, to erect or cause to be erected new churches or chapels in convenient places within districts to be respectively formed from contiguous portions of two or more adjoining parishes, as to the said archbishops and bishops respectively, and to their successors, shall seem proper, in manner hereinafter directed.

"XXIV. And be it further enacted, that before any such church or chapel shall be erected in or for any district, the bounds for such district shall be ascertained by an instrument in manner following; that is to say, the archbishop or bishop of the diocese, by writing under his hand and archiepiscopal or episcopal seal, shall and may set out and describe the bounds of such district, and the several townlands which shall be comprised within any such district respectively; and a copy of such instrument shall, within fourteen days from the date thereof, be transmitted to each of the several incumbents of the parishes from which such district shall be formed, and also to the lord lieutenant in council; and the lord lieutenant in council shall hear and determine any objections which may be made by or on behalf of any such incumbents, and shall confirm or alter the bounds of the district so set out and described in such instrument, as the circumstances of the case may appear to require, and shall order such instrument to be altered accordingly: provided always, that such instrument so altered by any such order, or if no order shall be made thereupon by the lord lieutenant in council within six weeks after the date of the transmission of the copy of such instrument to the council office in Dublin Castle, then such instrument, as originally transmitted, shall be entered in the registry of the diocese, for which entry the sum of thirteen shillings and four-pence, and no more, shall be paid to the registrar, and shall also be enrolled in the rolls office of the court of Chancery in Ireland, for which enrolment the sum of thirteen shillings and four-pence, and no more, shall be paid, over and above the expenses usually paid to the ingrossing clerk for the same.

"XXV. And be it further enacted, that upon and after the registry and enrolment of any such instrument, the district therein set out and described shall be deemed and reputed to be a several and distinct district or parish for the purposes of this act, and shall be called and known by such name as shall be given thereto by such instrument; and every church or chapel to be erected in such district shall be deemed a perpetual cure: and the curate of every such church or chapel respectively, when duly nominated and licensed, and his successors, shall be and become bodies politic and corporate, and shall be capable of receiving any endowment from any archbishop or bishop respectively, or their successors, or from the rectors or incumbents of such adjoining parishes, or their successors or any other bodies corporate or politic, or any other person or persons, and to take and receive augmentations from the trustees and commissioners of the first-fruits of ecclesiastical benefices, in such manner as any curate of any inappropriate or appropriate parish, or chapel of ease or perpetual cure, is by any laws in force in Ireland qualified to take the same; and from and after the time when any of the said cures shall be endowed with sufficient quantity of glebe, it shall and may be lawful for any such curate, with the approbation of the archbishop or bishop of the diocese, to make such buildings and improvements on such glebe, and he shall be entitled to receive such proportion of the money expended in making or building the same from his next successor, as any curate of any inappropriate or

appropriate parish, or chapel of ease or perpetual cure, is or shall be entitled unto for buildings on the glebe of his curacy; and all other provisions for encouraging the making buildings and improvements on glebes belonging to the curates of impropriate or appropriate parishes, or chapels of ease or perpetual cures, shall extend to curates of perpetual cures under this act respectively, in the same manner as they now do to the curates of impropriate or appropriate parishes, or chapels of ease or perpetual cures.

“XXVI. And be it further enacted, that from and after the execution, registry, and enrolment of any such instrument, as before directed, it shall and may be lawful for the archbishop or bishop of the diocese to appoint vestries to be held for any and every such intended district, as a separate parish, and two churchwardens to be chosen, and sums of money to be assessed, in the same manner and subject to the same provisions as vestries are directed to be held, and churchwardens chosen, and sums assessed for chapels of ease or perpetual cures, under the directions of the said recited acts of the eleventh and twelfth years of King George the Third; and that every such district or new parish shall be subject to all the same provisions with regard to vestries, elections of churchwardens and other parochial officers, church rates, assessments and applotments, and salaries for parish clerks and sextons, as other impropriate or appropriate curacies, or chapels of ease or perpetual cures, are now subject by the said act, or by any other act or acts in force in Ireland.

“XXVII. And be it further enacted, that it shall and may be lawful for the archbishop or bishop of the diocese in which any such district or new parish shall be formed, and he is hereby required to determine, in and by such instrument as aforesaid, the rates and proportions of salary which each of the incumbents of the adjoining parishes out of which such district shall be formed shall pay to the curate of such district or parish, and to regulate the manner in which each of such incumbents shall, on vacancies of the said curacy, nominate to the said archbishop or bishop, or their successors, a sufficient curate, and also to appoint which of the incumbents shall first nominate, and the order in which the several incumbents of all such adjoining parishes shall in their turn nominate such curate; and so soon as any such church or chapel shall be erected and set apart for divine worship, the rector or incumbent of one of the said adjoining parishes, whose turn it shall be, shall nominate to the said archbishop or bishop of the diocese a sufficient curate for such church or chapel; and such curate shall be approved of and licensed by such archbishop or bishop, in such manner as other curates are by law to be licensed and approved of; and upon every vacancy of any such cure, by the death or removal of such curate, or by his acceptance of any other cure, or of any benefice with cure of souls, another curate shall be nominated by the rector or incumbent of such of the said adjoining parishes whose turn it shall be so to nominate, in manner aforesaid; and in case the rector or incumbent of any such adjoining parish for the time being, whose turn it shall be so to nominate, shall fail or neglect to nominate a curate for the space of two months next after any such church or chapel shall be erected and set apart, or next after any such vacancy shall happen, such incumbent shall forfeit and lose his turn for that time, and it shall and may be lawful for the archbishop or bishop respectively to appoint and license a curate for the district where such failure shall happen; and such archbishop or bishop shall in all cases allocate such salary for every such curate, so to be nominated and appointed and licensed for any of the said cures, as such archbishop or bishop is enabled to do by the laws in force in Ireland in other cases of perpetual cures.

“XXVIII. And be it further enacted, that if the rector or incumbent of any of such adjoining parishes shall by deed in writing, with the consent of the archbishop or bishop of the diocese, and of the patron, and the dean and chapter of the said diocese where there is a dean and chapter, or in any diocese where there is no dean and chapter, then by the consent of the major part of the beneficed clergy at their respective visitations, testified by their being parties to and affixing their hands and seals to such writing, endow any such cure with a competent portion of glebe or tithes for or towards the maintenance of the curate, such rector or

STAT. 7 & 8
Geo. 4, c. 43.
[I.R.]

All provisions for building on glebes extended to such curates.

Vestries shall be held, and churchwardens chosen, and assessments made, in such districts, as in the case of chapels of ease, &c.

Bishop shall ascertain the rate and proportion of salary to be paid to curates by incumbents, and their turns of nomination.

When the church is erected, the curate to be nominated.

Nomination on vacancies.

If any incumbent neglect to nominate in his turn, the nomination shall lapse to the bishop.

Allocation of salary.

Incumbent endowing curacy with any glebe or tithes, discharged from paying salary to curate.

STAT. 7 & 8
GEO. 4, c. 43.
[Ire.]

incumbent, and his successors, shall from thenceforth be discharged from the payment of the proportion of the salary of the curate so endowed; and such writing shall be registered in the registry of the diocese, and enrolled in the rolls office of the Chancery of Ireland, for which enrolment the same fee as is hereinbefore specified, and no more, shall be paid.

Districts under this act shall have all parochial rights.

“XXIX. And be it further enacted, that every such district or new parish, to be formed under the authority of this act, shall have all parochial rights by law appertaining to any parish, for the purposes in this act mentioned as aforesaid, and for all other purposes whatsoever, in like manner to all intents and purposes as other parishes may by law be entitled unto; and that every such district or new parish shall be discharged and exempted from all claims and charges whatsoever, as part of any former parish or parishes; saving nevertheless to the rectors or incumbents of the several adjoining parishes, and their successors, all their rights as rectors or incumbents of the respective portions of such districts.

Cure of souls shall remain in incumbents of former parishes.

“XXX. Provided always, and be it enacted, that this act shall not be construed so as to discharge any rector or incumbent of any such adjoining parish, or his successors, from the cure of souls, or any other parochial duties within the portions of their respective parishes which shall make part of such intended district, but such cure of souls and duties shall remain in them respectively as before the passing of this act.

Where church or chapel is already erected, the district may be formed, the bounds ascertained, and church made a perpetual cure.

“XXXI. And be it further enacted, that if it shall appear proper to any archbishop or bishop in Ireland, in the manner and under the regulations prescribed in the said act of the eleventh and twelfth years of his late majesty George the Third, or of this act, to form any district from a portion of any parish, or from any contiguous portion of two or more adjoining parishes, and if in any such portion of a parish a church or chapel shall have been previously erected for the accommodation of the inhabitants of such parish who may live at a distance from the parish church, it shall and may be lawful for such archbishop or bishop to form such district, and to ascertain the bounds thereof in the manner required by law, and to make the church or chapel within such district a perpetual cure, although such church or chapel may have been erected before the formation of such district, or the ascertainment of the bounds thereof; anything in the said act of the eleventh and twelfth years of his late majesty, or of this act, to the contrary notwithstanding.”

STAT. 7 & 8
GEO. 4, c. 44.
[Ire.]

CLXXXVI. STAT. 7 & 8 GEORGII 4, c. 44. [IRELAND.] A.D. 1827.

“An Act to provide for the Payment of a Salary (in lieu of Fees) to the Judge of the Prerogative Court and Court of Faculties in Ireland.”

The offices of judge of the Prerogative and Faculty courts in Ireland shall be considered and held as one office.

“Whereas the offices of judge or commissary of his majesty's court of Prerogative for causes ecclesiastical, and commissary of his majesty's court of Faculties, in and throughout the whole of that part of the United Kingdom called Ireland, are judicial offices, and have always hitherto been held and enjoyed by one and the same person: and whereas it is expedient that provision should be made for the payment of a certain annual salary to the judge or person holding or who shall hold the said offices jointly, and that such salary should be in lieu of all fees and emoluments whatsoever receivable by such judge or person, and that all such fees should be applied to the public use: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, the office of judge or commissary of his majesty's court of Prerogative for causes ecclesiastical, and the office of commissary of his majesty's court of Faculties, in and throughout that part of the United Kingdom called Ireland, both which offices are held and enjoyed by the present judge or commissary thereof, shall from thenceforth for ever continue to be jointly held and enjoyed by one and the same person, and shall from time to time for ever be granted and held as one office, and that the person holding such office shall be styled the judge or commissary of his majesty's court of Prerogative for causes ecclesiastical and court of Faculties in and through-

out Ireland; and that no fees or pecuniary profits whatever, other than and except the salary permitted by this act, shall, from and after the fifth day of July one thousand eight hundred and twenty-seven, be received by or shall be payable to or to the use of the person holding or who shall hold the said office in respect of the execution of the said office, any act or acts of parliament, or any law, usage, or custom to the contrary in anywise notwithstanding; and that from and after the said fifth day of July, one thousand eight hundred and twenty-seven, all fees and pecuniary profits heretofore payable to the use of the holder of the office or offices aforesaid, shall be collected and applied to the public service in manner hereinafter mentioned and directed."

STAT. 7 & 8
GEO. 4, c. 44.
[1r.]

Fees shall not be received for the use of the judge, but shall be applied to the public service.

CLXXXVII. STAT. 7 & 8 GEORGII 4, cap. xlv. A.D. 1827.

"An Act to confirm an Exchange made of certain Parts of the Lands belonging to the Vicar of Saint Werburgh, in the County of Derby."

STAT. 7 & 8
GEO. 4, cap.
xlv.

CLXXXVIII. STAT. 7 & 8 GEORGII 4, CAP. XLIX. A.D. 1827.

"An Act for dividing, inclosing, and exonerating from Tithes, the open and common Fields, Meadows, Pastures, Fens, Ings, and Waste Lands, in the Parish of Washingborough, in the County of Lincoln, and Township of Heighington in the same Parish; and also for embanking, draining, and improving certain Lands within the same Parish and Township."

STAT. 7 & 8
GEO. 4, CAP.
XLIX.

CLXXXIX. STAT. 7 & 8 GEORGII 4, cap. xlix. A.D. 1827.

"An Act for carrying into effect an Agreement for Sale of certain Messuages or Tenements, and Parcels of Ground, in the Parish of Saint Andrew Holborn, in the County of Middlesex, Part of the Possessions of the See of Bangor; and for applying the Money arising therefrom in manner therein mentioned."

STAT. 7 & 8
GEO. 4, cap.
xlix.

CXC. STAT. 7 & 8 GEORGII 4, cap. l. A.D. 1827.

"An Act to explain and amend certain Acts passed in the forty-seventh and fifty-first years of the Reign of His late Majesty, and in the first and fifth years of the Reign of His present Majesty, for enabling the Archbishop of Canterbury to grant Building and Repairing Leases."

STAT. 7 & 8
GEO. 4, cap. l.

CXCI. STAT. 7 & 8 GEORGII 4, cap. liv. A.D. 1827.

"An Act for enabling the Bishop of London and his Successors to grant Licences to demise the Copyholds within the Manor of Fulham, in the County of Middlesex, for building upon and improving the same."

STAT. 7 & 8
GEO. 4, cap.
liv.

CXCII. STAT. 7 & 8 GEORGII 4, cap. lvii. A.D. 1827.

"An Act to enable the Lord Bishop of Carlisle to grant a Lease, with Powers of Renewal, of Hereditaments in the Parish of Lambeth, in the County of Surrey; and to authorise the granting of Sub-leases for building thereon, and for other Purposes."

STAT. 7 & 8
GEO. 4, cap.
lvii.

CXCIII. STAT. 7 & 8 GEORGII 4, cap. lviii. A.D. 1827.

"An Act for enabling the Master and Brethren of the Hospital of Saint Mary Magdalene, within the Town and County of Newcastle-upon-Tyne, to erect a Chapel on Part of their Possessions in the said Town, and for regulating the Performance of Divine Service therein; and also for carrying into effect an Exchange between the said Master and Brethren and Ralph Naters, Esquire; and also for enabling the said Master and Brethren to grant Building, Repairing, and other Leases of their Estates."

STAT. 7 & 8
GEO. 4, cap.
lviii.

STAT. 7 & 8
GEO. 4, c. 60.
[Ire.]

CXCIV. STAT. 7 & 8 GEORGIÆ 4, c. 60(1). [IRELAND.] A.D. 1827.
"An Act to amend the Acts for the establishing of Compositions for Tithes in Ireland."

STAT. 7 & 8
GEO. 4, cap.
lxi.

CXCV. STAT. 7 & 8 GEORGIÆ 4, cap. lxi. A.D. 1827.
"An Act to amend and enlarge the Powers of an Act of the fifty-seventh year of His late Majesty King George the Third, for enabling the Trustees of the Charity Estates of William Hickey, deceased, situate at Richmond in the County of Surrey, to grant Building and Repairing Leases thereof."

STAT. 7 & 8
GEO. 4, c. 62.

CXCVI. STAT. 7 & 8 GEORGIÆ 4, c. 62(2). A.D. 1827.
"An Act to authorize the Sale of a Port of the Clergy Reserves in the Provinces of Upper and Lower Canada."

31 Geo. 3, c.
31.

"Whereas by an act passed in the thirty-first year of the reign of his late majesty King George the Third, intituled, 'An Act to repeal certain Parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, "An Act for making more effectual Provision for the Government of the Province of Quebec in North America, and to make further Provision for the Government of the said Province," it is amongst other things enacted, that it shall and may be lawful for his majesty, his heirs, or successors, to authorize the governor or lieutenant-governor of each of the provinces of Upper Canada and Lower Canada respectively, or the person administering the government therein, to make, from and out of the lands of the crown within such provinces, such allotment and appropriation of lands as therein mentioned, for the support and maintenance of a protestant clergy within the same; and it was further enacted, that all and every the rents, profits, or emoluments, which might at any time arise from such lands so allotted and appropriated as aforesaid, should be applicable solely for the maintenance and support of a protestant clergy within the province in which the same should be situated, and to no other purpose whatever: and whereas in pursuance of the said act such allotments and appropriation of land as aforesaid have from time to time been reserved for the purposes therein mentioned; which lands are known within the said provinces by the name of 'The Clergy Reserves:' and whereas the said clergy reserves have in great part remained waste and unproductive, from the want of capital to be employed in the cultivation thereof; and it is expedient to authorize the sale of certain parts of such clergy reserves, to the intent that the monies arising from such sale may be employed in the improvement of the remaining part of the said clergy reserves, or otherwise, for the purposes for which the said lands are so reserved as aforesaid: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the governor and lieutenant-governor, or officer administering the government of the said provinces, or either of them, with the consent of the executive council appointed within such province for the affair thereof, in pursuance of any instructions which may be issued to such governor, lieutenant-governor, or other officer as aforesaid, by his majesty, through one of his principal secretaries of state, to sell, alienate, and convey, in fee-simple, or for any less estate or interest, a part of the said clergy reserves in each of the said provinces, (not exceeding in either province one fourth of the reserves within such province,) upon, under, and subject to such conditions, provisos, and regulations, as his majesty, by any such instructions as aforesaid, shall be pleased to direct and appoint: provided nevertheless, that the quantity of the said clergy reserves so to be sold as aforesaid in any one year, in either of the said provinces, shall not in the

Governor or
lieutenant-
governor, &c.
empowered to
sell part of
clergy reserves
in Canada.

Limiting the
quantity of

(1) *Vide Stat. 2 & 3 Geo. 4, c. 119; Stat. 3 & 4 Geo. 4, c. 37, s. 163; Stat. 3 & 4 Geo. 4, c. 100; and Stat. 1 & 2 Vict. c. 109.*

(2) *Vide Stat. 6 Geo. 4, c. 75, and Stat.*

9 Geo. 4, c. 51, for granting lands to, and vesting certain powers and privileges in, the Canada Company.

whole exceed one hundred thousand acres : provided also, that the monies to arise by or to be produced from any such sale or sales shall be paid over to such officer or officers of his majesty's revenue within the said provinces respectively as his majesty shall be pleased to appoint to receive the same, and shall by such officer or officers be invested in the public funds of the United Kingdom of Great Britain and Ireland, in such manner and form as his majesty shall from time to time be pleased to direct : provided also, that the dividends and interest accruing from such public funds, so to be purchased, shall be appropriated, applied, and disposed of for the improvement of the remaining part of the said clergy reserves, or otherwise, for the purposes for which the said lands were so reserved as aforesaid, and for no other purpose whatsoever ; save only so far as it may be necessary to apply the same, or any part thereof, in or towards defraying the expenses of or attendant upon any such sale or sales as aforesaid ; and which appropriations shall be so made in such manner and form, and for such special purposes, as his majesty from time to time shall approve and direct.

" II. And be it further enacted, that it shall and may be lawful for the governor, lieutenant-governor, or officer administering the government of the said provinces, with the consent of such executive council as aforesaid, in pursuance of any instructions which may in manner aforesaid be issued to him, to give and grant, in exchange for any part of the said clergy reserves, any lands of and belonging to his majesty within the said provinces of equal value with such clergy reserves so to be taken in exchange, or to accept in exchange for any such clergy reserves, from any person or persons, any lands of equal value ; and all lands so taken in exchange for any such clergy reserves shall be holden by his majesty, his heirs, and successors, in trust for the several purposes to which the said clergy reserves are appropriated by the said act so passed in the thirty-first year of the reign of his late majesty King George the Third, or by this present act."

CXC VII. STAT. 7 & 8 GEORGII 4, c. 66 (1). A.D. 1827.

"An Act to extend an Act of the fifty-sixth year of His late Majesty, for enabling His Majesty to grant small Portions of Land, as Sites for Public Buildings, or to be used as Cemeteries."

STAT. 7 & 8
GEO. 4, c. 62.
land to be sold in one year. Money to be invested in the funds, and dividends and interest applied in improvement of remaining part.

Governor, &c. may grant or accept lands in exchange for clergy reserves.

CXC VIII. STAT. 7 & 8 GEORGII 4, c. 72 (2). A.D. 1827.

"An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes."

"Whereas an act was passed in the fifty-eighth year of the reign of his late majesty King George the Third, intituled, 'An Act for building and promoting the building of additional Churches in populous Parishes,' whereby it was enacted, that it should be lawful for his majesty, by letters patent, to appoint such persons as his majesty should deem fit to be his commissioners for carrying into execution the purposes of the said act, and that the said commission should continue in force for the term of ten years from the date thereof, unless his majesty should think fit sooner to revoke the same : and whereas another act was passed in the fifty-ninth year of the reign of his late majesty King George the Third, for the purpose of amending and rendering more effectual the said act, whereby it was enacted, that it should be lawful for his majesty, his heirs and successors, when and so often as any vacancy should arise of any of the commissioners appointed under the provisions of the said recited act or the act now in recital, to supply any such vacancy or vacancies by the appointment of any other person or persons, and also from time to time to appoint additional commissioners who, together with the persons before appointed, should be the commissioners for carrying into execution the purposes of the said act and the act now reciting ; and the commissioners so appointed by his majesty were thereby declared to be a body corporate by the style

STAT. 7 & 8
GEO. 4, c. 66.

STAT. 7 & 8
GEO. 4, c. 72.

58 Geo. 3, c. 45.

59 Geo. 3,
c. 134.

(1) Repealed by Stat. 10 Geo. 4, c. 50. c. 107; Stat. 2 & 3 Vict. c. 49; Stat. 3 & 4
(2) Vide Stat. 1 & 2 Gul. 4, c. 38; Stat. Vict. c. 20; Stat. 3 & 4 Vict. c. 60; and
7 Gul. 4 & 1 Vict. c. 75; Stat. 1 & 2 Vict. Stat. 4 & 5 Vict. c. 38, s. 19.

STAT. 7 & 8
GEO. 4, c. 72.

3 Geo. 4, c. 72.

5 Geo. 4, c. 103.

Term of commissioners' powers further continued.

Commissioners may divide parishes under certain restrictions.

Persons endowing chapels to have the nomination of minister.

of 'His Majesty's Commissioners for building new Churches,' and should have a common seal: and whereas another act was passed in the third year of his present majesty, for the purpose of amending and rendering more effectual the said two acts so passed as aforesaid: and whereas another act was passed in the fifth year of the reign of his present majesty, for amending and rendering more effectual the said three acts so passed as aforesaid: and whereas commissioners for the purpose of carrying into effect the aforesaid acts have been duly appointed, and they have proceeded in the execution of the powers so vested in them: and whereas it is expedient that the time for the execution of the commission granted by his majesty in pursuance of the said acts, and which is limited to the term of ten years by the said first-mentioned act, should be extended, and that the powers contained in the aforesaid acts should be altered and enlarged: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the persons now or hereafter to be appointed to be his majesty's commissioners for building new churches, and for the carrying into effect the aforesaid acts and this act, shall continue to be such commissioners, and the said commission shall continue in force, for the term of ten years from the twentieth day of July one thousand eight hundred and twenty-eight, instead of the said term of ten years so fixed as aforesaid, unless his majesty, his heirs or successors, shall think fit sooner to revoke the said commission.

"II. And be it further enacted, that it shall be lawful for the said commissioners to divide any parish or extra-parochial place into such ecclesiastical districts in manner provided by the said act passed in the fifty-eighth year of the reign of his late majesty King George the Third; and if there shall not be any burial ground within such district, then and in every such case, until a burial ground shall be provided, the bodies of persons dying within such district may be interred in the cemetery of the parish church in all respects as if such division had not taken place.

"III. And be it further enacted, that when any person or persons shall, to the satisfaction of the said commissioners, endow any chapel built or hereafter to be built by such person or persons with some permanent provision in land or monies in the funds exclusively, or in addition to the pew rents or other profits arising from the said chapel, such endowment to be settled and assured as the said commissioners shall authorize and direct, it shall be lawful for the said commissioners to declare that the right of *nominating a minister*(1) to the said chapel shall for ever thereafter be in the person or persons building and endowing the said chapel, his, her, or their heirs and assigns, or in such person or persons as he, she, or they shall appoint, and notwithstanding no compensation or endowment may be made to or for the benefit of the minister of the church of the parish within which such chapel may be built."

STAT. 7 & 8
GEO. 4, CAP.
LXXXIX.

CXCIX. STAT. 7 & 8 GEORGII 4, CAP. LXXXIX. A.D. 1827.

"An Act for removing Doubts as to the Legality of the Erection of the Porch of the Parish Church of the Parish of Saint Mary-le-bone, in the County of Middlesex; for declaring the whole of the Site of Trinity Church to be within the said Parish; and for altering the Boundary between the said Parish and the Parish of Saint Pancras."

STAT. 7 & 8
GEO. 4, CAP.
XC.

CC. STAT. 7 & 8 GEORGII 4, CAP. XC. A.D. 1827.

"An Act for substituting a Building lately erected by William Mitford, Esquire, deceased, as the future Church or Chapel of Exbury and Lops, in the County of Southampton, in lieu of the present Church or Chapel, and for other Purposes relating thereto."

(1) *Nominating a minister*:—Repealed by Stat. 1 & 2 Gul. 4, c. 38, s. 1. Vide *Bliss v. Woods*, 3 Hagg. 486.

CCI. STAT. 7 & 8 GEORGH II. 4, CAP. XCI. A.D. 1827.

"An Act for providing the Inhabitants of the Parish of Saint John, Hampstead, in the County of Middlesex, with increased Accommodation for attending Divine Service."

STAT. 7 & 8
GEO. 4, CAP.
XCI.

CCII. STAT. 7 & 8 GEORGH II. 4, CAP. XCII. A.D. 1827.

"An Act for erecting and endowing a Chapel of Ease in the Parish of Wisbech Saint Peter's, in the Isle of Ely, in the County of Cambridge."

STAT. 7 & 8
GEO. 4, CAP.
XCII.

CCIII. STAT. 7 & 8 GEORGH II. 4, CAP. CVI. A.D. 1827.

"An Act for separating the Town or Vill of Ramsgate, in the County of Kent, from the Parish of Saint Laurence, and making the same a distinct Parish; and for completing the new Church now building therein; and for other Purposes relating thereto; and for altering and amending an Act of His late Majesty for establishing a Chapel therein."

STAT. 7 & 8
GEO. 4, CAP.
CVI.

CCIV. STAT. 7 & 8 GEORGH II. 4, CAP. CVII. A.D. 1827.

"An Act for taking down and rebuilding the Parish Church of Staines, in the County of Middlesex; for providing an additional Burial Ground; and for equalizing the Church Rates of the said Parish."

STAT. 7 & 8
GEO. 4, CAP.
CVII.

CCV. STAT. 7 & 8 GEORGH II. 4, CAP. CX. A.D. 1827.

"An Act for erecting a Church in the Parish of Doncaster, in the West Riding of the County of York."

STAT. 7 & 8
GEO. 4, CAP.
CX.

CCVI. STAT. 9 GEORGH II. 4, CAP. XV. A.D. 1828.

"An Act to establish a Chapel of Ease in the Parish of Hove, in the County of Sussex."

STAT. 9 GEO.
4, CAP. XV.

CCVII. STAT. 9 GEORGH II. 4, C. 17 (1). A.D. 1828.

"An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments."

STAT. 9 GEO.
4, C. 17..

"Whereas an act was passed in the thirteenth year of the reign of King Charles the Second, intituled, 'An Act for the well-governing and regulating of Corporations:' and whereas another act was passed in the twenty-fifth year of the reign of King Charles the Second, intituled, 'An Act for preventing Dangers which may happen from Popish Recusants:' and whereas another act was passed in the sixteenth year of the reign of King George the Second, intituled, 'An Act to indemnify Persons who have omitted to qualify themselves for Offices and Employments within the Time limited by Law, and for allowing further Time for that Purpose; and also for amending so much of an Act made in the twenty-fifth year of the Reign of King Charles the Second, intituled, "An Act for preventing Dangers which may happen from Popish Recusants," as relates to the Time for receiving the Sacrament of the Lord's Supper now limited by the said Act:' and whereas it is expedient that so much of the said several acts of parliament as imposes the necessity of taking the sacrament of the Lord's supper according to the rites or usage of the church of England, for the purposes therein respectively mentioned, should be repealed; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much and such parts of the said several acts passed in the thirteenth and twenty-fifth years of the reign of King Charles the Second, and of the

13 Car. 2,
St. II. c. 1.
25 Car. 2, c. 2.

16 Geo. 2, c. 30.

So much of
recited acts as

(1) Vide Stat. 1 Gul. 4, c. 26; and Stat. 5 & 6 Gul. 4, c. 28.

STAT. 9 GEO.
4, c. 17.

require the
persons therein
described to
receive the
sacrament, for
certain pur-
poses, repealed.

Declaration to
be made in
lieu of the sa-
cramental test.

Form of
declaration.

Declaration to
be subscribed
before magis-
trates, &c.

In case of
neglect to
make the
declaration,
election to be
void.

Persons ad-
mitted into any
office which
heretofore
required the
taking of the
sacrament,
shall make the
declaration
within six
months, or the

said act passed in the sixteenth year of the reign of King George the Second, as require the person or persons in the said acts respectively described to take or receive the sacrament of the Lord's supper, according to the rites or usage of the church of England, for the several purposes therein expressed, or to deliver a certificate or make proof of the truth of such his or their receiving the said sacrament in manner aforesaid, or as impose upon any such person or persons any penalty, forfeiture, incapacity, or disability whatsoever for or by reason of any neglect or omission to take or receive the said sacrament, within the respective periods and in the manner in the said acts respectively provided in that behalf, shall, from and immediately after the passing of this act, be and the same are hereby repealed.

"II. And whereas the protestant episcopal church of England and Ireland, and the doctrine, discipline, and government thereof, and the protestant presbyterian church of Scotland, and the doctrine, discipline, and government thereof, are by the laws of this realm severally established, permanently and inviolably: and whereas it is just and fitting, that on the repeal of such parts of the said acts as impose the necessity of taking the sacrament of the Lord's supper according to the rites or usage of the church of England, as a qualification for office, a declaration to the following effect should be substituted in lieu thereof; be it therefore enacted, that every person who shall hereafter be placed, elected, or chosen in or to the office of mayor, alderman, recorder, bailiff, town clerk, or common councilman, or in or to any office of magistracy, or place, trust, or employment relating to the government of any city, corporation, borough, or cinque port within England and Wales or the town of Berwick-upon-Tweed, shall, within one calendar month next before or upon his admission into any of the aforesaid offices or trusts, make and subscribe the declaration following:

"I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, upon the true faith of a christian, that I will never exercise any power, authority, or influence which I may possess by virtue of the office of to injure or weaken the protestant church as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church, or the said bishops and clergy, are or may be by law entitled."

"III. And be it enacted, that the said declaration shall be made and subscribed as aforesaid in the presence of such person or persons respectively who, by the charters or usages of the said respective cities, corporations, boroughs, and cinque ports, ought to administer the oath for due execution of the said offices or places respectively, and in default of such, in the presence of two justices of the peace of the said cities, corporations, boroughs, and cinque ports, if such there be, or otherwise in the presence of two justices of the peace of the respective counties, ridings, divisions, or franchises wherein the said cities, corporations, boroughs, and cinque ports are; which said declaration shall either be entered in a book, roll, or other record to be kept for that purpose, or shall be filed amongst the records of the city, corporation, borough, or cinque port.

"IV. And be it enacted, that if any person, placed, elected, or chosen into any of the aforesaid offices or places, shall omit or neglect to make and subscribe the said declaration in manner above mentioned, such placing, election, or choice shall be void; and that it shall not be lawful for such person to do any act in the execution of the office or place into which he shall be so chosen, elected, or placed.

"V. And be it further enacted, that every person who shall hereafter be admitted into any office or employment, or who shall accept from his majesty, his heirs and successors, any patent, grant, or commission, and who by his admittance into such office or employment or place of trust, or by his acceptance of such patent, grant, or commission, or by the receipt of any pay, salary, fee, or wages by reason thereof, would by the laws in force immediately before the passing of this act have been required to take the sacrament of the Lord's supper according to the rites or usage of the church of England, shall, within six calendar months after his admission to such office, employment, or place of trust, or his acceptance of such

patent, grant, or commission, make and subscribe the aforesaid declaration, or in default thereof his appointment to such office, employment, or place of trust, and such patent, grant, or commission, shall be wholly void.

“VI. And be it further enacted, that the aforesaid declaration shall be made and subscribed in his majesty’s high court of Chancery, or in the court of King’s Bench, or at the quarter sessions of the county or place where the person so required to make the same shall reside; and the court in which such declaration shall be so made and subscribed shall cause the same to be preserved among the records of the said court.

“VII. Provided always, that no naval officer below the rank of rear admiral, and no military officer below the rank of major general in the army or colonel in the militia, shall be required to make or subscribe the said declaration, in respect of his naval or military commission; and that no commissioner of customs, excise, stamps, or taxes, or any person holding any of the offices concerned in the collection, management, or receipt of the revenues which are subject to the said commissioners, or any of the officers concerned in the collection, management, or receipt of the revenues subject to the authority of the postmaster general, shall be required to make or subscribe the said declaration, in respect of their said offices or appointments: provided also, that nothing herein contained shall extend to require any naval or military officer, or other person as aforesaid, upon whom any office, place, commission, appointment, or promotion shall be conferred during his absence from England, or within three months previous to his departure from thence, to make and subscribe the said declaration until after his return to England, or within six months thereafter.

“VIII. And be it further enacted, that all persons now in the actual possession of any office, command, place, trust, service, or employment, or in the receipt of any pay, salary, fee, or wages, in respect of or as a qualification for which, by virtue of or under any of the before-mentioned acts or any other act or acts, they respectively ought to have heretofore taken or ought hereafter to receive the said sacrament of the Lord’s supper, shall be and are hereby confirmed in the possession and enjoyment of their said several offices, commands, places, trusts, services, employments, pay, salaries, fees, and wages respectively, notwithstanding their omission or neglect to take or receive the sacrament of the Lord’s supper in manner aforesaid, and shall be and are hereby indemnified, freed, and discharged from all incapacities, disabilities, forfeitures, and penalties whatsoever, already incurred or which might hereafter be incurred in consequence of any such omission or neglect; and that no election of or act done or to be done by any such person or under his authority, and not yet avoided, shall be hereafter questioned or avoided by reason of any such omission or neglect, but that every such election and act shall be as good, valid, and effectual as if such person had duly received the said sacrament of the Lord’s supper in manner aforesaid.

“IX. Provided nevertheless, that no act done in the execution of any of the corporate or other offices, places, trusts, or commissions aforesaid, by any such person omitting or neglecting as aforesaid, shall by reason thereof be void or voidable as to the rights of any other person not privy to such omission or neglect, or render such last-mentioned person liable to any action or indictment.”

CCVIII. STAT. 9 GEORGII 4, c. 24. [IRELAND.] A.D. 1828.

“An Act to repeal certain Acts, and to consolidate and amend the Laws relating to Bills of Exchange and Promissory Notes in Ireland.”

“IX. And whereas the bank of Ireland, and banks in general, and other persons in Ireland, are often under the necessity of transacting business on Good Friday, Christmas Day, and days appointed by his majesty’s proclamation for solemn fasts or days of thanksgiving, for the purpose of receiving money for foreign and inland bills of exchange and promissory notes becoming payable on those days respectively, in consequence whereof many persons are prevented observing the same with due solemnity: and whereas doubts have existed in Ireland, whether foreign

STAT. 9 GEO.
4, c. 17.

appointment be void. Declaration to be made in the court of Chancery or King’s Bench, or at the quarter sessions.

Proviso as to naval and military officers under certain rank, and to officers of the revenue.

Persons now in possession of any office which heretofore required the taking of the sacrament, confirmed in such possession, and indemnified from penalties.

Omissions of persons to make the declaration not to affect others not privy thereto.

STAT. 9 GEO.
4, c. 24. [IR.]

Bills falling due on Good Friday, Christmas Day, and days of fast, to be payable on the day before.

STAT. 9 GEO.
3, c. 24. [IR.]

and inland bills of exchange and promissory notes falling due on any Sunday are properly payable on the Saturday next before such Sunday, or on the Monday next after such Sunday: now therefore, for the better observance of Good Friday and Christmas Day, and such days of fasts and thanksgiving as aforesaid, and also for the removing such doubts as aforesaid, and assimilating the law of Ireland to that of England in such respects, be it enacted, that in all cases where any such bill of exchange or promissory note in Ireland shall fall due on any Sunday, or on any Good Friday, or on any Christmas Day, or on any such day of fast or day of thanksgiving, the same shall be payable on the day next preceding such Sunday or such Good Friday, or on the day (not being a Sunday) next preceding such Christmas Day or day of fast or day of thanksgiving respectively; and that in case of nonpayment of such bill of exchange or promissory note, the same may be noted and protested on such preceding day as if the same were payable on such day; and that whenever such Christmas Day shall fall on, or such day of fast or day of thanksgiving shall be appointed on a Monday, every such bill of exchange or promissory note, which would be payable on such Christmas Day or day of fast or day of thanksgiving, shall be payable on the Saturday preceding such Christmas Day or day of fast or day of thanksgiving respectively, and in case of nonpayment, being first duly demanded, may be noted and protested for payment on such preceding Saturday.

In such cases notice of the dishonour thereof not necessary to be given until the day next after such Good Friday, &c.

“X. And be it further enacted, that from and after the first day of September, one thousand eight hundred and twenty-eight, in cases of bills of exchange and promissory notes falling due on any Sunday, Good Friday, or any Christmas Day, or on any day of fast or day of thanksgiving as aforesaid, as well as in the cases of foreign or inland bills of exchange and promissory notes falling due in Ireland on the day preceding any Sunday, or any Good Friday, or any Christmas Day, or any such day of fast or day of thanksgiving, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonour thereof until the day next after such Sunday, or Good Friday, or Christmas Day, or day of fast or day of thanksgiving; and in case such Christmas Day shall fall, or such day of fast or day of thanksgiving shall be appointed on a Saturday, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonour thereof until the Monday next after such Christmas day or day of fast or thanksgiving; and that whensoever such Christmas Day shall fall on, or such day of fast or day of thanksgiving shall be appointed on a Monday, it shall not be necessary for the holder or holders of such bills of exchange and promissory notes, as shall either, by virtue of this act or otherwise, be payable on the preceding Saturday, to give notice of the dishonour thereof until the Tuesday next after such Christmas Day or day of fast or day of thanksgiving respectively; and that every such notice so given as aforesaid shall be valid and effectual to all intents and purposes.

Good Friday, &c. for the purposes of this act, to be considered the same as Sunday.

“XI. And be it further enacted, that from and after the said first day of September, one thousand eight hundred and twenty-eight, Good Friday and Christmas Day, and every such day of fast and thanksgiving so appointed by his majesty, is and shall, for all other purposes whatsoever as regards bills of exchange and promissory notes, be treated and considered in Ireland as the Lord's day, commonly called Sunday.”

STAT. 9 GEO.
4, c. 31.

CCIX. STAT. 9 GEORGII 4, c. 31 (1). A.D. 1828.

“An Act for consolidating and amending the Statutes in England relative to Offences against the Person.”

Bigamy.

“XXII. And be it enacted, that if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere, every such offender, and every person counselling, aiding, or abetting such offender, shall be guilty of felony, and being convicted thereof, shall be liable to be transported beyond the seas for

(1) *Vide* Stat. 4 & 5 Gul. 4, c. 26; and Stat. 6 & 7 Gul. 4, c. 30.

the term of seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and any such offence may be dealt with, inquired of, tried, determined, and punished in the county where the offender shall be apprehended (1) or be in custody, as if the offence had been actually committed in that county; provided always, that nothing herein contained shall extend to any second marriage contracted out of England by any other than a subject of his majesty, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who at the time of such second marriage shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

"XXIII. And be it enacted, that if any person shall arrest any clergyman upon any civil process while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall suffer such punishment, by fine or imprisonment, or by both, as the court shall award."

STAT. 9 GEO.
4, c. 31.

Place of trial.

Exceptions.

Arresting a
clergyman
during divine
service.

CCX. STAT. 9 GEORGH II 4, c. 32 (2). A.D. 1828.

"An Act for amending the Law of Evidence in certain cases."

"Whereas it is expedient that Quakers and Moravians should be allowed to give evidence upon their solemn affirmation in all cases, criminal as well as civil, and that, in prosecutions for forgery, the party interested should be rendered a competent witness; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every Quaker or Moravian who shall be required to give evidence in any case whatsoever, criminal or civil, shall, instead of taking an oath in the usual form, be permitted to make his or her solemn affirmation or declaration in the words following; that is to say, 'I, A. B., do solemnly, sincerely, and truly declare and affirm;' which said affirmation or declaration shall be of the same force and effect in all courts of justice, and other places where by law an oath is required, as if such Quaker or Moravian had taken an oath in the usual form; and if any person making such affirmation or declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing, which if the same had been sworn in the usual form would have amounted to wilful and corrupt perjury, every such offender shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful and corrupt perjury are or shall be subject."

STAT. 9 GEO.
4, c. 32.

Quakers or
Moravians re-
quired to give
evidence may,
instead of an
oath, make
their solemn
affirmation,
which shall be
of the same
effect in all
cases, civil or
criminal.

CCXI. STAT. 9 GEORGH II 4, c. 33. A.D. 1828.

"An Act to declare and settle the Law respecting the Liability of the Real Estates of British Subjects and others, situate within the Jurisdiction of His Majesty's Supreme Courts in India, as Assets in the Hands of Executors and Administrators, to the Payment of the Debts of their deceased Owners."

STAT. 9 GEO.
4, c. 33.

(1) *Apprehended*.—It was held, on Stat. 1 Jac. 1, which had only the word "apprehended," that if a prisoner be apprehended for another offence, and be detained in the same county for bigamy, the detainer is such an apprehension, as will warrant the indicting him in that county. A prisoner was taken up in Worcestershire for a larceny; while in the house of correction for that offence, a bill for bigamy was found against him, and upon which he was tried at the assizes for that county. The judges were of opinion, that as the prisoner was in custody on a criminal charge, he was liable to

be tried where he was imprisoned; although the second marriage was not contracted in Worcestershire. *Rex v. Gordon*, R. & R. 48. *Vide Digbies (Lord) case*, Hutt. 131. Where the indictment is preferred in a county, not where the second marriage was, but where the prisoner was apprehended or in custody, it must expressly state that fact. *Rex v. Fraser*, R. & M. C. C. R. 407. *Vide Rex v. Treharne*, Ibid. 298. 1 Russell on Crimes by Greaves, 189.

(2) *Vide Stat. 3 & 4 Gul. 4, c. 49; and Stat. 1 & 2 Vict. c. 77.*

STAT. 9 GEO.
4, c. 40.

CXXII. STAT. 9 GEORGH 4, c. 40. A.D. 1828.

"An Act to amend the Laws for the Erection and Regulation of County Lunatic Asylums, and more effectually to provide for the Care and Maintenance of Pauper and Criminal Lunatics in England."

Visitors to
make regula-
tions and ap-
point officers;

"XXX. And be it further enacted, that in all cases where any such county lunatic asylum shall have been established under the authority of this act, or any former act or acts, the major part of the visitors appointed as aforesaid to superintend the same present at a meeting duly summoned, such major part not being fewer than three, shall from time to time make such regulations as to them shall seem expedient for the management and conduct thereof, in which regulations shall be set forth the number and description of officers and servants to be kept, the duties to be required, and what salaries respectively shall be paid to them, and may appoint a treasurer, and such other officers and servants, together with such number of assistants as they shall from time to time find necessary, in proportion to the number of persons confined in such county lunatic asylum, and may dismiss any such officer, servant, or assistant, if they see occasion; and shall from time to time fix a certain weekly rate to be paid for each person confined in such county lunatic asylum, which may be sufficient to defray the whole expense of the maintenance and care, medicine and clothing, requisite for such person, and the salaries of the officers and attendants; provided always, that such rate shall in no case exceed fourteen shillings per week; and that the said visitors shall annually audit the accounts of the treasurer, and report the same to the next general quarter sessions of the peace to be holden for the counties at the expense of which such county lunatic asylum shall have been erected.

and to fix a
weekly rate for
maintenance of
insane persons.

Rate not to
exceed 14s.
per week.

A chaplain to
be appointed

"XXXII. Provided always, and be it further enacted, that in every case where a county lunatic asylum shall be provided, a *chaplain shall be appointed* (1) for the

(1) *Chaplain shall be appointed*:—In *Regina v. Middlesex Pauper Lunatic Asylum (Visiting Justices of)*, (2 Q. B. 433,) it was held, that under Stat. 9 Geo. 4, c. 40, s. 30, the visiting justices of county lunatic asylums have the power of appointing and dismissing the chaplain at their discretion, though, by sect. 32, the chaplain appointed must be licensed by the bishop of the diocese, and though the bishop has power to revoke such licence. Therefore, where a chaplain, appointed by the visiting justices, and afterwards licensed by the bishop, was dismissed by the justices, and another appointed in his stead, but the bishop refused to revoke his first licence, or to license the new appointee, the court of Queen's Bench refused to issue a *mandamus* commanding them to admit the first appointee to perform the duties of chaplain in the asylum:—Lord Denman observing, "This rule calls on the visiting justices of the Middlesex Lunatic Asylum to show cause why they should not be commanded by *mandamus* to admit Mr. Tebbutt into the asylum, that he may perform his duties as chaplain, and to pay the arrears of his salary. It appears to me, that they have shown sufficient cause, and that the rule must be discharged. If we felt any reasonable doubt, we would call for a return, in order that the question might be solemnly discussed: but it does not seem to me, that any reasonable doubt has been raised. I found my opinion on the 30th and 32nd sections, which are quite essential to the creating of any power of appointment at all. The 32nd section provides that a chaplain shall be appointed for the asylum, who shall be licensed by the

bishop, and that such licence is to be revocable by the bishop, at his discretion. It is contended, that this power of revocation gives the bishop, in effect, the power of appointment and dismissal. But it seems to me, that the only rational mode of expounding the 32nd section is to read it together with the 30th, which enacts that the visiting justices 'may appoint a treasurer, and such other officers and servants, together with such number of assistants as they shall from time to time find necessary,' and may dismiss any such officer, servant, or assistant, if they see occasion.' If it had been intended, that any other than the magistrates should appoint and dismiss the chaplain, there would have been an exception in respect of him in sect. 30, or an express provision for his appointment and dismissal, in sect. 32. But the 32nd section merely requires, that the power of appointment shall be exercised by the appointment of a chaplain, subject to the bishop's power of withholding or revoking the licence. No power to appoint the chaplain is directly given, unless he is included in the 30th section under the word 'officers.' We may perhaps regret, that the expression in the act is not more directly pointed. But I think the chaplain would be considered an officer here, as he was under Stat. 4 & 5 Geo. 4, c. 76, s. 46, in *Regina v. Braintree Union (The Guardians of the Poor of)*, 1 Q. B. 130. Under the Gaol Act, 4 Geo. 4, c. 64, s. 30, the sessions have power to remove a chaplain who refuses or neglects to conform to the regulations made under that act. By that act, though the chaplain is

same, which chaplain shall be in full orders, and shall be licensed by the bishop of the diocese; and the said licence shall be revocable by the bishop whenever he shall think fit to withdraw it; and such chaplain shall perform on each Sunday, and on the great festivals, the divine service of our church, according to the forms by law established."

STAT. 9 GEO.
4, c. 40.

for every
county lunatic
asylum.

CCXIII. STAT. 9 GEORGII 4, cap. xl. A.D. 1828.

STAT. 9 GEO.
4, cap. xl.

"An Act to effect an Exchange of Lands and Tithes situate and arising in the County of Buckingham, belonging to Richard Lansdale, Yeoman, for other Lands in the same County, of which the Mayor, Bailiffs, and Burgesses of the Borough of Chepping Wycombe are seized for Charitable Purposes."

CCXIV. STAT. 9 GEORGII 4, c. 42 (1). A.D. 1828.

STAT. 9 GEO.
4, c. 42.

"An Act to abolish Church Briefs, and to provide for the better Collection and Application of Voluntary Contributions for the purpose of enlarging and building Churches and Chapels."

"Whereas an act was passed in the fourth year of the reign of Queen Anne, intituled, 'An Act for the better collecting Charity Money on Briefs by Letters Patent, and preventing Abuses in relation to such Charities;' and it is expedient to repeal the said act, and to provide for the better collection and application of voluntary contributions for enlarging, building, rebuilding, and repairing churches and chapels in England and Wales: and whereas in the year one thousand eight hundred and eighteen a society was instituted, by the name of 'The Society for promoting the Enlargement and Building of Churches and Chapels,' consisting of persons who had contributed or should contribute twenty guineas in one donation, or two guineas annually; which society, governed under certain rules and regulations, has tended greatly to promote the good and laudable objects for which it was instituted, and would be enabled to promote the same still more effectually if the said society were incorporated, with such powers and privileges as are hereinafter mentioned: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said act of Queen Anne shall be and the same is hereby repealed, except as to such

4 Ann. c. 14.

Repeal of
recited act,
except as to
briefs in pro-
gress.

appointed by the sessions, (sect. 28,) he cannot officiate till licensed by the bishop, (sect. 29.) There, however, sect. 30 confers certain powers and imposes certain duties on the chaplain; which might entitle him to say, in the event of dismissal, that the case was not within the act. But here there may well be strong reasons for giving a larger discretion to the justices. Where the persons whom the chaplain is to attend are in possession of their reason, it may be proper to specify more distinctly the grounds which shall authorize the removal of the chaplain. But, in the case of persons in a lunatic asylum, instances may occur in which it would be dangerous even to touch upon religious subjects. The observations made on sect. 12 scarcely require notice. That section merely enacts that the sessions shall have power to defray the expenses by laying special county rates; but the powers relating to the execution of the details of the act are left untouched. I do not know that it is necessary to show, that the bishop has not the power of appointment; though I think that he has only to take care not to give a licence where the person appointed is not a clergyman of the church of England, able, fit,

and willing to perform the duties. But the duties cannot be the same in all cases. A patient, when recovering, may require constant personal attendance; but in a different stage of the disease, a different course may be advisable. We are not here to revise the discretion exercised by the justices, or to assume that it has been exercised perversely: where a discretion is given, we must suppose that they will perform properly the serious duties thrown upon them. On comparing this act with the Gaol Act, 4 Geo. 4, c. 64, we find that in the Gaol Act, the justices have power, by sect. 12, to make regulations in addition to those laid down by the act, as may seem to them expedient: in this act, by sect. 30, the justices have power to dismiss if they see occasion. A large discretion is given in each instance: but, as might be expected, the discretion as to the dismissal of officers is larger in the case of a lunatic asylum than in that of a gaol."

(1) Repealed, as to franking, by Stat. 7 Gul. 4 & 1 Vict. c. 32; which statute was amended by Stat. 7 Gul. 4 & 1 Vict. c. 33; Stat. 7 Gul. 4 & 1 Vict. c. 35; and Stat. 2 & 3 Vict. c. 52.

STAT. 9 GEO.
4, c. 42.

The church-
buildingsociety
to be incorpo-
rated.

Presidency,
&c. of the
society.

Constitution of
the committee.

Qualification
for members of
the society.

General court,
when to be
holden; busi-
ness to be there
transacted.

Number of the
acting com-
mittee; their
powers and
duties.

Proviso as to
bye laws.

Rules to be
observed by the

briefs issued before the passing of this act as are now in progress, with respect to which the said act shall remain in force.

"II. And be it enacted, that from and after the passing of this act all such persons as now are or hereafter may become members of the said society shall be and are hereby declared to be a body corporate, by the name of 'The Incorporated Society for promoting the Enlargement, Building, and Repairing of Churches and Chapels.'

"III. And be it enacted, that the Archbishop of Canterbury for the time being shall be the president of the said society, and that the Archbishop of York for the time being, and the bishops of the two provinces for the time being, shall be vice-presidents thereof, together with such lay peers and commoners, being twenty-five in number, as now are vice-presidents of the said society; and that all vacancies which shall from time to time occur in that number of the vice-presidents shall be filled up from the lay members of the society by the committee thereof.

"IV. And be it enacted, that the said society shall be governed by a committee, which shall consist of the president, vice-presidents, and treasurer, who shall be members thereof in virtue of their several offices, and of thirty-six members elected from the society, one half at least of whom shall be laymen; and the treasurer, together with one fourth of the thirty-six elected members of the committee in rotation, shall vacate their offices at the annual general court, but shall be capable of immediate re-election: provided always, that all such persons as before the passing of this act shall have been elected to and are now filling the respective stations of treasurer, or of members of the committee of the said society, shall continue to fill the same, without any fresh election, until vacated as aforesaid.

"V. And be it enacted, that all persons who shall contribute ten guineas in one donation, or one guinea annually, shall be members of the said society, and have a right to vote at general courts, and be eligible to the committee, provided such annual subscriptions shall not then be in arrear.

"VI. And be it enacted, that a general court shall be holden annually in May, and oftener if the committee shall think it expedient; and that at the general court three auditors shall be appointed for the year ensuing, a treasurer elected, and the vacancies in the committee filled up from a double list prepared by the president and vice-presidents, and that all such elections and appointments shall be by ballot.

"VII. And be it enacted, that every order to be made and act to be done by the committee for the time being of the said society shall be made and done with the consent of the majority of the members present at any meeting of the committee, such meeting to consist of not less than five; and the committee, or the major part of them at any such meeting, shall have full power and authority to make all such laws and regulations, not being repugnant to the laws of this kingdom, or to the express provisions of this act, as to them shall from time to time seem expedient, for the management and government of the said society, and for carrying its designs into effect; and shall have the sole management, control, and disposition of the estates, funds, revenues, and other property which now or may hereafter belong to the said society; and shall have the power of affixing the common seal of the said society, or directing it to be affixed, to such instruments as the said committee or such major part of them shall think fit; and shall have the sole control over the appointment of all officers, agents, or servants whom it may be thought expedient to employ in the service of the said society, or in any of the concerns relating thereto: provided always, that such laws and regulations so to be made as aforesaid shall not be of any force or effect unless the same shall be confirmed by the members of the committee, or the major part of them, who shall be present at the next meeting of the said committee after the same shall have been first made, such next meeting to consist of not less than five.

"VIII. Provided always and be it enacted, that the committee of the said society, in the selection of parishes and extra-parochial places to which they shall

grant any part of their funds toward the enlarging or building of any churches or chapels, shall have regard to the amount of the population, and also to the disproportion between the number of inhabitants and the present accommodation for attendance upon divine service according to the rites of the united church of England and Ireland; and in giving preference among such parishes and extra-parochial places, shall have regard to the proportion of the expense which shall be offered to be contributed or raised by such respective parishes or places, towards the enlargement or building of churches or chapels therein, and to the pecuniary ability of the inhabitants thereof.

STAT. 9 GEO.
4, c. 42.

society in
selecting
parishes for
grants, &c.

“IX. Provided also, and be it enacted, that in granting aid towards the repairs of churches and chapels which have fallen into a state of great dilapidation without neglect or fault of the existing parishioners, and the entire expense of repairing which the parishioners shall be proved, to the satisfaction of the committee of the said society, to be unable to defray, reference shall be had to the amount of money raised by the parishioners by rates or subscription, and to the improvement which it may be proposed to effect in the accommodation for the poor.

Further rules
for the like
purpose.

“X. And be it enacted, that as often as his majesty shall be graciously pleased to issue his royal letters, directed respectively to the Archbishops of Canterbury and York, authorizing the collection of voluntary contributions within their several provinces, for the purpose of aiding the enlarging, building, rebuilding, or repairing of churches and chapels in England and Wales, or in any part thereof, in every such case all the contributions so collected shall be paid over to the treasurer of the said society, or his order, and shall be employed by the said society in carrying its designs into effect.

All sums col-
lected under
royal letters
for aiding the
building, &c.
of churches,
shall be applied
by the society-

“XI. And be it enacted, that accounts shall annually be presented to his majesty, of the progress made by the said society in the execution of its designs, stating the number of churches or chapels enlarged, built, rebuilt, or repaired, or in the course of being so, the money expended, and for what purposes, and all such other particulars as shall be necessary for explaining the progress made by the said society, together with a list of all officers, agents, and servants employed by the said society, and a statement of their respective salaries.

Accounts of
the society to
be laid annu-
ally before
parliament.

“XII. And be it enacted, that the said society may receive and send all letters and packets relating to the execution of the powers and trusts of this act free from the duty of postage, provided that such letters and packets as shall be sent to the said society by the post shall be directed to ‘The Incorporated Society for promoting the Enlargement, Building, and Repairing of Churches and Chapels;’ and that all such letters and packets as shall be sent by the said society shall be dated from their office, and shall be signed on the outside by such person as the said society shall appoint, with the consent of the commissioners of his majesty’s treasury, or any three or more of them, under such restrictions and regulations as the said commissioners shall think proper and direct.

Society may
send and re-
ceive letters
free of postage.

“XIII. And whereas there is a certain sum of money remaining in the hands of John Stevenson Salt, Esquire, the undertaker of briefs, arising from balances of monies collected upon briefs which have not been wanted or required for the purposes for which the same were collected; be it therefore enacted, that such sum shall be transferred to the said society, and that upon such transfer being made the said John Stevenson Salt shall be released and discharged from all claims and demands in respect of such sum, or of any part thereof.

Balances in the
hands of the
undertaker of
briefs to be
transferred to
the society.

“XIV. And whereas George Humphrys is seised to himself, his heirs and assigns, of the office of clerk of the briefs, for the lives of himself and of Josiah Humphrys his son, by virtue of certain letters patent, and the profits of the said office will be extinguished by the repeal of the said act of Queen Anne, and compensation should therefore be granted to the said George Humphrys for the loss of such profits; be it therefore enacted, that the said society shall, out of the sum so to be transferred to them as aforesaid, grant such compensation to the said George Humphrys, for his interest under the said letters patent, as shall be a full equivalent for the loss of the net profits of the said office, such net profits to be calculated upon an average of the last seven years.

Compensation
to be made to
the clerk of
the briefs.

STAT. 9 GEO.
4, c. 42.

Secretary of
State to make
order as to the
disposal of
briefs on hand.

Public act.

"XV. And whereas there is a large number of briefs now in the possession of the said John Stevenson Salt, which have been returned to him after the collections made thereon; be it therefore enacted, that it shall be lawful for any one of his majesty's principal secretaries of state to make such order as he shall think fit, respecting the manner of disposing of the said briefs.

"XVI. And be it enacted, that this act shall be deemed to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

STAT. 9 GEO.
4, cap. xlv.

CCXV. STAT. 9 GEORGII 4, cap. xlv. A.D. 1828.

"An Act for confirming a Partition of the Walcott Charity Estates, situate in the Parish of Lambeth, in Surrey, by vesting the same in Trustees for the several Parishes of Lambeth aforesaid, and Saint Olave Southwark, and Saint John Horslydown, in Surrey, and for regulating the said Charities; and for empowering the Trustees of the said Charities, and also the Trustees of a certain other Charity, called Hayle's Charity, in Lambeth, to grant Building and Repairing Leases."

STAT. 9 GEO.
4, c. 51.

CCXVI. STAT. 9 GEORGII 4, c. 51 (1). A.D. 1828.

"An Act to alter and amend an Act for enabling His Majesty to grant to a Company, to be incorporated by Charter, to be called 'The Canada Company,' certain Lands in the Province of Upper Canada."

STAT. 9 GEO.
4, c. 52. [IR.]

CCXVII. STAT. 9 GEORGII 4, c. 52. [IRELAND.] A.D. 1828.

"An Act for erecting a Chapel of Ease at Killiney, in the Parish of Monkstown, in the County and Diocese of Dublin, and for providing for the due Celebration of Divine Service therein."

"Whereas the parish of Monkstown, in the county and diocese of Dublin, has of late years become very populous, and a considerable number of inhabitants reside at Killiney, in the said parish, at a distance of two miles and upwards from the parish church, which is not sufficiently large to accommodate the increasing population of said parish; and the parishioners dwelling in the neighbourhood of Killiney aforesaid are very much in need of a particular place of worship nearer their homes, to which they may resort for the service of God, at morning and evening prayers, and for the administration of the sacrament of the Lord's supper: and whereas it will much tend to the advancement of religion in the said neighbourhood if the want of a proper place of worship should be supplied, and a chapel of ease be erected for that purpose upon a convenient site: and whereas the cure of souls in the parish of Monkstown is in the perpetual curate thereof; and the said curacy is appropriated to the deanery of the cathedral of the holy and undivided Trinity, commonly called Christchurch, in the city of Dublin, and the patronage and nomination thereof belong to the dean of the said cathedral: and whereas the Reverend Charles Lindsay is the present ecclesiastical incumbent or perpetual curate of the said parish; and whereas many inhabitants of the said parish have expressed an earnest desire that said chapel of ease should be forthwith erected, and that it is in contemplation to promote said design by creating proper and sufficient funds for the purpose: and whereas the most reverend father in God William Lord Archbishop of Dublin and ordinary of the said diocese, the Dean of Christchurch aforesaid, to whose patronage and nomination the said benefice of Monkstown belongs, the said Charles Lindsay the present curate or ecclesiastical incumbent thereof, and the parishioners of the same, have respectively testified their consent to the erecting of the said chapel of ease, and to the endowment of a chaplain in manner hereinafter provided: and whereas the said parish of Monkstown does not come within the provisions and operation of the several statutes in force in that part of the United Kingdom of Great Britain and Ireland called

Ireland, for the promoting and regulating the building of chapels of ease in the cases therein provided, and it is necessary to have special provision for the same; and it is also necessary, for the purposes aforesaid, that a piece of land should be set apart and appropriated in the vicinity of Killiney, as a site for the said intended chapel, and that there should be an endowed chaplain of the said chapel; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for any proprietor of any ground within the said parish of Monkstown, or any part thereof, within the ancient pariah of Killiney, now forming a part of the said parish of Monkstown, notwithstanding any such proprietor may be seised only for an estate for life or in tail therein, to grant and convey to the perpetual curate or minister of the said parish of Monkstown, and his successors, a sufficient quantity of ground, not exceeding one acre, English statute measure, for the purpose of building, erecting, and making a chapel of ease, with all buildings necessary thereto, in like manner and as fully and effectually as persons are authorized to grant or set out ground for such or the like purposes by any law now in being, such grant and conveyance to be in trust for the inhabitants of the said parish for ever; and that the said perpetual curate or minister of the said parish be and is hereby enabled to take such grant and conveyance, the statute of mortmain or any other law to the contrary notwithstanding: provided always, that if at any time after the making of the said grant and conveyance of the said ground, and before the building of the said chapel, it shall be found necessary or convenient to change such site of the said intended chapel, it shall be lawful for the said perpetual curate or minister of the said parish, with the consent of the ordinary of the diocese, the Dean of Christchurch, and the proprietor who shall or may have granted any ground for the site for the said chapel, to exchange such ground so granted as a site for the same for any ground of equal or greater quantity in the vicinity of Killiney aforesaid; which said ground so given in exchange shall be conveyed to the said incumbent for the purposes aforesaid, and shall be and is hereby vested in the said incumbent and his successors, in like manner as the ground originally granted would have been had it remained for the purposes aforesaid.

STAT. 9 GEO.
4, c. 52. [1A.]

Authorizing
the conveyance
of land for
erecting a
chapel of ease
in Killiney.

"II. And be it further enacted, that when and so soon as a proper site shall have been chosen and granted, in manner aforesaid, for the place of the said intended chapel, that then and as soon thereafter as conveniently may be, it shall and may be lawful for his grace William Lord Archbishop of Dublin, or his successors, Archbishops of Dublin, to erect or cause to be erected upon the ground so given and conveyed for the purposes aforesaid a chapel of ease, with all necessary accommodations; which chapel, when built, shall be consecrated, and shall be dependent upon the mother church of the said parish of Monkstown, as a parochial chapel of ease annexed to the said church; and it shall and may be lawful to celebrate the morning and evening service of the united church of England and Ireland, and administer the sacraments of baptism and the Lord's supper, and to preach the word of God therein: provided always, that nothing in this act shall be construed to extend so as to endow the said chapel with any right, privilege, or liberty of a parochial church or independent district chapel, or to authorize the performance therein of the service of confirmation, matrimony, and burial of the dead, or any or either of them, but that all such services shall continue as before to be solemnized in the parish church only.

When site has
been chosen
and granted, a
chapel of ease
to be erected
under the direc-
tion of the
Lord Arch-
bishop of
Dublin.

"III. And be it further enacted, that there shall be a chaplain of the said chapel, with constant and perpetual successive chaplains, to be appointed, constituted, and endowed in manner hereinafter provided, for the due celebration of divine service and preaching the word of God in the said chapel; which said chaplain and his successors shall be subject to the visitation and power of the ordinary of the diocese, and the laws and canons ecclesiastical, in like manner as chaplains with perpetual succession usually are and of right ought to be subject.

A chaplain to
be appointed.

"IV. And whereas it is necessary to make a provision for the endowment of the said chaplaincy, and for the maintenance of the chaplain and his successors;

Endowment of
the chapel.

STAT. 9 GEO.
4, c. 52. [1A.]

and that the Dean of Christchurch aforesaid, to whose deanery the said parish of Monkstown is appropriate, has proposed and is willing, as far as in him lies, and with the consent of the chapter of the said cathedral, to give certain lands and tenements, with their appurtenances, belonging to the deanery aforesaid, situate within the parish aforesaid at Dalkey, consisting of twelve acres one rood and eight perches, English statute measure, described in a certain lease bearing date the fifteenth day of January, in the year of our Lord one thousand eight hundred and twenty-eight, and made between the Dean of Christchurch aforesaid of the one part, and Henry Lindsay, esquire, of the other part, as part endowment of the said chaplaincy, and to settle and convey the same to the use of the first and other chaplains thereof in perpetuity; and Henry Lindsay, the tenant in possession of the said land and tenements, holding of the said dean under the said lease, has proposed and is willing to surrender his lease and interest in the same to the said dean; be it therefore enacted, that it shall and may be lawful for the said Dean of Christchurch, and his successors, Deans of Christchurch, at any time after the passing of this act, to grant and convey to the said Reverend Charles Lindsay, the incumbent or perpetual curate aforesaid, and his successors, the aforesaid lands and tenements, with their appurtenances, belonging to the deanery aforesaid, situate within the parish aforesaid, of Dalkey, consisting of twelve acres one rood and eight perches, English statute measure as aforesaid, and for any other proprietor of land within the said parish of Monkstown, notwithstanding such proprietor may be seised only for an estate for life or in tail therein, at any time after the passing of this act, to grant and convey to the said Reverend Charles Lindsay, the incumbent or perpetual curate aforesaid, and his successors, any quantity of land within the said parish of Monkstown, or any of the ancient parishes now forming the parish of Monkstown, not exceeding eight acres English statute measure, in trust and to and for the sole use and benefit of the first and other chaplains to be constituted and appointed in manner hereinafter provided; and that so soon as any chaplain shall have been duly appointed under the provisions of this act, then and from thenceforth the said lands and tenements, with their appurtenances, so granted or to be granted by the said dean, and any other proprietor of ground in said parish, to the use of the said chaplain, and all the right, title, and interest therein of them the said dean and such proprietor as aforesaid, shall become vested in possession in the said chaplain and his successors, chaplains of the said chaplaincy, for ever, and he and they shall thenceforth stand seised thereof in like manner as if the said grant and conveyance or grants and conveyances had been made directly to themselves, any statute of mortmain or any other law to the contrary notwithstanding: provided, however, that nothing in this act contained shall be construed to diminish, or in anywise affect, save as aforesaid, the interests of any tenant or tenants of any of the lands proposed to be conveyed, and now holding the same by virtue of any subsisting demise under the said dean or such proprietor as aforesaid.

Lands to be
conveyed to
the chaplain.

“V. Provided always, and be it enacted, that in case a chaplain shall have been duly constituted and appointed, pursuant to the provisions of this act, before the said grants and conveyances, or either of them, shall have been duly made and carried into effect, then and in such case it shall and may be lawful for the said dean and such other proprietor, or either of them, to convey the said lands and tenements, with their appurtenances, and other land, not exceeding eight acres English statute measure, in respect to such proprietor, to such chaplain and his successors, to his and their own sole use and benefit; any statute of mortmain or other law to the contrary notwithstanding.

Enabling
chaplain to
grant leases
for a term of
years.

“VI. And whereas the value of the said lands and tenements, with their appurtenances, belonging to the deanery aforesaid, proposed to be granted and conveyed by the said dean to the use and benefit of the first and other chaplains aforesaid in perpetuity, would be much augmented and increased, if the said chaplain and his successors, chaplains of the said chaplaincy, were empowered by law to grant leases of the same, so as to bind their successors for a term of years; be it therefore enacted, that it shall be lawful for the said chaplain and his successors, when duly constituted and appointed in manner hereinafter provided, with the consent in

writing of the Archbishop of Dublin and the Dean of Christchurch aforesaid respectively for the time being, to grant a lease of the said lands and tenements, with their appurtenances, or of any part thereof, for any term of years not exceeding sixty years from the time of the execution of such lease, at the full improved yearly value of said lands and tenements with their appurtenances, without taking any fine, or any other pecuniary consideration whatsoever: provided always, that if any fine or other pecuniary consideration should be taken by said chaplain or his successors, or if he should grant a lease of said lands and tenements, with their appurtenances, or any part thereof, without the consent in writing of the said Archbishop of Dublin and the said Dean of Christchurch respectively for the time being first had and obtained, in such case, or in either of such cases, the said lease so granted shall be *ipso facto* void, without any process or judgment of law.

“VII. And be it further enacted, that the patronage of the said chaplaincy shall be in the perpetual curate of Monkstown, and his successors; and that it shall and may be lawful for the said Charles Lindsay, the now perpetual curate of the said parish of Monkstown, or his successors, perpetual curates of the same, at any time after the passing of this act, to nominate to his grace William Lord Archbishop of Dublin, and his successors, Archbishops of Dublin, a fit and proper person, being a priest in holy orders of the established church, and not being possessed of any other cure or benefice, or ecclesiastical preference with cure of souls, to be licensed and appointed to the chaplaincy of the said chapel of Killiney; and that the said chaplain, when so nominated, licensed, and appointed, shall be perpetual chaplain of the said chaplaincy, and shall officiate as such; and that then and thereafter, and so often as the said chaplaincy shall become void by the death, resignation, or other removal of any first or other chaplain filling the same, it shall be lawful for the perpetual curate of said parish of Monkstown, and his successors, to nominate to the Archbishop of Dublin for the time being a fit and proper person, being a priest in holy orders, and not being possessed of any other cure or benefice, or ecclesiastical preferment with cure of souls, to be licensed and appointed as aforesaid, who shall thereafter and by virtue of such nomination and licence forthwith be entitled to officiate as chaplain, and to take and receive to his own use all the fruits, profits, rents, and emoluments whatsoever unto the said chaplaincy belonging; and that the said chapel, when built as provided, and the chaplains thereof for the time being, shall be for ever subject to the visitation of the said Archbishop of Dublin and his successors.

“VIII. Provided always, and be it enacted, that in case the said perpetual curate of Monkstown shall omit or neglect, for the space of three calendar months, to nominate a fit person to the said archbishop and his successors, to be licensed and appointed as aforesaid, that then and in such case it shall and may be lawful for the said Archbishop of Dublin, and his successors, Archbishops of Dublin, to appoint a chaplain as in a case of lapse, and such chaplain shall be the lawful successor in the said chaplaincy; provided, however, that if any chaplain shall die, resign, or be removed during any vacancy of the said perpetual cure or benefice of Monkstown, no time running during such vacancy shall be counted as a lapse of the right of nomination to such chaplaincy, or as any part of the period of three months constituting a lapse, or as in any manner defeating or running against the said right of patronage of the incumbent of Monkstown, but that such period of time shall be counted only during the plenarty of the said benefice or appropriate curacy of Monkstown, and begin to run only from the time when the said curacy or benefice of Monkstown shall be full of a curate or incumbent.

“IX. And be it enacted, that the said chaplain and his successors, chaplains as aforesaid, shall be and they and each of them are and is hereby incorporated and made one body politic and corporate, by the name of chaplains of the chapel of Killiney in the parish of Monkstown, and that they and every of them shall be capable to sue and be sued in all courts and places in that part of the United Kingdom of Great Britain and Ireland called Ireland, and by such name to take and receive any lands, tenements, or property whatsoever, real or personal, not exceeding in the whole the clear yearly value of two hundred pounds, by gift,

STAT. 9 GEO.
4, c. 52. [Ire.]

Patronage of the chaplaincy to be in the perpetual curate of Monkstown, who shall nominate the chaplain.

In case the perpetual curate shall omit to nominate a chaplain within a certain time, the Archbishop of Dublin may.

Chaplaincy to be incorporated.

STAT. 9 GEO.
4, c. 52. [1r.]

grant, devise, or otherwise in augmentation of the said endowment, and to the use and behoof of them and their successors for ever; and that the trustees and commissioners of the first-fruits of the several benefices of Ireland may grant to the said chaplain and chaplains, and any of them in succession, any sum of money out of the funds vested in them for public purposes, either by way of gift or loan, for the enabling said chaplain, or any succeeding chaplain, to build a house of residence, and also for the enabling him to purchase any lands, tenements, or hereditaments, as an additional endowment of the said chaplaincy; and that the said trustees and commissioners may exercise all such powers and authority in favour of the said chaplain, and his successors, chaplains of the said chapel of Killiney, as they are empowered to do in favour of any perpetual curate by any law now in being; and that all laws and statutes now in force in that part of the United Kingdom called Ireland, for and in relation to the purchase, procuring, building, and improving on glebes and glebe lands to be held, provided, and enjoyed by perpetual curates, shall be and are hereby enacted to extend to the said chaplaincy of the chapel of Killiney, and the lands, houses, and improvements to belong and to be made, erected, and procured by the chaplains of the said chaplaincy for the time being.

Chaplain to
reside within
the parish of
Monkstown.

“X. And be it further enacted, that the said chaplain, and his successors, chaplains of the said chapel of Killiney, shall reside within the parish of Monkstown, and as near as conveniently may be to said chapel when erected, and shall be bound to the duty of residence as any perpetual curates are by law bound; and that if any such chaplain shall at any time be nominated and licensed or presented to any other curacy, or presented, instituted, or collated to any benefice or ecclesiastical preferment with cure of souls, then and in such case the said chaplaincy of the chapel of Killiney aforesaid shall be *ipso facto* void, and the acceptance of such curacy, preferment, or benefice, shall be held to be and amount to a resignation of the said chaplaincy of Killiney, to which it shall be thereupon lawful for the incumbent of Monkstown to nominate another fit person as aforesaid to be licensed by the archbishop; and in failure of such nomination within those months from such acceptance, to be counted and computed as aforesaid, it shall be lawful for the archbishop to appoint a chaplain as in a case of lapse as aforesaid; and such chaplain, so appointed by the archbishop, shall be the lawful successor in the said chaplaincy.

Commissioners
of first-fruits
may advance
money for
building the
chapel.

“XI. And be it further enacted, that it shall and may be lawful for the trustees and commissioners of the first-fruits of the benefice in Ireland, to give any sum of money which may appear to them proper and sufficient for the building and completing of the said intended chapel of ease at Killiney aforesaid, and to exercise for that purpose all such powers and authority as are now vested in them, in respect of the building new churches and chapels in that part of the United Kingdom of Great Britain and Ireland called Ireland.

Chapel, when
completed, to
be maintained
and repaired at
the expense of
the parish of
Monkstown.

“XII. And be it further enacted, that the said chapel of ease, when built and completed, shall thenceforward be maintained and repaired, and found in all needful things, at the expense of the said parish of Monkstown, in like manner as other parochial chapels of ease are maintained, repaired, and provided, by the laws and statutes now in being; and that the ordinary of the diocese of Dublin, in which said parish of Monkstown is situate, and the minister and churchwardens of the said parish, and the inhabitants of the same in vestry assembled, shall have and exercise all such powers, and be subject to all such duties in respect of said chapel, as in like cases ordinaries, ministers, churchwardens, and vestries, exercise or are subject to by any law now in being, or by any statute hereafter to be enacted, and particularly under and by virtue of a certain statute made in the seventh year of his present majesty, intituled, ‘An Act to consolidate and amend the Laws which regulate the Levy and Application of Church Rates and Parish Cesses, and the Election of Churchwardens, and the Maintenance of Parish Clerks, in Ireland.’

7 Geo. 4, c. 72.

Act 2 Geo. 1,
[1r.], for
union and

“XIII. And whereas by an act made in the parliament of Ireland, in the second year of the reign of King George the First, intituled, ‘An Act for the real Union and Division of Parishes,’ it is (amongst other things) enacted, that all acts

of parliament for the uniting or disuniting of particular parishes or parts of parishes, or erecting particular churches, shall be deemed as public general acts in all courts and by all persons, and that no fees shall be taken by any person or persons for passing any such act of parliament: and whereas it is expedient that the like provision should be made in this case, be it therefore enacted, that this present act is and shall be deemed a public and general act, and shall be judicially taken notice of as such in all courts, and by all judges, justices, and others, without being specially pleaded; and that no fees shall be paid or taken by any person or persons for passing the same."

STAT. 9 GEO.
4, c. 52. [Ir.]
division of
parishes.

Act to be a
public act, and
not to be sub-
ject to the
payment of
fees.

CCXVIII. STAT. 9 GEORGH 4, c. 54. [IRELAND.] A.D. 1828.

STAT. 9 GEO.
4, c. 54. [Ir.]

"An Act for improving the Administration of Justice in Criminal Cases in Ireland."

"XII. And be it enacted, that benefit of clergy with respect to persons convicted of felony shall be abolished; but that nothing herein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of this act."

Benefit of
clergy abo-
lished.

CCXIX. STAT. 9 GEORGH 4, c. 55. [IRELAND.] A.D. 1828.

STAT. 9 GEO.
4, c. 55. [Ir.]

"An Act for consolidating and amending the Laws in Ireland relative to Larceny and other Offences connected therewith."

"X. (1) And be it enacted, that if any person shall break and enter any church, meeting house, chapel, or other place of divine worship, and shall steal therein or therefrom any chattel, or having stolen any chattel in or from any church, meeting house, chapel, or other place of divine worship, shall break out of the same, every such offender, being convicted thereof, shall suffer death as a felon.

Stealing in or
from a church,
with breaking
in or out,
felony with
death.

"XXI. And be it enacted, that if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, or any part of any such document, of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such court, or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever, of or belonging to any court of equity, or relating to any cause or matter begun, depending, or terminated, in any such court, or any part thereof respectively, or any original document, or part of any original document, in anywise relating to or concerning the business of any person or persons holding any office or employment under his majesty, and remaining or deposited for safe custody in any office appertaining to any court of justice, or in his majesty's castle of Dublin, or in any of his majesty's custom houses, post offices, or other public offices in Ireland, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or by both, as the court shall award; and it shall not be necessary to allege in any indictment, or to prove on any trial for such offence, that the article in respect of which the offence is charged to have been committed is the property of any person, or that the same is of any value, nor shall it be the subject of inquiry at the trial of any such offence, whether the thing charged to have been stolen is or is not of any intrinsic value.

Stealing, &c.
of records and
other proceed-
ings of courts
of justice, mis-
demeanor,
punishable by
transportation,
&c.

"XXII. And be it enacted, that if any person shall, either during the life or after the death of any testator or testatrix, steal, or shall for any fraudulent

Stealing of
wills, a mis-

(1) Repealed, and other provisions made, & 7 Gul. 4, c. 4. Vide 1 Russell on Crimes, by Stat. 5 & 6 Gul. 4, c. 81; and Stat. 6 by Greaves, 843.

STAT. 9 GEO.
4, c. 55. [Ire.]
demeanor,
punishable by
transportation,
&c.

purpose destroy or conceal any will or codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or both, as the court shall award; and it shall not be necessary to allege in any indictment, or to prove on any trial for such offence, that such will or codicil, or other instrument, is the property of any person, or that the same is of any value, nor shall it be a subject of inquiry at such trial whether the same is or is not of any intrinsic value.

Stealing of
writings re-
lating to real
estate.

“XXIII. And be it enacted, that if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or of any part of the title, to any real estate, every such offender shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to suffer such other punishment, by fine or imprisonment, or both, as the court shall award; and in any indictment for such offence, it shall be sufficient to allege the thing charged to have been stolen to be or to contain evidence of the title or of part of the title of the person, or of some one of the persons, having an interest, whether vested, contingent, legal, or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege or prove the thing charged to have been stolen to be of any value, nor shall it be inquired into at the trial what the value thereof is, or whether the same is or is not of any intrinsic value.

Provisions as
to wills, &c.
shall not lessen
any other
remedy.
Conviction
shall not be
evidence in
actions against
offender.
Offender shall
not be con-
victed by
evidence
disclosed by
himself.

“XXIV. Provided always, and be it enacted, that nothing in this act contained, relating to either of the misdemeanors last aforesaid, nor any proceeding, conviction, or judgment to be had or taken thereupon, shall prevent, lessen, or impeach any remedy, at law or in equity, which any party aggrieved by any such offence might or would have had if this act had not been passed; but nevertheless the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against such offender: provided also, that no person shall be liable to be convicted of either of the misdemeanors last aforesaid, in respect of any act done by him, by any evidence disclosed by him in consequence of any compulsory process of any court of law or equity, in any action, suit, or proceeding, which shall have been *bona fide* instituted by any party aggrieved, or by any evidence disclosed by such person in any examination or deposition before any commissioners of bankrupt.”

STAT. 9 GEO.
4, c. 56. [Ire.]

CCXX. STAT. 9 GEORGII 4, c. 56. [IRELAND.] A.D. 1828.

“An Act for consolidating and amending the Laws in Ireland relative to Malicious Injuries to Property.”

Setting fire to
a house,
outbuilding,
church, or
chapel, felony,
with death.

“II. And be it enacted, that if any person shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, hay-yard, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, or if any person shall unlawfully and maliciously set fire to any church, chapel, or place for religious worship, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.”

STAT. 9 GEO.
4, c. 57. [Ire.]

CCXXI. STAT. 9 GEORGII 4, c. 57(1). [IRELAND.] A.D. 1828.

“An Act to provide for the Regulation of the Public Office for registering Memorials of Deeds, Conveyances, and Wills, in Ireland.”

(1) Repealed, and other provisions made, by Stat. 2 & 3 Gal. 4, c. 87.

CCXXII. STAT. 9 GEORGII 4, c. 70(1). A.D. 1828.

STAT. 9 GEO.
4, c. 70.

"An Act to alter and enlarge the Powers of an Act passed in the seventh year of the Reign of His present Majesty, for extending to Charing Cross, the Strand, and Places adjacent, the Powers of an Act for making a more convenient Communication from Mary-le-bone Park, and for enabling the Commissioners of His Majesty's Woods, Forests, and Land Revenues to grant Leases of the Site of Carlton Palace; and for other Purposes relating thereto."

"V. And whereas it was by the said in part recited act of the seventh year of the reign of his present majesty, amongst other things, further enacted, that it should be lawful for the said commissioners acting in the execution of the said act to take or use, for the purposes of the said act, so much of the burial ground in the parish of Saint Martin in the Fields as lay on the south side of the church as might be required for the purpose, and the ground so taken, and the fee simple and inheritance thereof, should be and were thereby vested in the king's majesty, his heirs and successors, for the purposes of the said act; and it was further enacted, that whenever it should be necessary, in pursuance and execution of the said in part recited act, to open or disturb any grave or graves, or any burial vault or vaults, in the said present burial ground of the parish of Saint Martin in the Fields, on the south side of the said church aforesaid, it should be lawful for the heirs, executors, administrators, relations, or friends of any person or persons who should have been interred or deposited in such grave or graves, vault or vaults, with the consent of the vicar and churchwardens of the said parish, or the major part of them, to remove and carry away the remains of any such person or persons, and place the same in such new burial ground as therein mentioned, or any other churchyard or consecrated ground, in such manner as the Lord Bishop of London for the time being, or such person as he might appoint, should direct; and that the expenses of such removing, carrying away, and placing (not exceeding in any one case the sum of ten pounds) should be paid, by the said commissioners acting in the execution of the said in part recited act, out of the monies to be applied for the purposes of the said act; and that the remains of such person or persons as should have been interred or deposited in the graves or vaults so to be opened and disturbed as aforesaid, which should not be removed or carried away as aforesaid, should (except such graves or vaults should be finally closed up), at the expense of the said commissioners acting in the execution of the said act, to be paid out of the monies to be raised by virtue of the said act, be removed from such graves or vaults into and be interred in such new burial ground as aforesaid, in such manner as the Lord Bishop of London for the time being, or such person or persons as he should appoint, should direct: and whereas in order to facilitate the removal of the remains of the various persons who have been interred or deposited in the graves or vaults of the present burial ground of the parish of Saint Martin in the Fields, on the south side of the said church aforesaid, it is expedient, and would be of great saving to the public, if the said powers given by the said in part recited act for the removal of such remains as aforesaid were repealed, and such new provisions made in respect thereof as hereinafter is mentioned; be it therefore enacted, that from and after the passing of this act so much of the said in part recited act as relates to the removal of the remains of the various persons who have been interred or deposited in the graves or vaults of the said burial ground of the parish of Saint Martin in the Fields, on the south side of the said church as aforesaid, shall be and the same is hereby repealed.

So much of
7 Geo. 4 as
relates to
removal of
remains of
persons from
graves, &c.
repealed.

"VI. And be it further enacted, that whenever, at any time after the passing of this act, it shall be necessary, in pursuance and execution of the said in part recited act, to open or disturb any grave or graves, or any burial vault or vaults, in the said burial ground of the parish of Saint Martin in the Fields, on the south side of the said church aforesaid, it shall be lawful for the said commissioners acting in the execution of the said recited act, with the consent of the vicar and

Commissioners
empowered
to remove
remains of
persons from
the burial
ground of St.
Martin's.

STAT. 9 GEO.
4, c. 70.

churchwardens for the time being of the said parish of Saint Martin in the Fields, or the major part of them, to remove and carry away the remains of any such person or persons as shall have been interred or deposited in such grave or graves, vault or vaults, and place the same either in such new burial ground as by the said in part recited act the said commissioners are empowered and required to provide, or in any other churchyard or consecrated ground, in such manner as the Lord Bishop of London for the time being, or such person or persons as he may appoint, shall direct; and that the expenses of such removing, carrying away, and placing, (not exceeding in any one case the sum of ten pounds,) shall be paid by the said commissioners acting in the execution of the said in part recited act, out of the monies to be applied for the purposes of the said act."

STAT. 9 GEO.
4, c. 74.

CCXXIII. STAT. 9 GEORGII 4, c. 74. A.D. 1828.

"An Act for improving the Administration of Criminal Justice in the East Indies."

"XIX. And be it enacted, that benefit of clergy, with respect to persons convicted of felony, shall be abolished."

STAT. 9 GEO.
4, c. 83.

CCXXIV. STAT. 9 GEORGII 4, c. 83. A.D. 1828.

"An Act to provide for the Administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other Purposes relating thereto."

Supreme
courts to have
ecclesiastical
jurisdiction.

"XII. And be it further enacted, that the said supreme courts respectively shall be courts of ecclesiastical jurisdiction, and shall have full power and authority to administer and execute, within New South Wales and Van Diemen's Land, and the dependencies thereof respectively, such ecclesiastical jurisdiction and authority as hath been or shall be committed to the said supreme courts respectively by his majesty's said charters or letters patent so issued or to be issued as aforesaid; provided that in all cases where the executor or executors of any will, upon being duly cited, shall refuse or neglect to take out probate, or where the next of kin shall be absent, and the effects of the deceased shall appear to the said courts respectively to be exposed and liable to waste, it shall be lawful for the said courts respectively to authorize and empower the registrar, or other ministerial officer of the said supreme courts respectively, to collect such effects, and hold or deposit or invest the same in such manner and place, or upon such security, and subject to such orders and directions as shall be made, either as applicable in all such cases, or specially in any case, by the said courts respectively, in respect of the custody, control, or disposal thereof.

Appeal to
his majesty in
council.

"XV. And be it further enacted, that it shall and may be lawful for his majesty, by the said charters or letters patent respectively, or by any order or orders of his majesty in council, to allow any person or persons feeling aggrieved by any judgment, decree, order, or sentence of the said supreme courts respectively, to appeal therefrom to his majesty in council, in such manner, within such time, and under and subject to such rules, regulations, and limitations, as his majesty, by any such charters or letters patent, or order or orders in council respectively, shall appoint and prescribe."

STAT. 9 GEO.
4, c. 85.

CCXXV. STAT. 9 GEORGII 4, c. 85. A.D. 1828.

"An Act for remedying a Defect in the Titles of Lands purchased for Charitable Purposes."

9 GEO. 2, c. 36.

"Whereas by an act passed in the ninth year of the reign of his late majesty King George the Second, and intituled, 'An Act to restrain the Disposition of Lands whereby the same become unalienable,' it was amongst other things enacted, that after the twenty-fourth day of June, one thousand seven hundred and thirty-six, no manors, lands, tenements, rents, advowsons, or other hereditaments, cor-

real or incorporeal, whatsoever, should be given, granted, aliened, limited, released, transferred, assigned, appointed, or anyways conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any *estate or interest* (1) whatsoever, or anyways charged or incumbered by any person or persons whatsoever, in trust or for the benefit of any charitable uses whatsoever, unless such gift, conveyance, appointment, or settlement of any such lands, tenements, or hereditaments were made by deed indented, sealed, and delivered in the presence of two or more credible witnesses, twelve calendar months at the least before the death of such donor or grantor, (including the days of the execution and death,) and were enrolled in his majesty's high court of Chancery within six calendar months next after the execution thereof, and unless the same were made to take effect in possession, for the charitable use intended, immediately from the making thereof, and were without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him; but it was thereby provided, that nothing thereinbefore mentioned, relating to the sealing and delivery or any deed or deeds twelve calendar months at least before the death of the grantor, should extend or be construed to extend to any purchase of any estate or interest in lands, tenements, or hereditaments, to be made really and *bona fide* for a full and valuable consideration actually paid at or before the making such conveyance, without fraud or collusion; and it was thereby enacted that all gifts, grants, appointments, assurances, transfers, and settlements whatsoever, of any lands, tenements, or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting or to affect any lands, tenements, or hereditaments, to or in trust for any charitable uses whatsoever, which should at any time after the said twenty-fourth day of June, one thousand seven hundred and thirty-six, be made in any other manner or form than by the said act was directed and appointed,

STAT. 9 GEO.
4, c. 85.

(1) *Estate or interest*.—In *Doe d. Graham v. Hawkins*, (2 Q. B. 212,) it was held, that a clause of redemption in a mortgage, is not a power of revocation, or a condition, &c., for the benefit of the grantor, within the meaning of the Mortmain Acts, Stat. 9 Geo. 2, c. 36, s. 1, and Stat. 9 Geo. 4, c. 85, s. 1. Therefore, if a mortgage to a charitable foundation executed before Stat. 9 Geo. 4 has not been duly enrolled, but is otherwise regular, it is rendered valid by Stat. 9 Geo. 4, c. 85, s. 1, though containing a clause for redemption on payment of the principal money and interest:—Lord Denman observing, “This rule would not have been granted, if the question upon the Mortmain Acts had been the only one. It is clear that the legislature, when they introduced into those acts the condition against powers and agreements for the benefit of the grantor, did not contemplate an application of it to mortgages. The words alluded to at the end of Stat. 9 Geo. 4, c. 85, s. 1, were intended to prevent fraudulent revocations. As to the question of evidence; there is no doubt that the writing of a clerk, so recognized as the entries were in this case, is that of the steward who recognises it. It would be very unreasonable, that a man's writing with his own pen should fix him with a declaration against his interest, but that his writing with the pen of another should not have that effect. The decision in *Baron de Rotsen v. Farr*, (4 A. & E. 53,) is not adverse to the plaintiff, because there it was not proved, as it is here, that the clerk by whom the entries were written was authorized by the steward to make those entries.”

The foregoing judgment was supported by Mr. Justice Patteson in the following language: “I doubt if mortgages were at all within the contemplation of the legislature in passing Stat. 9 Geo. 2, c. 36; though they may be so far within the words, that enrolment may be necessary, Stat. 9 Geo. 4, c. 85, s. 1, curing only past omissions. But the proviso for redemption in a mortgage cannot be called a condition for the benefit of a grantor. It only ensures his having back the land which was granted but as a security; it cannot be called a ‘benefit’ within the act, for that means something given collusively, and making the deed inconsistent with that which it professes to be. As to the evidence; the entries must be taken to be Melliar's, being made by a person in his employment, and adopted by Melliar, which was equivalent to his having ordered them. It is as if the clerk has made them in his presence, his own hand being disabled: the writing by an authorized agent was the same, as if it had been by himself. It may be difficult, after a long interval of time, to prove that entries have been made in this manner; but here that was proved. That the clerk who wrote was not called might be matter of observation to the jury; but it was enough to prove that, by whomsoever the entries were made, Melliar adopted them.”

It may be here stated, that length of possession will not prevail against charitable trusts, if the land be purchased with a notice of the trusts. *Attorney-General v. Christ's Hospital*, 3 M. & K. 344.

STAT. 9 GEO.
4, c. 85.

Deeds relating to purchase of lands for charitable purposes to be valid, although the formalities prescribed by the recited act have not been duly performed.

Act not to extend to deeds avoided by suits at law.

Not to dispense with prescribed formalities.

STAT. 9 GEO.
4, c. 94.

Engagements entered into for the resignation of any benefice upon notice or request, to be valid.

should be absolutely and to all intents and purposes null and void: and whereas the said provision contained in the said recited act, in relation to the purchase of any estate or interest in lands, tenements, or hereditaments, for a full and valuable consideration, was only intended to prevent such purchases from being avoided by reason of the death of the grantor within twelve calendar months after the sealing and delivery of the deed or deeds relating thereto: and whereas it has notwithstanding been generally apprehended that the said last-mentioned provision was intended wholly to exempt such purchases from the operation of the said act, and in consequence thereof the formalities by the said act prescribed, in relation to the conveyance of hereditaments to charitable uses, have in divers instances been omitted on purchases for a full and valuable consideration, and by reason of such omission the title to such hereditaments may be considered defective: and whereas it is expedient that provision should be made for remedying such defect in manner hereinafter mentioned: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where any lands, tenements, or hereditaments, or any estate or interest therein, have or has been purchased for a full and valuable consideration, in trust or for the benefit of any charitable uses whatsoever, and such full and valuable consideration has been actually paid for the same, every deed or other assurance already made for the purpose of conveying or assuring such lands, tenements, or hereditaments, estate or interest as aforesaid, in trust or for the benefit of such charitable uses, (if made to take effect in possession, for the charitable use intended, immediately from the making thereof, and without any power of revocation, reservation, trust, condition, limitation, clause, or agreement whatsoever, for the benefit of the grantor, or of any person or persons claiming under him,) shall be as good and valid, and of the same effect, both for establishing derivative titles, and in all other respects, as if the several formalities by the said act prescribed had been duly observed and performed.

"II. Provided always, and be it further enacted, that nothing in this act contained shall extend to give effect to any deed or other assurance heretofore made, so far as the same has been already avoided by suit at law or in equity, or by any other legal or equitable means whatsoever, or to affect or prejudice any suit at law or in equity actually commenced for avoiding any such deed or other assurance, or for defeating the charitable uses in trust or for the benefit of which such deed or other assurance may have been made.

"III. Provided also, and be it further enacted, that nothing herein contained shall be construed to dispense with any of the said several formalities prescribed by the said recited act, in relation to any deed or other assurance which shall be made after the passing of this present act."

CCXXVI. STAT. 9 GEORGII 4, c. 94 (1). A.D. 1828.

"An Act for rendering valid Bonds, Covenants, and other Assurances, for the Resignation of Ecclesiastical Preferments, in certain specified Cases."

"Whereas it is expedient that certain bonds, covenants, and other assurances for the resignation of ecclesiastical preferments, should be rendered valid in the cases and subject to the limitations hereinafter specified; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every engagement by promise, grant, agreement, or covenant, which shall be really and *bonâ fide* made, given, or entered into at any time after the passing of this act, for the resignation of any spiritual office, being a benefice with cure of souls, dignity, prebend, or living ecclesiastical, to the intent or purpose, to be manifested by the terms of such engagement, that any one person whosoever, to be specially named and described therein, or one of

two persons to be specially named and described therein, being such persons as are hereinafter mentioned, shall be presented, collated, nominated, or appointed to such spiritual office, or that the same shall be given or bestowed to or upon him, shall be good, valid, and effectual in the law to all intents and purposes whatsoever, and the performance of the same may also be enforced in equity; provided always, that such engagement shall be so entered into before the presentation, nomination, collation, or appointment of the party so entering into the same as aforesaid.

"II. Provided always, and be it further enacted, that where two persons shall be so specially named and described in such engagement, each of them shall be, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron or of one of the patrons of such spiritual office, not being merely a trustee or trustees of the patronage of the same, or of the person or one of the persons for whom the patron or patrons shall be a trustee or trustees, or of the person or one of the persons by whose direction such presentation, collation, gift, or bestowing shall be intended to be made, or of any married woman whose husband in her right shall be the patron or one of the patrons of such spiritual office, or of any other person in whose right such presentation, collation, gift, or bestowing shall be intended to be made.

"III. And be it further enacted, that no presentation (1), collation, gift, or bestowing to or of any such spiritual office of or upon any spiritual person, to be made after the passing of this act, nor any admission, institution, investiture, or induction thereupon, shall be void, frustrate, or of no effect in law for or by reason of any such engagement so to be made, given, or entered into by such spiritual person, or any other person or persons, to or with the patron or patrons of such spiritual office, or to or with any other person or persons, for the resignation of the same as aforesaid; and that it shall not be lawful for the king's most excellent majesty, his heir or successors, for or by reason of any such engagements as aforesaid to present or collate unto, or give or bestow such spiritual office; and that such spiritual person, and patron or patrons, or other person or persons respectively, shall not be liable to any pains, penalty, forfeitures, loss, or disability, nor to any prosecution or other proceeding, civil, criminal, or penal, in any court, ecclesiastical or temporal, for or by reason of his, her, or their having made, given, or entered into, or accepted or taken such engagement as aforesaid; and that every such presentation or collation, or gift or bestowing, to be made after the passing of this act, and every admission, institution, investiture, and induction thereupon, shall be as valid and effectual in the law to all intents and purposes whatsoever as if such engagement had not been made, given, or entered into, or accepted or taken; anything in an act passed in the thirty-first year of the reign of her late majesty Queen Elizabeth, intituled, 'An Act against Abuses in Elections of Scholars and Presentations to Benefices,' or in any other act, statute, or canon, or any law, to the contrary in anywise notwithstanding.

"IV. Provided always, and be it further enacted, that nothing in this act shall extend to the case of any such engagement as aforesaid, unless one part of the deed, instrument, or writing by which such engagement shall be made, given, or entered into, shall, within the space of two calendar months next after the date thereof, be deposited in the office of the registrar of the diocese wherein the benefice with cure of souls, dignity, prebend, or living ecclesiastical, for the resignation whereof such engagement shall be made, given, or entered into as aforesaid, shall be locally situate, except as to such benefices with cure of souls, dignities, prebends, or livings ecclesiastical, as are under the peculiar jurisdiction of any archbishop or bishop, in which case such document as aforesaid shall be deposited in the office of the regis-

STAT. 9 GEO.
4, c. 94.

Proviso.

Relationship of
such persons.

No presenta-
tion to any
spiritual office
shall be void
by reason of
such agree-
ment to resign.

Persons
making such
agreement not
to be liable to
penalty.

Such presenta-
tions to be
valid.

31 Eliz. c. 6.

Not to extend
to any engage-
ments, unless
the deed be
deposited
within two
months with
the registrar of
the diocese or
peculiar juris-
diction wherein
the benefice is
situated.

(1) *Presentation*:—Where a party was presented to a rectory in consideration of his having given a bond to resign in favour of a particular person, at the request of the patron, and was instituted and inducted, and such bond was held to be void, on the ground that it was simoniacal, and the king then pre-

sented A. B., and he was instituted and inducted; it was held, previous to the passing of Stat. 9 Geo. 4, c. 94, that he might maintain ejectment for the rectory, against the person who had been simoniacally presented. *Doe d. Watson (Clerk) v. Fletcher (Clerk)*, 8 B. & C. 25.

STAT. 9 GEO.
4, c. 94.

Deed to be open to inspection; and a certified copy to be admitted as evidence. Fees to registrar.

trar of that peculiar jurisdiction to which any such benefice with cure of souls, dignity, prebend, or living ecclesiastical, shall be subject; and such registrars shall respectively deposit and preserve the same, and shall give and sign a certificate of such deposit thereof; and every such deed, instrument, or writing, shall be produced at all proper and usual hours at such registry to every person applying to inspect the same; and an office copy of each such deed, instrument, or writing, certified under the hand of the registrar, (and which office copy so certified the registrar shall in all cases grant to every person who shall apply for the same,) shall in all cases be admitted and allowed as legal evidence thereof in all courts whatsoever; and every such registrar shall be entitled to the sum of two shillings, and no more, for so depositing as aforesaid such deed, instrument, or writing, and so as aforesaid certifying such deposit thereof; and the sum of one shilling, and no more, for each search to be made for the same; and the sum of sixpence, and no more, over and besides the stamp duty, if any, for each folio of seventy-two words of each such office copy so certified as aforesaid.

Resignation to state the engagement, and name of person for whom made.

Resignation to be void, unless the person be presented within six months.

"V. And be it further enacted, that every resignation to be made in pursuance of any such engagement as aforesaid shall refer to the engagement in pursuance of which it is made, and state the name of the person for whose benefit it is made; and that it shall not be lawful for the ordinary to refuse such resignation, unless upon good and sufficient cause to be shown for that purpose; and that such resignation shall not be valid or effectual, except for the purpose of allowing the person for whose benefit it shall be so made to be presented, collated, nominated, or appointed to the spiritual office thereby resigned, and shall be absolutely null and void unless such person shall be presented, collated, nominated, or appointed as aforesaid within six calendar months next after notice of such resignation shall have been given to the patron or patrons of such spiritual office.

Nothing herein to extend to presentations made by the king, &c.

"VI. Provided also, and be it further enacted, that nothing in this act shall extend to any case where the presentation, collation, gift, or bestowing to or of any such spiritual office as aforesaid shall be made by the king's most excellent majesty, his heirs or successors, in right of his crown or his duchy of Lancaster; or by any archbishop, bishop, or other ecclesiastical person, in right of his archbishopric, bishopric, or other ecclesiastical living, office, or dignity; or by any other body politic or corporate, whether aggregate or sole, or by any other person or persons, in right of any office or dignity; or by any company, or any feoffees or trustees for charitable or other public purposes; or by any other person or persons not entitled to the patronage of such spiritual office as private property."

STAT. 10 GEO.
4, cap. vi.

CCXXVII. STAT. 10 GEORGII 4, cap. vi. A.D. 1829.

"An Act for assisting the repairing, altering, and improving Lambeth Palace, belonging to the See of Canterbury, and the taking down and rebuilding some Parts thereof, and the making Additions to and altering and improving the Mansion House at Addington, belonging to the same See."

[Governors of Queen Anne's bounty may advance sums authorized to be raised by this act. s. 14.]

STAT. 10 GEO.
4, c. 7.

CCXXVIII. STAT. 10 GEORGII 4, c. 7 (1). A.D. 1829.

"An Act for the Relief of His Majesty's Roman Catholic Subjects (2)."

"Whereas by various acts of parliament certain restraints and disabilities are imposed on the Roman catholic subjects of his majesty, to which other subjects of

(1) *Vide* Stat. 1 Gul. 4, c. 26; Stat. 2 & 3 Gul. 4, c. 115; Stat. 7 & 8 Vict. c. 97; and Stat. 7 & 8 Vict. c. 102.

(2) *Roman Catholic Subjects*:—"As to papists," observes Mr. Justice Blackstone, (4 Comm. by Chitty, 54,) "what has been said of the protestant dissenters would hold

equally strong for a general toleration of them, provided their separation was founded only upon difference of opinion in religion, and their principles did not also extend to a subversion of the civil government. If once they could be brought to renounce the supremacy of the pope, they might quietly enjoy

his majesty are not liable; and whereas it is expedient that such restraints and disabilities shall be from henceforth discontinued; and whereas by various acts STAT. 10 GEO. 4, c. 7.

their seven sacraments, their purgatory, and aricular confession; their worship of relics and images; nay, even their transubstantiation. But while they acknowledge a foreign power, superior to the sovereignty of the kingdom, they cannot complain if the laws of that kingdom, will not treat them upon the footing of good subjects.

“Let us, therefore, now take a view of the laws in force against the papists; who may be divided into three classes,—persons professing popery, popish recusants convict, and popish priests. 1. *Persons professing the popish religion*, besides the former penalties for not frequenting their parish church, are disabled from taking their lands either by descent or purchase, after eighteen years of age, until they renounce their errors; they must, at the age of twenty-one, register their estates before acquired, and all future conveyances and wills relating to them; they are incapable of presenting to any advowson, or granting to any other person any avoidance of the same; they may not keep or teach any school under pain of perpetual imprisonment; and, if they willingly say or bear mass, they forfeit, the one two hundred, the other one hundred marks, and each shall suffer a year's imprisonment. Thus much for persons, who, from the misfortune of family prejudices, or otherwise, have conceived an unhappy attachment to the Romish church from their infancy, and publicly profess its errors. But if any evil industry is used to rivet these errors upon them, if any person sends another abroad to be educated in the popish religion, or to reside in any religious house abroad for that purpose, or contributes to their maintenance when there; both the sender, the sent, and the contributor, are disabled to sue in law or equity, to be executor or administrator to any person, to take any legacy or deed of gift, and to bear any office in the realm, and shall forfeit all their goods and chattels, and likewise all their real estate for life. And where these errors are also aggravated by apostasy or perversion, where a person is reconciled to the see of Rome, or procures others to be reconciled, the offence amounts to high treason. 2. *Popish recusants*, convicted in a court of law of not attending the service of the church of England, are subject to the following disabilities, penalties and forfeitures, over and above those before mentioned. They are considered as persons excommunicated; they can hold no office or employment; they must not keep arms in their houses, but the same may be seized by the justices of the peace; they may not come within ten miles of London, on pain of 100*l.*; they can bring no action at law, or suit in equity; they are not permitted to travel above five miles from home, unless by licence, upon pain of forfeiting all their goods; and they may not come to court under pain of 100*l.* No marriage or burial of such recusant, or baptism of his child, shall be had, otherwise than by the ministers of the church of England, under

other severe penalties. A married woman, when recusant, shall forfeit two-thirds of her dower or jointure, may not be executrix or administratrix to her husband, nor have any part of his goods; and during the coverture may be kept in prison, unless her husband redeems her at the rate of 10*l.* a month, or the third part of all his lands. And lastly, as a *feme covert* recusant may be imprisoned, so all others must, within three months after conviction, either submit and renounce their errors, or, if required so to do by four justices, must abjure and renounce the realm; and if they do not depart, or if they return without the king's licence, they shall be guilty of felony, and suffer death as felons without benefit of clergy. There is also an inferior species of recusancy, (refusing to make the declaration against popery enjoined by Stat. 30 Car. 2, St. 11., when tendered by the proper magistrate,) which, if the party resides within ten miles of London, makes him an absolute recusant convict; or, if at a greater distance, suspends him from having any seat in parliament, keeping arms in his house, or any horse above the value of five pounds. This is the state, by the laws now in being, (Stat. 23 Eliz. c. 1; Stat. 27 Eliz. c. 2; Stat. 29 Eliz. c. 6; Stat. 35 Eliz. c. 2; Stat. 1 Jac. 1, c. 4; Stat. 3 Jac. 1, cc. 4 & 5; Stat. 7 Jac. 1, c. 6; Stat. 3 Car. 1, c. 3; Stat. 25 Car. 2, c. 2; Stat. 30 Car. 2, St. 11.; Stat. 1 G. & M. cc. 9, 15, & 26; Stat. 11 & 12 Gul. 3, c. 4; Stat. 12 Ann. St. 11., c. 14; Stat. 1 Geo. 1, St. 11., c. 55; Stat. 3 Geo. 1, c. 18; Stat. 12 Geo. 2, c. 17,) of a lay papist. But, 3. The remaining species or degree, viz., *popish priests*, are in a still more dangerous condition. For by Stat. 11 & 12 Gul. 3, c. 4, popish priests or bishops, celebrating mass or exercising any part of their functions in England, except in the houses of ambassadors, are liable to perpetual imprisonment. And by Stat. 27 Eliz. c. 2, any popish priest, born in the dominions of the crown of England, who shall come hither from beyond sea, unless driven by stress of weather and tarrying only a reasonable time, (*Clark's (Sir Simon) case*, Latch. 1.) or shall be in England three days without conforming and taking the oaths, is guilty of high treason; and all persons harbouring him are guilty of felony without the benefit of clergy.

“This is a short summary of the laws against the papists, under their three several classes, of persons professing the popish religion, popish recusants convict, and popish priests. Of which the President *Montesquieu*, (b. 19, c. 27,) observes, that they are so rigorous, though not professedly of the sanguinary kind, that they do all the hurt that can possibly be done in cold blood. But in answer to this, it may be observed, (what foreigners who only judge from our statute book are not fully apprised of,) that these laws are seldom exerted to their utmost rigour; and, indeed, if they were, it would be very difficult to excuse them. For they are rather to

STAT. 10 GEO.
4, c. 7.

Acts relating
to declarations
against trans-
substantiation,
repealed.

Roman catho-
lics may sit
and vote in
parliament on
taking the fol-
lowing oath.

certain oaths and certain declarations, commonly called the declaration against transubstantiation, and the declaration against transubstantiation and the invocation of saints and the sacrifice of the mass, as practised in the church of Rome, are or may be required to be taken, made, and subscribed, by the subjects of his majesty, as qualifications for sitting and voting in parliament, and for the enjoyment of certain offices, franchises, and civil rights; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the commencement of this act all such parts of the said acts as require the said declarations, or either of them, to be made or subscribed by any of his majesty's subjects, as a qualification for sitting and voting in parliament, or for the exercise or enjoyment of any office, franchise, or civil right, be and the same are (save as hereinafter provided and excepted) hereby repealed.

"II. And be it enacted, that from and after the commencement of this act it shall be lawful for any person professing the Roman catholic religion, being a peer, or who shall after the commencement of this act be returned as a member of the house of commons, to sit and vote in either house of parliament respectively, being in all other respects duly qualified to sit and vote therein, upon taking and subscribing the following oath, instead of the oaths of allegiance, supremacy, and abjuration:

"I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to his majesty King George the Fourth, and will defend him to the utmost of my power, against all conspiracies and attempts whatever, which shall be made against his person, crown, or dignity; and I will do my utmost endeavour to disclose and make known to his majesty, his heirs, and successors, all treasons and traitorous conspiracies which may be formed against him or them; and I do faithfully promise to maintain, support, and defend, to the utmost of my power, the succession of the crown, which succession, by an act, intituled, 'An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject,' is and stands limited to the Princess Sophia, electress of Hanover, and the heirs of her body, being protestants; hereby utterly renouncing and abjuring any obedience or allegiance unto any other person claiming or pretending a right to the crown of this realm; and I do further declare, that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion, that princes excommunicated or deprived by the Pope, or any other authority of the see of Rome, may be deposed or murdered by their subjects, or by any person whatsoever; and I do declare, that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm. I do swear that I will defend, to the utmost of my power, the settlement of property within this realm, as established by the laws; and I do

be accounted for from their history, and the urgency of the times which produced them, than to be approved, (upon a cool review,) as a standing system of law. The restless machinations of the Jesuits during the reign of Elizabeth, the turbulence and uneasiness of the papists under the new religious establishment, and the boldness of their hopes and wishes for the succession of the Queen of Scots, obliged the parliament to counteract so dangerous a spirit by laws of a great, and then perhaps necessary severity. The powder-treason, in the succeeding reign, struck a panic into James the First, which operated in different ways: it occasioned the enacting of new laws against the papists, but deterred him from putting them in execution. The intrigues of Queen Henrietta, in the reign of Charles the First, the prospect of a popish successor in that of Charles the Second, the assassination plot in the reign of King Wil-

liam, and the avowed claim of a popish pretender to the crown in that and subsequent reigns, will account for the extension of these penalties at those several periods of our history. But if a time should ever arrive, and perhaps it is not very distant, when all fears of a pretender shall have vanished, and the power and influence of the pope shall become feeble, ridiculous, and despicable, not only in England, but in every kingdom of Europe, it probably would not then be amiss to review and soften these rigorous edicts; at least till the civil principles of the Roman catholics called again upon the legislature to renew them: for it ought not to be left in the breast of every merciless bigot to drag down the vengeance of these occasional laws upon inoffensive, though mistaken subjects, in opposition to the lenient inclinations of the civil magistrate, and to the destruction of every principle of toleration and religious liberty."

hereby disclaim, disavow, and solemnly abjure any intention to subvert the present church establishment as settled by law, within this realm; and I do solemnly swear, that I never will exercise any privilege to which I am or may become entitled, to disturb or weaken the protestant religion or protestant government in the United Kingdom; and I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever.

‘So help me, God.’

“III. And be it further enacted, that wherever, in the oath hereby appointed and set forth, the name of his present majesty is expressed or referred to, the name of the sovereign of this kingdom for the time being, by virtue of the act for the further limitation of the crown and better securing the rights and liberties of the subject, shall be substituted from time to time, with proper words of reference thereto.

“IV. Provided always, and be it further enacted, that no peer professing the Roman catholic religion, and no person professing the Roman catholic religion, who shall be returned a member of the house of commons after the commencement of this act, shall be capable of sitting or voting in either house of parliament respectively, unless he shall first take and subscribe the oath hereinbefore appointed and set forth, before the same persons, and at the same times and places, and in the same manner as the oaths and the declaration now required by law are respectively directed to be taken, made, and subscribed; and that any such person professing the Roman catholic religion, who shall sit or vote in either house of parliament, without having first taken and subscribed, in the manner aforesaid, the oath in this act appointed and set forth, shall be subject to the same penalties, forfeitures, and disabilities, and the offence of so sitting or voting shall be followed and attended by and with the same consequences, as are by law enacted and provided in the case of persons sitting or voting in either house of parliament respectively, without the taking, making, and subscribing the oaths and the declaration now required by law.

“V. And be it further enacted, that it shall be lawful for persons professing the Roman catholic religion to vote at elections of members to serve in parliament for England and for Ireland, and also to vote at the elections of representative peers of Scotland and of Ireland, and to be elected such representative peers, being in all other respects duly qualified, upon taking and subscribing the oath hereinbefore appointed and set forth, instead of the oaths of allegiance, supremacy, and abjuration, and instead of the declaration now by law required, and instead also of such other oath or oaths as are now by law required to be taken by any of his majesty’s subjects professing the Roman catholic religion, and upon taking also such other oath or oaths as may now be lawfully tendered to any persons offering to vote at such elections.

“VI. And be it further enacted, that the oath hereinbefore appointed and set forth shall be administered to his majesty’s subjects professing the Roman catholic religion, for the purpose of enabling them to vote in any of the cases aforesaid, in the same manner, at the same time, and by the same officers or other persons as the oaths for which it is hereby substituted are or may be now by law administered; and that in all cases in which a certificate of the taking, making, or subscribing, of any of the oaths or of the declaration now required by law is directed to be given, a like certificate of the taking or subscribing of the oath hereby appointed and set forth shall be given by the same officer or other person, and in the same manner as the certificate now required by law is directed to be given, and shall be of the like force and effect.

“VII. And be it further enacted, that in all cases where the persons now authorised by law to administer the oaths of allegiance, supremacy, and abjuration, to persons voting at elections, are themselves required to take an oath previous to their administering such oaths, they shall, in addition to the oath now by them taken, take an oath for the duly administering the oath hereby appointed and set forth, and for the duly granting certificates of the same

STAT. 10 GEO.
4, c. 7.

The name of the sovereign for the time being to be used in the oath.

No Roman catholic capable of sitting or voting until he has taken the oath.

Roman catholics may vote at elections, and be elected, upon taking the oath.

Oath shall be administered in the same manner as former oaths.

Persons administering oaths at elections to take an oath duly to administer.

STAT. 10 GEO.
4, c. 7.

So much of
any acts as
require the
formula con-
tained in 8 &
9 Gul. 3, c. 3,
[Sc.] to be
tendered or
taken,
repealed.
Roman catho-
lics may elect
and be elected
members for
Scotland.

No Roman
catholic priest
to sit in the
house of
commons.

Roman catho-
lics may hold
civil and mili-
tary offices
under his
majesty, with
certain excep-
tions.

Not to exempt
Roman catho-
lics from
taking any
other oaths
required.

Offices with-
held from Ro-
man catholics.

Nothing herein

“VIII. And whereas in an act of the parliament of Scotland made in the eighth and ninth session of the first parliament of King William the Third, intituled, ‘An Act for the preventing the Growth of Popery,’ a certain declaration or formula is therein contained, which it is expedient should no longer be required to be taken and subscribed; be it therefore enacted, that such parts of any acts as authorize the said declaration or formula to be tendered, or require the same to be taken, sworn, and subscribed, shall be and the same are hereby repealed, except as to such offices, places, and rights, as are hereinafter excepted; and that from and after the commencement of this act it shall be lawful for persons professing the Roman catholic religion to elect and be elected members to serve in parliament for Scotland, and to be enrolled as freeholders in any shire or stewartry for Scotland, and to be chosen commissioners or delegates for choosing burgesses to serve in parliament for any districts of burghs in Scotland, being in all other respects duly qualified, such persons always taking and subscribing the oath hereinbefore appointed and set forth, instead of the oaths of allegiance and abjuration as now required by law, at such time as the said last-mentioned oaths, or either of them, are now required by law to be taken.

“IX. And be it further enacted, that no person in holy orders in the church of Rome shall be capable of being elected to serve in parliament as a member of the house of commons; and if any such person shall be elected to serve in parliament as aforesaid, such election shall be void; and if any person, being elected to serve in parliament as a member of the house of commons shall, after his election, take or receive holy orders in the church of Rome, the seat of such person shall immediately become void; and if any such person shall, in any of the cases aforesaid, presume to sit or vote as a member of the house of commons, he shall be subject to the same penalties, forfeitures, and disabilities, as are enacted by an act passed in the forty-first year of the reign of King George the Third, intituled, ‘An Act to remove Doubts respecting the Eligibility of Persons in Holy Orders, to sit in the House of Commons;’ and proof of the celebration of any religious service by such person, according to the rites of the church of Rome, shall be deemed and taken to be *prima facie* evidence of the fact of such person being in holy orders, within the intent and meaning of this act.

“X. And be it enacted, that it shall be lawful for any of his majesty’s subjects professing the Roman catholic religion to hold, exercise, and enjoy all civil and military offices and places of trust or profit under his majesty, his heirs, or successors, and to exercise any other franchise or civil right, except as hereinafter excepted, upon taking and subscribing, at the times and in the manner hereinafter mentioned, the oath hereinbefore appointed and set forth, instead of the oaths of allegiance, supremacy, and abjuration, and instead of such other oath or oaths as are or may be now by law required to be taken for the purpose aforesaid by any of his majesty’s subjects professing the Roman catholic religion.

“XI. Provided always, and be it enacted, that nothing herein contained shall be construed to exempt any person professing the Roman catholic religion from the necessity of taking any oath or oaths, or making any declaration, not hereinbefore mentioned, which are or may be by law required to be taken or subscribed by any person on his admission into any such office or place of trust or profit as aforesaid.

“XII. Provided also, and be it further enacted, that nothing herein contained shall extend or be construed to extend to enable any person or persons professing the Roman catholic religion to hold or exercise the office of guardians and justices of the United Kingdom, or of regent of the United Kingdom, under whatever name, style, or title such office may be constituted; nor to enable any person, otherwise than as he is now by law enabled, to hold or enjoy the office of lord high chancellor, lord keeper or lord commissioner of the great seal of Great Britain or Ireland; or the office of lord lieutenant, or lord deputy, or other chief governor or governors of Ireland; or his majesty’s high commissioner to the general assembly of the church of Scotland.

“XIII. Provided also, and be it further enacted, that nothing herein contained

shall be construed to affect or alter any of the provisions of an act passed in the seventh year of his present majesty's reign, intituled, 'An Act to consolidate and amend the Laws which regulate the Levy and Application of Church Rates and Parish Cesses, and the Election of Churchwardens, and the Maintenance of Parish Clerks, in Ireland.'

"XIV. And be it enacted, that it shall be lawful for any of his majesty's subjects professing the Roman catholic religion to be a member of any lay body corporate, and to hold any civil office or place of trust or profit therein, and to do any corporate act, or vote in any corporate election or other proceeding, upon taking and subscribing the oath hereby appointed and set forth, instead of the oaths of allegiance, supremacy, and abjuration; and upon taking also such other oath or oaths as may now by law be required to be taken by any persons becoming members of such lay body corporate, or being admitted to hold any office or place of trust or profit within the same.

"XV. Provided nevertheless, and be it further enacted, that nothing herein contained shall extend to authorize or empower any of his majesty's subjects professing the Roman catholic religion, and being a member of any lay body corporate, to give any vote at, or in any manner to join in the election, presentation, or appointment of any person to any ecclesiastical benefice whatsoever, or any office or place belonging to or connected with the united church of England and Ireland, or the church of Scotland, being in the gift, patronage, or disposal of such lay corporate body.

"XVI. Provided also, and be it enacted, that nothing in this act contained shall be construed to enable any persons, otherwise than as they are now by law enabled, to hold, enjoy, or exercise any office, place, or dignity of, in, or belonging to the united church of England and Ireland, or the church of Scotland, or any place or office whatever of, in, or belonging to any of the ecclesiastical courts of judicature of England and Ireland respectively, or any court of appeal from or review of the sentences of such courts, or of, in, or belonging to the commissary court of Edinburgh, or of, in, or belonging to any cathedral or collegiate or ecclesiastical establishment or foundation; or any office or place whatever of, in, or belonging to any of the universities of this realm; or any office or place whatever, and by whatever name the same may be called, of, in, or belonging to any of the colleges or halls of the said universities, or the colleges of Eton, Westminster, or Winchester, or any college or school within this realm; or to repeal, abrogate, or in any manner to interfere with any local statute, ordinance, or rule, which is or shall be established by competent authority within any university, college, hall, or school, by which Roman catholics shall be prevented from being admitted thereto, or from residing or taking degrees therein: provided also, that nothing herein contained shall extend or be construed to extend to enable any person, otherwise than as he is now by law enabled, to exercise any right of presentation to any ecclesiastical benefice whatsoever; or to repeal, vary, or alter in any manner the laws now in force in respect to the right of presentation to any ecclesiastical benefice.

"XVII. Provided always, and be it enacted, that where any right of presentation to any ecclesiastical benefice shall belong to any office in the gift or appointment of his majesty, his heirs or successors, and such office shall be held by a person professing the Roman catholic religion, the right of presentation shall devolve upon and be exercised by the Archbishop of Canterbury for the time being.

"XVIII. And be it enacted, that it shall not be lawful for any person professing the Roman catholic religion, directly or indirectly, to advise his majesty, his heirs or successors, or any person or persons holding or exercising the office of guardians of the United Kingdom, or of regent of the United Kingdom, under whatever name, style, or title such office may be constituted, or the lord lieutenant, or lord deputy, or other chief governor or governors of Ireland, touching or concerning the appointment to or disposal of any office or preferment in the united church of England and Ireland, or in the church of Scotland; and if any such person shall offend in the premises, he shall, being thereof convicted by due course of law, be

STAT. 10 GEO.
4, c. 7.
to repeal
7 Geo. 4, c. 72.

Roman catholics may be members of lay corporations.

Such members of corporations not to vote in ecclesiastical appointments.

Not to extend to offices, &c. in the established church, or ecclesiastical courts, universities, colleges, or schools;

nor to presentations to benefices.

Proviso for presentations to benefices connected with offices.

No Roman catholic to advise the crown in the appointment to offices in the established church.

STAT. 10 GEO.
4, c. 7.

Time and
manner of
taking oaths
for corporate
offices.

Time and
manner of
taking oaths
for other
offices.

Penalty on
acting in offices
without taking
the oath.

Oaths by mili-
tary and naval
officers.

No other oaths
necessary to be
taken by Ro-
man catholics.

deemed guilty of a high misdemeanor, and disabled for ever from holding any office, civil or military, under the crown.

“XIX. And be it enacted, that every person professing the Roman catholic religion, who shall after the commencement of this act be placed, elected, or chosen in or to the office of mayor, provost, alderman, recorder, bailiff, town clerk, magistrate, councillor, or common councilman, or in or to any office of magistracy or place of trust or employment relating to the government of any city, corporation, borough, burgh, or district within the United Kingdom of Great Britain and Ireland, shall, within one calendar month next before or upon his admission into any of the same respectively, take and subscribe the oath hereinbefore appointed and set forth, in the presence of such person or persons respectively as by the charters or usages of the said respective cities, corporations, burghs, boroughs, or districts ought to administer the oath for due execution of the said offices or places respectively; and in default of such, in the presence of two justices of the peace, councillors or magistrates of the said cities, corporations, burghs, boroughs, or districts, if such there be; or otherwise, in the presence of two justices of the peace of the respective counties, ridings, divisions, or franchises wherein the said cities, corporations, burghs, boroughs, or districts are; which said oath shall either be entered in a book, roll, or other record to be kept for that purpose, or shall be filed amongst the records of the city, corporation, burgh, borough, or district.

“XX. And be it enacted, that every person professing the Roman catholic religion, who shall after the commencement of this act be appointed to any office or place of trust or profit under his majesty, his heirs or successors, shall within three calendar months next before such appointment, or otherwise shall, before he presumes to exercise or enjoy or in any manner to act in such office or place, take and subscribe the oath hereinbefore appointed and set forth, either in his majesty's high court of Chancery, or in any of his majesty's courts of King's Bench, Common Pleas, or Exchequer, at Westminster or Dublin; or before any judge of assize, or in any court of general or quarter sessions of the peace in Great Britain or Ireland, for the county or place where the person so taking and subscribing the oath shall reside; or in any of his majesty's courts of Session, Justiciary, Exchequer, or jury court, or in any sheriff or steward court, or in any burgh court, or before the magistrates and councillors of any royal burgh in Scotland, between the hours of nine in the morning and four in the afternoon; and the proper officer of the court in which such oath shall be so taken and subscribed shall cause the same to be preserved amongst the records of the court; and such officer shall make, sign, and deliver a certificate of such oath having been duly taken and subscribed, as often as the same shall be demanded of him, upon payment of two shillings and sixpence for the same; and such certificate shall be sufficient evidence of the person therein named having duly taken and subscribed such oath.

“XXI. And be it enacted, that if any person professing the Roman catholic religion shall enter upon the exercise or enjoyment of any office or place of trust or profit under his majesty, or of any other office or franchise, not having in the manner and at the times aforesaid taken and subscribed the oath hereinbefore appointed and set forth, then and in every such case such person shall forfeit to his majesty the sum of two hundred pounds; and the appointment of such person to the office, place, or franchise so by him held shall become altogether void, and the office, place, or franchise shall be deemed and taken to be vacant to all intents and purposes whatsoever.

“XXII. Provided always, that for and notwithstanding anything in this act contained, the oath hereinbefore appointed and set forth shall be taken by the officers in his majesty's land and sea service, professing the Roman catholic religion, at the same times and in the same manner as the oaths and declarations now required by law are directed to be taken, and not otherwise.

“XXIII. And be it further enacted, that from and after the passing of this act no oath or oaths shall be tendered to or required to be taken by his majesty's subjects professing the Roman catholic religion, for enabling them to hold or enjoy any real or personal property, other than such as may by law be tendered to and

required to be taken by his majesty's other subjects; and that the oath herein appointed and set forth, being taken and subscribed in any of the courts, or before any of the persons above mentioned, shall be of the same force and effect, to all intents and purposes, as, and shall stand in the place of, all oaths and declarations required or prescribed by any law now in force for the relief of his majesty's Roman catholic subjects from any disabilities, incapacities, or penalties; and the proper officer of any of the courts above mentioned, in which any person professing the Roman catholic religion shall demand to take and subscribe the oath herein appointed and set forth, is hereby authorized and required to administer the said oath to such person, and such officer shall make, sign, and deliver a certificate of such oath having been duly taken and subscribed, as often as the same shall be demanded of him, upon payment of one shilling; and such certificate shall be sufficient evidence of the person therein named having duly taken and subscribed such oath.

STAT. 10 GEO.
4, c. 7.

"XXIV. And whereas the protestant episcopal church of England and Ireland, and the doctrine, discipline, and government thereof, and likewise the protestant presbyterian church of Scotland, and the doctrine, discipline, and government thereof, are by the respective acts of union of England and Scotland, and of Great Britain and Ireland, established permanently and inviolably: and whereas the right and title of archbishops to their respective provinces, of bishops to their sees, and of deans to their deaneries, as well in England as in Ireland, have been settled and established by law; be it therefore enacted, that if any person, after the commencement of this act, other than the person thereunto authorized by law, shall assume or use the name, style, or title of archbishop of any province, bishop of any bishopric, or dean of any deanery, in England or Ireland, he shall for every such offence forfeit and pay the sum of one hundred pounds.

Titles to sees,
&c. not to be
assumed by
Roman
catholics.

"XXV. And be it further enacted, that if any person holding any judicial or civil office, or any mayor, provost, jurat, bailiff, or other corporate officer, shall, after the commencement of this act, resort to or be present at any place or public meeting for religious worship in England or in Ireland, other than that of the united church of England and Ireland, or in Scotland, other than that of the church of Scotland, as by law established, in the robe, gown, or other peculiar habit of his office, or attend with the ensign or insignia, or any part thereof, of or belonging to such his office, such person shall, being thereof convicted by due course of law, forfeit such office, and pay for every such offence the sum of one hundred pounds.

Judicial or
other officers
not to attend
with insignia
of office at any
place of wor-
ship, other
than esta-
blished church.

"XXVI. And be it further enacted, that if any Roman catholic ecclesiastic, or any member of any of the orders, communities, or societies hereinafter mentioned, shall, after the commencement of this act, exercise any of the rites or ceremonies of the Roman catholic religion, or wear the habits of his order, save within the usual places of worship of the Roman catholic religion, or in private houses, such ecclesiastic or other person shall, being thereof convicted by due course of law, forfeit for every such offence the sum of fifty pounds.

Penalty on Ro-
man catholic
ecclesiastics
officiating,
except in their
usual places of
worship.

"XXVII. Provided always, and be it enacted, that nothing in this act contained shall in any manner repeal, alter, or affect any provision of an act made in the fifth year of his present majesty's reign, intituled, 'An Act to repeal so much of an Act passed in the ninth year of the Reign of King William the Third, as relates to Burials in suppressed Monasteries, Abbeys, or Convents in Ireland, and to make further Provision with respect to the Burial in Ireland of Persons dissenting from the Established Church.'

Not to repeal
Stat. 5 Geo. 4,
c. 25.

"XXVIII. And whereas jesuits, and members of other religious orders, communities, or societies of the church of Rome, bound by monastic or religious vows, are resident within the United Kingdom; and it is expedient to make provision for the gradual suppression and final prohibition of the same therein; be it therefore enacted, that every jesuit, and every member of any other religious order, community, or society of the church of Rome, bound by monastic or religious vows, who at the time of the commencement of this act shall be within the United Kingdom, shall, within six calendar months after the commencement of this act,

For the sup-
pression of
jesuits and
other religious
orders of the
church of
Rome.

STAT. 10 GEO.
4, c. 7.

deliver to the clerk of the peace of the county or place where such person shall reside, or to his deputy, a notice or statement, in the form and containing the particulars required to be set forth in the schedule to this act annexed; which notice or statement such clerk of the peace, or his deputy, shall preserve and register amongst the records of such county or place, without any fee, and shall forthwith transmit a copy of such notice or statement to the chief secretary of the lord lieutenant, or other chief governor or governors of Ireland, if such person shall reside in Ireland, or if in Great Britain, to one of his majesty's principal secretaries of state; and in case any person shall offend in the premises, he shall forfeit and pay to his majesty, for every calendar month during which he shall remain in the United Kingdom without having delivered such notice or statement as is hereinbefore required, the sum of fifty pounds.

Jesuits, &c.
coming into
the realm, to
be banished.

"XXIX. And be it further enacted that if any jesuit, or member of any such religious order, community, or society as aforesaid, shall, after the commencement of this act, come into this realm, he shall be deemed and taken to be guilty of a misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life.

Natural-born
subjects, being
jesuits, may
return into the
kingdom and
be registered.

"XXX. Provided always, and be it further enacted, that in case any natural-born subject of this realm, being at the time of the commencement of this act a jesuit, or other member of any such religious order, community, or society as aforesaid, shall, at the time of the commencement of this act, be out of the realm, it shall be lawful for such person to return or to come into this realm; and upon such his return or coming into the realm he is hereby required, within the space of six calendar months after his first returning or coming into the United Kingdom, to deliver such notice or statement to the clerk of the peace of the county or place where he shall reside, or his deputy, for the purpose of being so registered and transmitted, as hereinbefore directed; and in case any such person shall neglect or refuse so to do, he shall for such offence forfeit and pay to his majesty, for every calendar month during which he shall remain in the United Kingdom without having delivered such notice or statement, the sum of fifty pounds.

The principal
secretaries of
state may grant
licences to
jesuits, &c. to
come into the
kingdom;

and may re-
voke the same.

"XXXI. Provided also, and be it further enacted, that, notwithstanding anything hereinbefore contained, it shall be lawful for any one of his majesty's principal secretaries of state, being a protestant, by a licence in writing, signed by him, to grant permission to any jesuit, or member of any such religious order, community, or society as aforesaid, to come into the United Kingdom, and to remain therein for such period as the said secretary of state shall think proper, not exceeding in any case the space of six calendar months; and it shall also be lawful for any of his majesty's principal secretaries of state to revoke any licence so granted before the expiration of the time mentioned therein, if he shall so think fit; and if any such person to whom such licence shall have been granted shall not depart from the United Kingdom within twenty days after the expiration of the time mentioned in such licence, or if such licence shall have been revoked, then within twenty days after notice of such revocation shall have been given to him, every person so offending shall be deemed guilty of a misdemeanor, and being thereof lawfully convicted shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life.

Accounts of
licences to be
laid before
parliament.

"XXXII. And be it further enacted, that there shall annually be laid before both houses of parliament an account of all such licences as shall have been granted for the purpose hereinbefore mentioned within the twelve months then next preceding.

Admitting
persons as
members of
such religious
orders deemed
a misdemeanor.

"XXXIII. And be it further enacted, that in case any jesuit, or member of any such religious order, community, or society as aforesaid, shall, after the commencement of this act, within any part of the United Kingdom, admit any person to become a regular ecclesiastic, or brother or member of any such religious order, community, or society, or be aiding or consenting thereto, or shall administer or cause to be administered, or be aiding or assisting in the administering or taking, any oath, vow, or engagement purporting or intended to bind the person taking the same to the rules, ordinances, or ceremonies of such religious order, community,

or society, every person offending in the premises in England or Ireland shall be deemed guilty of a misdemeanor, and in Scotland shall be punished by fine and imprisonment. STAT. 10 GEO. 4, c. 7.

“XXXIV. And be it further enacted, that in case any person shall, after the commencement of this act, within any part of this United Kingdom, be admitted or become a jesuit, or brother or member of any other such religious order, community, or society as aforesaid, such person shall be deemed and taken to be guilty of a misdemeanor, and being thereof lawfully convicted shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural life. Any person so admitted a member of a religious order to be banished.

“XXXV. And be it further enacted, that in case any person sentenced and ordered to be banished under the provisions of this act shall not depart from the United Kingdom within thirty days after the pronouncing of such sentence and order, it shall be lawful for his majesty to cause such person to be conveyed to such place out of the United Kingdom as his majesty, by the advice of his privy council, shall direct. The party offending may be banished by his majesty;

“XXXVI. And be it further enacted, that if any offender, who shall be so sentenced and ordered to be banished in manner aforesaid, shall, after the end of three calendar months from the time such sentence and order hath been pronounced, be at large within any part of the United Kingdom, without some lawful cause, every such offender being so at large as aforesaid, on being thereof lawfully convicted, shall be transported to such place as shall be appointed by his majesty, for the term of his natural life. and if at large after three months, may be transported for life.

“XXXVII. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend in any manner to affect any religious order, community, or establishment consisting of females bound by religious or monastic vows. Not to extend to female societies.

“XXXVIII. And be it further enacted, that all penalties imposed by this act shall and may be recovered as a debt due to his majesty, by information to be filed in the name of his majesty's attorney-general for England or for Ireland, as the case may be, in the courts of Exchequer in England or Ireland respectively, or in the name of his majesty's advocate-general in the court of Exchequer in Scotland. Penalties, how to be recovered.

“XXXIX. And be it further enacted, that this act, or any part thereof, may be repealed, altered, or varied at any time within this present session of parliament. Act may be altered this session.

“XL. And be it further enacted, that this act shall commence and take effect at the expiration of ten days from and after the passing thereof. Commencement of act.

SCHEDULE TO WHICH THIS ACT REFERS.

Date of the Registry.	Name of the Party.	Age.	Place of Birth.	Name of the Order, Community, or Society whereof he is a Member.	Name and usual Residence of the next immediate Superior of the Order, Community, or Society.	Usual Place of Residence of the Party.

STAT. 10 GEO.
4, cap. vii.

CCXXIX. STAT. 10 GEORGH II 4, cap. vii. A.D. 1829.

"An Act for effecting an Exchange between the Dean and Chapter of the Cathedral Church of Saint Paul, in London, and John Pedley, Require."

STAT. 10 GEO.
4, CAP. XI.

CCXXX. STAT. 10 GEORGH II 4, CAP. XI. A.D. 1829.

"An Act for vesting a new Church in the Parish of Liverpool, in the County of Lancaster, in the Mayor, Bailiffs, and Burgesses of the said Town; and for authorizing the Appointment of Districts for the better Performances of Ecclesiastical Duties within the said Parish."

STAT. 10 GEO.
4, CAP. XIV.

CCXXXI. STAT. 10 GEORGH II 4, CAP. XIV. A.D. 1829.

"An Act for extinguishing Tithes and Payments in lieu of Tithes, Mortuaries, and Easter Offerings, and other Vicarial Dues and Payments, within the Parish of Halifax, in the Diocese and County of York; and for making Compensation to the Vicar in lieu thereof, and enabling him to grant certain Leases of Lands belonging to the Vicarage."

STAT. 10 GEO.
4, CAP. XV.

CCXXXII. STAT. 10 GEORGH II 4, CAP. XV. A.D. 1829.

"An Act for establishing and governing an Institution in Liverpool, called 'The School for the Indigent Blind at Liverpool;' for incorporating the Subscribers thereto; and also for regulating and supporting a Chapel attached to the said Institution."

STAT. 10 GEO.
4, cap. xxiii.

CCXXXIII. STAT. 10 GEORGH II 4, cap. xxiii. A.D. 1829.

"An Act for enabling the Lord Bishop of Chichester to grant Building Leases of certain Estates belonging to the said See."

STAT. 10 GEO.
4, c. 25.

CCXXXIV. STAT. 10 GEORGH II 4, c. 25. A.D. 1829.

"An Act to provide for the better Management of the Affairs of Greenwich Hospital."

Patronage of
livings vested
in the Admi-
ralty.

"XXXV. And whereas by an act passed in the fifty-first year of the reign of his late majesty, intituled, 'An Act for erecting Five distinct Rectories and Parishes within the Rectory and Parish of Simonburn in the County of Northumberland, and for separating the same from the Rectory and Parish Church of Simonburn, and for providing Parish Churches, Churchyards, and Parsonage Houses for the same, and for restraining the Commissioners and Governors of the Royal Hospital for Seamen at Greenwich in the County of Kent, from presenting to the Rectory of Simonburn, or the said new Rectories, any other Persons than Chaplains in the Royal Navy,' the rights of patronage and presentation of, in, and to the several rectories of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, and Greystead, in the County of Northumberland, are vested in the commissioners and governors of the Royal Hospital for Seamen at Greenwich in the county of Kent, and their successors for ever; be it enacted, that from and after the passing of this act the rights of patronage and presentation to the said several rectories of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, and Greystead, and also to the living of Alston in the county of Cumberland, and all other benefices which may belong to Greenwich Hospital, shall (subject to the provisions of the said act) and of an act passed in the first year of the reign of his present majesty, intituled, 'An Act to enable Chaplains in the Navy, presented to either of the Livings of Simonburn, Wark, Bellingham, Thorneyburn, Fallstone, or Greystead, in the County of Northumberland, to receive their Half Pay, and for other Purposes relating to the said Livings,' be for ever hereafter vested in the lord high admiral, or commissioners for executing the office of lord high admiral, for the time being.

Roman catho-
lica not to be

"XXXVI. Provided nevertheless, and be it further enacted, that nothing herein contained shall extend to authorise or empower any person professing the

Roman catholic religion, being one of the commissioners for executing the office of lord high admiral, in any manner to join in the election, presentation, or appointment to any of the benefices hereinbefore mentioned.

STAT. 10 GEO.
4, c. 25.

concerned in
presentation to
benefices.

Commissioners
may hold with-
out licence in
mortmain.

“XXXVII. And be it enacted, that it shall be lawful for any person or persons whomsoever, having power so to do, to give, devise, or bequeath any messuages, lands, tenements, or hereditaments, goods, monies, chattels, and effects, to and for the use or benefit of Greenwich Hospital; and that the commissioners of Greenwich Hospital and their successors shall be able and capable in law, without licence in mortmain, to take, hold, receive, possess, and enjoy, to them and their successors, for the purposes of the said hospital, or the persons supported therein or therefrom, any manors, messuages, lands, rents, tenements, annuities, and hereditaments, of what nature or kind soever, or any estate or interest arising or derived out of any manors, messuages, lands, tenements, or hereditaments to them and their successors in fee and perpetuity, or for life or lives, or term of years, or otherwise, and to let, sell, alien, exchange, assign, and dispose of the said manors, messuages, lands, tenements, or hereditaments at their will and pleasure, as shall be most beneficial for the said institution.”

CCXXXV. STAT. 10 GEORGII 4, c. 34. [IRELAND.] A.D. 1829.

STAT. 10 GEO.
4, c. 34. [Ir.]

“An Act for consolidating and amending the Statutes in Ireland relating to Offences against the Person.”

“XXVII. And be it enacted, that if any person shall arrest any clergyman upon any civil process while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall suffer such punishment, by fine or imprisonment, or by both, as the court shall award.”

Arrest of cler-
gyman during
divine service.

CCXXXVI. STAT. 10 GEORGII 4, cap. xliv. A.D. 1829.

STAT. 10 GEO.
4, cap. xliv.

“An Act to enable the Mayor, Bailiffs, and Commonalty of the City of Winchester to convey certain Estates, the Possessions of the Hospital of Saint John the Baptist in Winchester, to Trustees to be appointed by the Court of Chancery; and to enable such Trustees to exercise certain Powers over the said Estates; and to authorize the Mayor, Burgesses, and Commonalty of the City of Bristol to convey to the said Trustees a certain Sum payable every twenty-fourth year under a Grant of Sir Thomas White; and for other Purposes.”

CCXXXVII. STAT. 10 GEORGII 4, cap. xlv. A.D. 1829.

STAT. 10 GEO.
4, cap. xlv.

“An Act for enabling the Dean and Chapter of the Cathedral Church of Saint Paul in London to grant Building Leases, pursuant to an Agreement entered into with John Ambler for that Purpose.”

CCXXXVIII. STAT. 10 GEORGII 4, cap. xlv. A.D. 1829.

STAT. 10 GEO.
4, cap. xlv.

“An Act for enabling the Dean and Chapter of the Cathedral Church of Saint Paul in London, to grant Building Leases of certain Land of the said Dean and Chapter at Barnes, in the County of Surrey.”

CCXXXIX. STAT. 10 GEORGII 4, cap. xlix. A.D. 1829.

STAT. 10 GEO.
4, cap. xlix.

“An Act for enabling the Rector for the time being of Saint Mary, Newington Butts, in the County of Surrey, to make certain Confrmations, Leases, and Assurances of certain parts of the Glebe Lands belonging to his Rectory.”

STAT. 10 GEO.
4, c. 50.

CCXL. STAT. 10 GEORGH II, c. 50. A.D. 1829.

"An Act to consolidate and amend the Laws relating to the Management and Improvement of His Majesty's Woods, Forests, Parks, and Chases, of the Land Revenue of the Crown within the Survey of the Exchequer in England, and of the Land Revenue of the Crown in Ireland, and for extending certain Provisions relating to the same to the Isles of Man and Alderney."

His majesty
may grant sites
for churches,
&c.

"XLV. And whereas it is desirable that his majesty, his heirs and successors, should be at liberty to grant any lands or hereditaments, part of the possessions or land revenues of the crown to which this act relates, for any of the purposes herein mentioned, whenever he or they shall be graciously pleased so to do; be it therefore enacted, that the king's most excellent majesty, his heirs and successors, shall at any time hereafter have full power and authority, out of the said possessions and land revenues of the crown to which this act relates, to give and grant to and vest in any body or bodies politic or corporate, or any person or persons whomsoever, and their heirs and successors respectively, for such estate or interest therein as to his majesty, his heirs and successors, shall seem meet, any building proper to be used as or converted into, or any ground proper for the site of any church or chapel, with or without a cemetery or burial ground thereto, or any ground proper for a cemetery or burial ground, to any church or chapel, and any house, with its appurtenances, and with or without a garden thereto, proper for the residence of the spiritual person who may serve such church or chapel, or any ground proper for the site or sites of any such residence, or of any parochial or district school, anything in this act or any other law or statute to the contrary in anywise notwithstanding; and such body or bodies politic or corporate, or person or persons, and their heirs, successors, executors, or administrators, shall have full capacity and ability to take, hold, and enjoy the same; and whenever it shall be the pleasure of his majesty, his heirs or successors, to make a grant for any of the purposes aforesaid, it shall be lawful for the lord high treasurer, or the commissioners of his majesty's treasury for the time being, to issue a warrant under his or their hand or hands to any such body or bodies politic or corporate, or person or persons as aforesaid, which warrant shall be exempt from any stamp duty whatsoever, and shall, if the same shall relate to a grant in England and Wales, be enrolled in manner hereinafter mentioned, and if the same shall relate to a grant in Ireland, shall be enrolled in the office of record in Ireland in which the rentals or rent rolls of the king's rents shall be preserved, and the enrolment of the said warrant shall be certified at the foot or on the back thereof by the proper officer or officers by whom the same shall be enrolled, under his or their hand or hands, and the said warrant, when so enrolled, shall be returned with such certificate of enrolment to the grantee or grantees of such lands and premises; and from and immediately after such enrolment thereof, the grantee or grantees named in such warrant, and his or their heirs, successors, executors, or administrators, shall, by force of this act, be adjudged, deemed, and taken to be in the actual seisin or possession of the premises in the said warrant specified, and shall hold and enjoy the same, either absolutely and in perpetuity, or for such limited estate, term, or interest, and under and subject to such reservations of rent or other acknowledgments, conditions, or restrictions, and upon such trusts and for such purposes, as shall be specified, inserted, directed, or contained in such warrant; any law, statute, or usage to the contrary thereof in anywise notwithstanding: provided always, that nothing in this act contained shall extend or be construed to extend to enable his majesty, his heirs or successors, to grant more than five acres in any one grant for any of the purposes aforesaid, or to grant any premises in any one instance which shall exceed in value the sum of one thousand pounds."

STAT. 10 GEO.
4, CAP. LI.

CCXLI. STAT. 10 GEORGH II, CAP. LI. A.D. 1829.

"An Act for erecting and endowing a Church in Abercrombie Square in the Parish of Liverpool, in the County Palatine of Lancaster."

CCXLII. STAT. 10 GEORGH II, C. 53. A.D. 1829.

STAT. 10 GEO.
4, C. 53.

"An Act to regulate the Duties, Salaries, and Emoluments of the Officers, Clerks, and Ministers of certain Ecclesiastical Courts in England."

"Whereas the commissioners authorized and appointed by several commissions and warrants, as well from his late majesty King George the Third, as from his present majesty, to make a diligent examination of the duties, salaries, and emoluments of the several officers, clerks, and ministers of justice of and within all ecclesiastical courts (amongst other courts) in England, and to inquire what regulations might be fit to be established respecting such duties, salaries, and emoluments, have, in pursuance of the said several commissions and warrants, made two several reports to his present majesty, one dated the sixteenth day of May, one thousand eight hundred and twenty-three, as to the duties, salaries, and emoluments of the officers, clerks, and ministers of justice of the court of Arches, Prerogative court, and court of Peculiars of the Lord Archbishop of Canterbury respectively, and the other dated the fourth day of July one thousand eight hundred and twenty-three, as to the duties, salaries, and emoluments of the officers, clerks, and ministers of justice of the Consistory court and Commissary court of the Lord Bishop of London respectively; and whereas the said commissioners have in their said several reports recommended the regulation of the duties, salaries, and emoluments of the officers, clerks, and ministers of justice of the said several courts respectively, and it is expedient that such recommendation of the said commissioners should be carried into effect, and that some provision should be made for the permanent regulation of the said duties, salaries, and emoluments; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the official principal of the said court of Arches, together with the chancellor of the diocese of London and the commissary of the diocese of Canterbury, or together with either of them, and they are hereby required, to take into consideration the said reports and recommendations of the said commissioners, and to establish and ordain tables of fees to be thereafter taken by the several officers, clerks, and ministers of the said several courts respectively, such tables respectively to contain the fees recommended by the said commissioners in their said reports to be taken by the several officers, clerks, and ministers of the said several courts respectively, and no other fees or emoluments whatsoever; which tables of fees, when so established and ordained, shall be entered or enrolled in the public books or records of the courts to which they respectively relate, in such manner as the persons establishing the same shall think fit.

Tables of fees to be established, and enrolled in the books of the courts.

"II. And be it further enacted, that the fees so established and ordained shall, from and after the establishment and ordaining thereof, and the entry or enrolment of such tables as aforesaid, and after notice thereof given to the officers, clerks, and ministers respectively whom they may concern, in such manner as the persons establishing the said tables shall direct, be the lawful fees of such officers, clerks, and ministers respectively, and that none other (except such as may be altered or ordained as hereinafter provided) shall be demanded, received, or taken by such officers, clerks, and ministers respectively, under any colour or pretence whatsoever.

The fees in such tables to be the only lawful fees.

"III. And whereas some alteration in such tables of fees, after the same shall have been so entered and enrolled as aforesaid, may from time to time become expedient and necessary; be it therefore enacted, that it shall and may be lawful for the said persons for the time being by whom such tables of fees shall be established as aforesaid from time to time to alter such tables of fees, and also to establish and ordain other reasonable, new, or additional fees to be demanded, received, and taken by such officers, clerks, and ministers respectively, and to cause such altered, new, or additional fees to be entered or enrolled in the public books or records of the courts to which they respectively relate; and which altered, new, or additional fees, when so entered or enrolled, shall be the lawful fees of such offi-

Power to make alterations or additions in such tables.

STAT. 10 GEO.
4, c. 53.

Alterations or
additions to be
approved pre-
vious to their
enrolment.

Tables of fees
to be hung up
in the offices
to which they
relate.

Not to extend
to fees of
proctors.

Power to make
regulations for
due perform-
ance of duties.

Appointment
of deputy
registrars, &c.

As to the
appointment

cers, clerks, and ministers; provided always, that before such altered, new, or additional fees shall be entered or enrolled in the public books or records of the courts to which they respectively relate, and before the same shall be demanded, taken, or received by the said officers, clerks, and ministers respectively, the same shall be approved by the Lord Archbishop of Canterbury and the Lord Bishop of London respectively, as the same may relate to their respective courts, and, if approved by them, shall be submitted to the consideration of his majesty's privy council, who may disallow the same or any part thereof; and notice shall be given in the London Gazette of such submission to the privy council; and if, within the space of three calendar months from the time of giving such notice, the same shall not be disallowed by the privy council, such altered, new, or additional fees, or such part thereof as shall not be disallowed, shall, from and after the expiration of the said three calendar months, be deemed and taken to be lawful fees, and shall be entered or enrolled as such in the public books or records of the courts to which they respectively relate, and added to the respective tables of fees accordingly.

"IV. And be it further enacted, that the several tables of fees so ordained and established as aforesaid, together with any subsequent alterations that may from time to time be made therein as aforesaid, shall be respectively kept hung up in some conspicuous part of the office or place of business to which they relate; and that extracts from such tables shall be hung up in some conspicuous part of the office or place of business of each officer, clerk, or minister of the said several courts respectively, containing such parts thereof as shall concern such officer, clerk, or minister.

"V. Provided always and be it further enacted, that nothing in this act contained shall extend to any charges or fees made or received by any proctor of the same courts, or of any of them, in respect of business done by such proctor in his character and profession of proctor only, and not as such officer, clerk, or minister as aforesaid.

"VI. And whereas various important duties are required to be performed by the deputy registrars and clerks of seats in the office of the Prerogative court, and by the other officers, clerks, and ministers employed in the registry and in other offices of the several before-mentioned courts, the due performance of which it is expedient to regulate and enforce, and to provide for the due qualification of the persons appointed to such offices; be it therefore enacted, that it shall and may be lawful for the said persons for the time being respectively hereinbefore authorized to establish fees, and they are hereby required, forthwith to inquire into the performance of such duties, and from time to time to make such regulations respecting the same, and the performance thereof by the several officers, clerks, and ministers aforesaid, as to them shall seem expedient; which regulations, having been approved and confirmed by the Lord Archbishop of Canterbury, when they relate to the said court of Arches, Prerogative court, and court of Peculiars, or either of them, and having been approved and confirmed by the Lord Bishop of London, when they relate to the said Consistory court and Commissary court, or either of them, shall be entered or enrolled in the public books or records of the courts to which they shall relate respectively, and shall from the time of such entry or enrolment be in full force with respect to such officers, clerks, and ministers respectively, and binding upon them and each of them.

"VII. And be it further enacted, that from and after the passing of this act no person shall be appointed to the office of deputy registrar, entering clerk, record keeper, clerk of the seats, or examiner in any of the said several courts respectively, unless the appointment of such person to such office shall be previously approved by the judges for the time being of the said several courts respectively, and confirmed by the Archbishop of Canterbury or Bishop of London, as such appointment may relate to the respective courts of such archbishop or bishop, such approbation and confirmation to be signified in writing, and to be registered.

"VIII. And be it enacted, that no person shall be hereafter appointed clerk of a seat in the office of the said Prerogative court, unless he be a notary public, and

have duly served a clerkship of seven years to a proctor practising as such in one of the said courts; and such clerk of a seat shall execute his duties in person, except when prevented by reasonable cause; and when so prevented, he shall procure the assistance of some other notary public, to be approved by the judge: provided always that nothing herein contained shall extend or apply to any clerk of a seat in the office of the Prerogative court, duly appointed thereto before or at the time of passing this act.

“IX. And whereas delay in the progress of causes in the said several courts, and in the high court of Delegates, is occasioned by some of the present *rules of practice* (1), and particularly by rules respecting causes proceeding in *panam contumacia*, where the parties cited do not appear; be it therefore enacted, that it shall

STAT. 10 GEO.
4, c. 53.
of clerks of
seats.

Additional
court days may
be appointed,
and orders

(1) *Rules of practice*:—In *Jolly v. Baines*, (12 A. & E. 201.) it was held, on motion for a prohibition, that the court of Queen’s Bench will not enter into questions as to the practice of the ecclesiastical courts; as, whether witnesses in a suit have been examined conformably to a general order of the court of Arches, although such order was made by virtue of Stat. 10 Geo. 4, c. 53, s. 9.

It was likewise held, that a cause of subtraction of church rate may be carried into the Arches court by letters of request from the commissary of the diocese, or other jurisdiction, in which the cause originates, under Stat. 23 Hen. 8, c. 9, s. 3, without any proceeding having been first taken in the court of that jurisdiction; and that it is sufficient ground for such removal that matters of difficulty may arise, in which the parties desiring letters of request can have assistance of counsel in the superior court, not attainable in the inferior:—Lord Denman stating, “This was a motion for a prohibition to the court of Arches, in a suit for subtraction of church rate.

“Two objections were urged. First, that the depositions were improperly taken, with reference to the statute 10 Geo. 4, c. 53, s. 9. The answer is clear, that, even if it were so, it is a matter of irregularity in practice only, and no ground for this court to interfere by writ of prohibition.

“Secondly, that the party was cited out of his diocese, and that a suit of subtraction of church rates cannot, by the law, civil or canon, be referred by letters of request to the superior ecclesiastical court, and so is not within the exception of the statute 23 Hen. 8, c. 9. No authority was cited for this position, nor any reason assigned at the bar, why a suit for subtraction of church rate might not be so referred as much as a suit for subtraction of tithes, or for brawling, or any other contentious matter. But it was said by counsel, that they were not aware of any instance in which it had been done.

“We have made inquiry, and find that suits for subtraction of church rate have frequently been referred by letters of request, and that no objection has ever been taken on that ground, although in several such instances a prohibition has been moved for on other grounds. The ground usually assigned in the letters of request is, that the parties can, in the superior court, have the benefit of counsel learned in the law, which advice cannot be had in the inferior jurisdic-

tion; and this ground is obviously applicable to the case in question.

“We see, therefore, no reason to doubt that the letters of request were in this case proper; and the rule must be discharged.”

The citation in the foregoing case was addressed by *Herbert Jenner, &c.*, official principal, &c., “To all and singular clerks, and literate persons,” in the province of Canterbury, and recited as follows. “Whereas we have lately received letters of request from the worshipful *Christopher Hodgson, M.A.*, commissary of the Right Reverend Father in God, *Johs*, by divine permission Lord Bishop of Lincoln, in and for the archdeaconry of Leicester, lawfully constituted, of the tenor following, to wit: ‘Whereas *W. Jolly* and *W. Berridge*, churchwardens of the parish of *St. Martin’s*, in the borough of *Leicester*, in the county, archdeaconry, and commissaryship of *Leicester*, in the diocese of *Lincoln*, intend to institute proceedings against *William Baines*, of the Market Place, in the borough of *Leicester* aforesaid, hatter and hosier, a parishioner and inhabitant of the said parish of *St. Martin*, in a cause of subtraction of church rates made in and for the said parish, and have requested us, *Christopher Hodgson, M.A.*, commissary, &c., ‘in and for the said archdeaconry,’ &c., ‘to grant them letters of request, in order that the said proceedings may be promoted and prosecuted in the Arches court of Canterbury; and whereas matters of difficulty may arise wherein the parties may require the aid and assistance of civilians or counsel learned in the law, practising in the said Arches court: Now we the said *C. Hodgson, M.A.*, the commissary aforesaid, do hereby, request you, the Right Hon. *Sir H. J.*, &c., ‘official principal,’ &c., ‘your surrogate, or some other competent judge, in this behalf, to cite, or cause to be cited, the said *William Baines*, a parishioner and inhabitant of the parish of *St. Martin* aforesaid, that he appear before you, your surrogate, or some other competent judge, in this behalf, at a certain competent time and place, and, in manner to be therein specified, to answer to the said *W. J.* and *W. B.*, in a certain cause of subtraction of church rates, made in and for the parish of *St. Martin*, and to hear and determine the said cause or business as unto law and justice shall appertain, at the promotion of the said *W. J.* and *W. B.*, the churchwardens of the said parish of *St. Martin*. In witness whereof we have hereto set our

STAT. 10 GEO.
4, c. 53.

made for
expediting
causes.

and may be lawful for the judges for the time being of the said court of Arches, Prerogative court, court of Peculiars, Consistory court, and Commissary court respectively, from time to time to appoint new and additional court days for the transaction of business in their several courts respectively, which new and additional court days shall, from and after the appointment thereof as aforesaid, be regular court days for the transaction of business, to all intents and purposes; and to make orders of court for expediting and regulating the proceedings in their several courts, and to cause the said orders to be entered or enrolled in the public books or records of the several courts to which they respectively relate, and which, when so entered, shall, until altered or revoked by the same authority, be observed by such courts respectively; and all such orders for the expediting or regulating the proceedings in any causes, as far as the same are applicable to cases of appeal, shall be submitted to the consideration of the lord high chancellor or keeper of the great seal for the time being, who may direct the same and any further order or orders to be observed as rules of practice by the said high court of Delegates in all causes to which such rules and orders respectively may relate or be applicable; and which orders, when approved by the lord chancellor or lord keeper for the time being, shall be entered as rules of practice in the register books of the said court of Delegates, and be observed as such by the same court accordingly, until altered or revoked by competent authority.

Holidays.

"X. And whereas great and unnecessary inconvenience and delay are occasioned by the numerous holidays now kept in the office of the said Prerogative court; be it therefore enacted, that from and after the passing of this act no holidays shall be kept in the office of the said Prerogative court, except such as are observed as holidays at his majesty's head office of stamps in London.

Court of Peculiars may be held in Doctors Commons.

"XI. And whereas great inconvenience arises from the said court of Peculiars being held in the vestry room of Bow church; be it therefore enacted, that from and after the passing of this act the said court of Peculiars shall and may be held in the common hall or place of judicature in Doctors Commons; and that all process from and out of the said court of Peculiars shall be returnable at such place in Doctors Commons; and all the business of the said court of Peculiars shall be done and transacted in the said place as fully and effectually to all intents and purposes whatsoever as if the same had been done and transacted in the said vestry room of Bow church; any usage to the contrary notwithstanding.

Officers shall continue and business be transacted in the said courts during the

"XII. And whereas great inconvenience arises from the ceasing of the functions of the judges and other officers, and the suspension of business in the several courts of the Lord Archbishop of Canterbury and of the Bishop of London respectively, upon any vacancy of their respective sees; be it therefore enacted, that upon any vacancy of the respective sees of Canterbury and London, after the passing of

hand and seal, and caused the seal of our office to be affixed, this 12th day of November, A.D. 1838.'" The citation then further recited that, at the petition of the proctor of W. J. and W. B. and in aid of justice, Sir H. J. had accepted the said letters of request and decreed to proceed according to the tenor thereof, and in pursuance thereof had decreed the said W. Baines to be cited and called into judgment, on, &c., (as after mentioned.) The citation then proceeded: "We do therefore hereby authorise, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite or cause to be cited, the said William Baines, that he appear personally, or by his proctor duly constituted, before us, our surrogate, or some other competent judge, in this behalf, in the common hall of Doctors' Commons, situate in the parish of St. Benedict, near St. Paul's Wharf, London, and place of judicature there, on the 6th day after he

shall have been served with these presents, if it be a general session, by-day, or additional court day of the said Arches court, otherwise on the general session, by-day, or additional court day of the said court then next following, at the hour of ten in the forenoon, and there to abide during the sitting of the said court, then and there to answer to the said W. J. & W. B., in the said cause of subtraction of church rate, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said W. J. and W. B. And what you shall do or cause to be done in the premises you shall duly certify us, our surrogate, or some other competent judge, in this behalf, together with these presents. Dated at London, the 15th day of November, A.D. 1838.

"Wm. Townsend,
"Registrar."

this act, the judges and officers for the time being of the several courts of the said Lord Archbishop of Canterbury and Bishop of London respectively shall during such vacancy, and until the issuing of new commissions in that behalf, respectively continue to hold their respective offices; and all business in the several offices of such courts respectively shall be transacted and carried on during such vacancy, and shall be as valid and effectual to all intents and purposes as if no such vacancy had occurred.

“XIII. And be it further enacted, that upon the death of any of the judges of the said several courts, the surrogates and other officers of the said several courts appointed by such judges respectively shall continue to exercise their respective offices until a new appointment shall be made by the persons having competent authority so to do.”

STAT. 10 GEO.
4, c. 53.

vacancy of the
sees of Can-
terbury or
London.

Upon death of
judges, the
surrogates, &c.
to continue
until new ap-
pointments.

CCXLIII. STAT. 10 GEORGII 4, c. 57 (1). A.D. 1829.

“An Act to continue, until the first day of July, One thousand eight hundred and thirty, the Powers of the Commissioners for inquiring concerning Charities in England and Wales.”

STAT. 10 GEO.
4, c. 57.

CCXLIV. STAT. 10 GEORGII 4, c. 58. [IRELAND.] A.D. 1829.

“An Act to repeal an Act of the Parliament of Ireland, of the ninth year of the Reign of Queen Anne, for uniting several Parishes, and building several Parish Churches in more convenient Places, so far as relates to the Parishes of Oran and Drumtemple, in the Diocese of Elphin.”

STAT. 10 GEO.
4, c. 58. [IR.]

“Whereas an act was passed in the parliament of Ireland in the ninth year of the reign of Queen Anne, intituled, ‘An Act for uniting several Parishes, and building several Parish Churches in more convenient Places,’ whereby, after reciting that the parishes of Oran and Drumtemple in the diocese of Elphin were fit to be united, and that the ancient church of Oran within the said parish of Oran was conveniently situated for the parishioners of the said parishes to repair unto, were the same rebuilt, it was enacted, that it should and might be lawful to and for the bishop of the said diocese, with the approbation of the archbishop of the province, and the consent of the respective patrons, incumbents, and the major part of the inhabitants of the said parishes, to order the church to be rebuilt at Oran in the said parish of Oran, and to unite the said parishes of Oran and Drumtemple; and that the said parishes so united should be called by the name of the parish of Oran; and that the inhabitants of the said united parish should from time to time be liable to and chargeable with building and keeping in repair the said church of Oran, which was for ever to be deemed and taken to be one parish to all intents and purposes whatsoever: and whereas after the passing of the said act the said parishes of Oran and Drumtemple were episcopally united with three other parishes, namely, the parish of Donamon, the parish of Kilcrowan, and the parish of Ballynakill, all in the said diocese of Elphin, which union still subsists; and whereas, in consequence of the great extent of the said union, it may be expedient hereafter to disunite the said parishes, or to divide the said union into two parts, one to consist of the said parishes of Oran and Drumtemple, and the other to consist of the said parishes of Donamon, Kilcrowan, and Ballynakill; and whereas no church has since the passing of the said act been built or rebuilt, pursuant thereto, in the said parishes thereby united, or either of them; and the said union of the said five parishes now contains only one church, which is in the said parish of Donamon, and is extremely remote from other parts of the said union; and whereas the trustees and commissioners of the first-fruits of the several benefices in Ireland have granted the sum of nine hundred pounds, late Irish currency, for building a church in the said parish of Drumtemple, being part of the union created by the said act; and a site for such new church has been selected in the village of Ballymoee in the said parish, as being more eligible than the site of Oran, mentioned in the said act; but such new church cannot, by reason of the said act, be erected

9 Ann. c. 12,
s. 2.

STAT. 10 GEO. 4, c. 58. [IR.] at any other place in the said union of Oran and Drumtemple than Oran aforesaid, which has on various accounts become unfit for that purpose; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said act passed in the ninth year of the reign of Queen Anne as is hereinbefore recited shall be and the same is hereby repealed.

Recited act in part repealed.

A new church to be erected in the village of Ballymoe.

"II. And be it enacted, that it shall and may be lawful to and for the bishop of the said diocese, with the approbation of the archbishop of the province, and the consent of the respective patrons of the said parishes of Oran and Drumtemple, to order or direct such new church to be erected in the said village of Ballymoe, or any other place in either of the said parishes, which to such bishop shall appear most convenient.

Public act.
2 Geo. I, c. 14.

"III. And whereas by an act passed in the parliament of Ireland in the second year of the reign of King George the First, intituled, 'An Act for real Union and Division of Parishes,' reciting that there might be occasion thereafter for making an act or acts of parliament for the uniting or disuniting of particular parishes or parts of parishes, or erecting particular churches, it was enacted, that all such acts of parliament for the aforesaid purposes only, or any of them, should be deemed as public and general acts in all courts and by all persons, and that no fees should be paid or taken by any person or persons for passing any such act of parliament: and whereas it is expedient that a like provision should be made in this case; be it therefore enacted, that this present act shall be deemed a public and general act, and shall be judicially taken notice of as such in all courts, and by all judges, justices, and others, without being specially pleaded, and that no fees shall be paid or taken by any person for passing the same."

STAT. 10 GEO. 4, c. 61.

CCXLV. STAT. 10 GEORGII 4, c. 61. A.D. 1820.

"An Act to amend an Act of the seventh year of His present Majesty, for extending to Charing Cross, the Strand, and Places adjacent, the Powers of an Act for making a more convenient Communication from Mary-le-bone Park."

Commissioners empowered to make vaults under St. Martin's church-yard.

"VIII. And whereas by the said in part recited act of the seventh year of the reign of his present majesty it was enacted, that it should be lawful for the said commissioners acting in the execution of the said act to take or use, for the purposes of the said act, so much of the burial ground of the parish of Saint Martin in the Fields as lay on the south side of the said church as might be required for the purpose, and the ground so taken and the fee-simple and inheritance thereof should be and were thereby vested in the king's majesty, his heirs and successors, for the purposes of the said act; and it was thereby further enacted, that the said commissioners acting in the execution of the said act should be and were thereby empowered and required, out of the monies to be applied for the purposes of the said act, to purchase or otherwise provide a piece or parcel of ground, to be approved by the Lord Bishop of London and the vicar of the parish of Saint Martin in the Fields for the time being, to be appropriated in enlarging that part of the then present burial ground as was situated on the north and east sides of the said church, such additional ground to be used as and for a burial ground for the parishioners of the said parish of Saint Martin in the Fields; and to procure the same to be consecrated and settled for that purpose, in such manner as the Lord Bishop of London for the time being, or such person as he should appoint, should direct; and to cause such burial ground to be made under pavement, and inclosed in such manner as the Lord Bishop of London, and the vicar of the said parish of Saint Martin in the Fields for the time being should approve; and the said commissioners should cause a proper gate or gates to be erected as an entrance thereto, with locks and other fastenings; and such new burial ground, and the soil thereof, and the freehold and inheritance of the same in fee-simple, should be vested in the same manner, and should be subject to the same peculiar jurisdictions and visitations, as the then present burial ground of the parish of Saint Martin in the Fields: and whereas by

an act passed in the ninth year of the reign of his present majesty, intituled, 'An Act to alter and enlarge the Powers of an Act passed in the seventh year of the Reign of His present Majesty, for extending to Charing Cross, the Strand, and Places adjacent, the Powers of an Act for making a more convenient Communication from Mary-le-bone Park, and for enabling the Commissioners of His Majesty's Woods, Forests, and Land Revenues to grant Leases of the Site of Carlton Palace, and for other Purposes relating thereto,' it was amongst other things enacted, that whenever, at any time after the passing of the now reciting act, it should be necessary, in pursuance and execution of the said therein and hereinbefore in part recited act, to open or disturb any grave or graves, or any burial vault or vaults, in the said burial ground of the said parish of Saint Martin in the Fields on the south side of the said church, it should be lawful for the said commissioners acting in the execution of the said recited act, with the consent of the vicar and churchwardens for the time being of the said parish of Saint Martin in the Fields, or the major part of them, to remove and carry away the remains of any such person or persons as should have been interred or deposited in such grave or graves, vault or vaults, and place the same either in such new burial ground as by the said therein and hereinbefore in part recited act the said commissioners were empowered and required to provide, or in any other churchyard or consecrated ground, in such manner as the Lord Bishop of London for the time being, or such person or persons as he might appoint, should direct, and that the expenses of such removing and carrying away and placing (not exceeding in any one case the sum of ten pounds) should be paid by the said commissioners acting in the execution of the said therein and hereinbefore in part recited act, out of the monies to be applied for the purposes of the said act: and whereas, for the greater accommodation of the interment of bodies within the parish of Saint Martin in the Fields aforesaid, and in order more effectually to enable the commissioners acting in the execution of the said recited act of the seventh year of the reign of his present majesty, to remove the remains of the persons now interred in the present burial ground of the said parish, the said commissioners have proposed to make a vault or vaults for that purpose under the present churchyard, on the north, east, and south sides of Saint Martin's church aforesaid; be it therefore further enacted, that the said commissioners acting in the execution of the said recited act of the seventh year of the reign of his present majesty as aforesaid, shall be and they are hereby authorized and empowered, by and with the consent of the vicar and churchwardens of the said parish of Saint Martin in the Fields or the major part of them, when and so soon as they shall think it expedient so to do, to make, form, and complete a vault or vaults under the north, east, and south sides of the present churchyard of the parish of Saint Martin in the Fields aforesaid, or under such part or parts thereof as they shall think necessary and proper for that purpose; such vault or vaults to be approved by the Lord Bishop of London, and to be used as and for a burial vault or vaults for the parishioners of the said parish.

STAT. 10 Geo.
4, c. 61.
9 Geo. 4, c. 70.

"IX. And be it further enacted, that whenever at any time after the passing of this act it shall be necessary, in pursuance and execution of the said in part recited acts, or of this act, or either of them, to open or disturb any grave or graves, or any burial vault or vaults, in the burial ground of the said parish of Saint Martin in the Fields aforesaid, it shall be lawful for the said commissioners acting in the execution of the said recited act of the seventh year of the reign of his present majesty aforesaid, with the consent of the vicar and churchwardens for the time being of the said parish of Saint Martin in the Fields, or the major part of them, to remove and carry away the remains of any such person or persons as shall have been interred or deposited in such grave or graves, vault or vaults, and place the same either in such new burial ground as by the said in part recited act of the seventh year of the reign of his present majesty the said commissioners are empowered and required to provide, or in the vault or vaults hereinbefore authorized to be made by them, or in any other churchyard, vault, or consecrated ground, in such manner as the Lord Bishop of London for the time being, or such person or persons as he may appoint, shall direct; and that the expenses of such removing,

Commissioners
empowered to
remove bodies.

STAT. 10 GEO. 4, c. 61. carrying away, and placing (not exceeding in any one case the sum of ten pounds) shall be paid by the said commissioners acting in execution of the said recited act of the seventh year of the reign of his present majesty as aforesaid, out of the monies to be applied for the purposes of the said act."

STAT. 10 GEO. 4, CAP. LXVIII. CCXLVI. STAT. 10 GEORGII 4, CAP. LXVIII. A.D. 1829.

"An Act to repeal several Acts relating to the Parish of Saint Paul, Covent Garden, in the County of Middlesex; and for making better Provision for the Regulation of the Affairs of the said Parish."

STAT. 10 GEO. 4, CAP. XCVI. CCXLVII. STAT. 10 GEORGII 4, CAP. XCVI. A.D. 1829.

"An Act for taking down the Parish Church of Saint Dunstan-in-the-West, in the City of London, and building a new Church in lieu thereof."

STAT. 10 GEO. 4, CAP. CXXV. CCXLVIII. STAT. 10 GEORGII 4, CAP. CXXV. A.D. 1829.

"An Act to authorize the Endowment of the Church and Vicarage of Newry, and for other Purposes relating thereto."

STAT. 11 GEO. 4 & 1 GUL. 4, CAP. X. CCXLIX. STAT. 11 GEORGII 4 & 1 GULIELMI 4, CAP. X. A.D. 1830.

"An Act for the better Regulation of the Affairs of the joint Parishes of Saint Giles-in-the-Fields and Saint George Bloomsbury, in the County of Middlesex, and of the separate Parishes of Saint Giles-in-the-Fields and Saint George Bloomsbury, in the same County."

STAT. 11 GEO. 4 & 1 GUL. 4, c. 18. CCL. STAT. 11 GEORGII 4 & 1 GULIELMI 4, c. 18(1). A.D. 1830.

"An Act to render valid Marriages solemnised in certain Churches and Chapels."

4 Geo. 4, c. 76. "Whereas, by an act passed in the fourth year of the reign of his present majesty, intituled, 'An Act for amending the Laws respecting the Solemnization of Marriages in England,' it is provided, that if the church of any parish, or chapel of any chapelry, wherein marriages have been usually solemnized, be demolished in order to be rebuilt, or be under repair, and on such account be disused for public

(1) The object of Stat. 11 Geo. 4 & 1 Gul. 4, c. 18, is to legalize marriages solemnized in chapels, of which the consecration was doubtful. For a similar purpose Stat. 6 Geo. 4, c. 92, was passed, namely, to legalize marriages celebrated in churches or chapels built and consecrated since Stat. 26 Geo. 2, c. 33, and Stat. 44 Geo. 3, c. 77, but in which banns had not usually been published before Stat. 26 Geo. 2, c. 33, and which did not fall under the qualifying provisions of Stat. 4 Geo. 4, c. 76.

There are several ancient chapels, such as the inns of court, and the chapel of the Savoy, in which marriages cannot now legally be solemnized, banns not having been published in them before Stat. 26 Geo. 2, c. 33. In *Tunstall v. Wyborn*, (2 Camp. 297,) Lord *Ellenborough* held, that the existence of a registry of marriages from 1578, and of the publication of banns from 1754, coupled with the deposition of the clergyman, that marriages had to his knowledge been frequently solemnized there, founded a sufficient presumption, that banns had been published there, before Stat. 26 Geo. 2, c. 33 (*ante* 847). Stat. 4 Geo. 4, c. 76, s. 2 (*ante* 1226), enacts, that marriage shall be solemnized in one of the parish churches or public chapels

in which the banns shall have been published; and further defines "chapel" as that "in which banns of matrimony may now or may hereafter be lawfully published;" and by its 22nd section, renders void all marriages knowingly celebrated by both parties in any other place.

In *Stallwood v. Tredger*, (2 Phill. 299,) Sir *John Nicholl* stated, and his opinion was confirmed by the court of Delegates, that the provisions of Stat. 26 Geo. 2, c. 33, were not contravened, where a church being under repair, (*vide* Stat. 4 Geo. 4, c. 76, s. 13; Stat. 5 Geo. 4, c. 32, ss. 2 & 3; and Stat. 11 Geo. 4 & 1 Gul. 4, c. 18, s. 2,) and shut up, the banns had been published in the church of a parish adjoining to that, in which they were married; but he said, "I am not disposed to go to the extent of giving an opinion, that under no circumstances would a marriage be void if contrary to this provision, and had elsewhere than in the church in which the banns were published; for instance, if the banns were *bond fide* and honestly published at York, and the parties were to come to London to be married, whether such a marriage would be void." *Vide* 2 Burn's E. L. by Phillimore, 645 (a).

service, it shall be lawful for the banns to be proclaimed in a church or chapel of any adjoining parish or chapelry in which banns are usually proclaimed, or in any place within the limits of the parish or chapelry which shall be licensed by the bishop of the diocese for the performance of divine service during the repair or rebuilding of the church as aforesaid; and whereas by an act passed in the fifth year of the reign of his present majesty, intituled, 'An Act to amend an Act passed in the last Session of Parliament, intituled, An Act for amending the Laws respecting the Solemnization of Marriages in England,' it was enacted, that all marriages which had been theretofore solemnized, or which should be thereafter solemnized, in any place within the limits of such parish or chapelry so licensed as aforesaid for the performance of divine service during the repair or rebuilding of the church of any parish, or chapel of any chapelry, wherein marriages had been usually solemnized, or if no such place should be so licensed, then in a church or chapel of any adjoining parish or chapelry in which banns were usually proclaimed, whether by banns lawfully published in such church or chapel, or by licence lawfully granted, should not have their validity questioned on account of their having been so solemnized, nor should the ministers who had so solemnized the same be liable to any ecclesiastical censure or to any other proceeding whatsoever; and whereas the ministers of certain parish churches and chapels of chapelries have, during the repair or rebuilding of such churches or chapels, published the banns of marriages in some places within the limits of their parishes or chapelries respectively wherein divine service has been usually performed during the time of such repair or rebuilding, but have solemnized the marriages themselves in the churches or chapels of the same or of some adjoining parishes or chapelries; and whereas other clergymen, during the time of such repair or rebuilding, have published banns of marriage and solemnized marriages in places duly licensed for the performance of divine worship, according to the forms of the united church of England and Ireland, within their respective parishes or chapelries, but not licensed specially for such performance during such time as aforesaid; and whereas it is expedient that the marriages so solemnized should not on that account have their validity questioned; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all marriages, the banns whereof have been published in any place used for the performance of divine service within the limits of any parish or chapelry, during the repairs or rebuilding of the church or chapel thereof, which marriages have been solemnized either in the said place so used or in the church or chapel of the same or of some adjoining parish or chapelry during such repair or rebuilding, shall not have their validity questioned on account of having been so solemnized.

"II. And be it further enacted, that in every case in which the church of any parish or place, in which banns of marriage may be published and marriages solemnized, shall be pulled down, or be rebuilding or under repair, it shall be lawful for the *bishop of the diocese to order and direct that banns of marriage may be published and marriages solemnized* (1) in any consecrated chapel of such parish or place which he shall by order in writing direct, until the church shall again be opened for the performance of divine service; and during all such period the said consecrated chapel shall, for all purposes relating to the publication of banns of marriage and to the solemnization of marriages, be deemed and taken to be the church of the parish, anything in any act or acts to the contrary notwithstanding; and the fees in respect thereof shall be applied, during such period, as the bishop of the diocese shall, with the consent of the incumbent, order and direct.

"III. And whereas doubts have arisen touching the validity of marriages solemnized in churches which have been made and constituted the churches of

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 18.

5 GEO. 4, c. 32.

The validity of marriages solemnized under the circumstances herein mentioned not to be questioned.

During the time that any church, &c. is under repair, the bishop may direct banns to be published in any consecrated chapel of the parish.

For removing doubts as to

(1) *Bishop of the diocese to order and direct that banns of marriage may be published and marriages solemnized*:—Vide Stat. 4 Geo. 4, c. 76, ss. 3, 4, & 5, and Stat. 6 & 7 Gul. 4, c. 85, ss. 28 & 29; respecting parties

resident in different districts, vide Stat. 7 Gul. 4 & 1 Vict. c. 22, ss. 33 & 34, repealing to a certain extent Stat. 6 & 7 Gul. 4, c. 85, ss. 30, 31, & 32.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 18.

marriages
solemnized in
churches made
and constituted
under acts 58
Geo. 3, c. 45,
and 59 Geo. 3,
c. 134.

26 Geo. 2, c. 33.

The validity of
marriages
solemnized in
certain chapels
not to be
questioned;

nor marriages
solemnized in
chapels, the
consecration of
which may be
doubted.

distinct parishes, or district parishes, under the provisions of an act passed in the fifty-eighth year of his late majesty, intituled, 'An Act for building and promoting the building of additional Churches in populous Parishes;' and also of an act passed in the fifty-ninth year of his late majesty, intituled, 'An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes;' and whereas it is expedient that such doubts should be removed; therefore be it enacted, that all marriages which have already been solemnized, or may hereafter be solemnized, in any church which shall have been made and constituted the church of a distinct parish, or of a district parish, as aforesaid, after consecration thereof and assignment of a district thereto, shall be as good and valid in law as if such marriages had been solemnized in any parish church wherein banns had been usually published before or at the time of passing an act made in the twenty-sixth year of King George the Second, intituled, 'An Act for the better preventing of clandestine Marriages.'

"IV. And whereas, by error, banns have been published, and divers marriages have been solemnized, in chapels duly consecrated, but in which chapels banns cannot be legally published, nor marriages by law be solemnized; and it is expedient to remove all doubts arising from the circumstances aforesaid touching the due publication of such banns and the validity of such marriages; therefore be it enacted, that all banns already published, and all marriages already solemnized, in such chapels as aforesaid, shall not hereafter be questioned on account of the said banns having been published, or the said marriages solemnized, in a chapel not legally authorized for the publication of banns and the solemnization of marriages; provided always, that nothing herein contained shall extend or be construed to extend to authorize the publication of banns or the solemnization of marriages in such chapels hereafter.

"V. And whereas divers marriages have taken place in chapels supposed to be consecrated, the consecration of which chapels, however, cannot be proved, and may be doubted; and whereas it is expedient that all apprehensions touching the validity of such marriages, on this account, should entirely be removed; be it therefore enacted, that the validity of such marriages shall not hereafter be questioned on account of the uncertainty respecting the consecration of such chapels."

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

Mode of exe-
cuting letters
of attorney
and wills.

CCLI. STAT. 11 GEORGII 4 & 1 GULIELMI 4, c. 20 (1). A.D. 1830.

"An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy."

"XLVIII. And whereas it is expedient to establish regulations for the prevention of forgery and fraud, which have been heretofore much practised in relation to the pay of the royal navy; be it further enacted, that no will made by any petty officer or seaman, non-commissioned officer of marines or marine, before his entry into his majesty's service, shall be valid to pass any wages, prize money, or other monies payable in respect of services in his majesty's navy, and that no letter of attorney made by any such person who shall be or shall have been in the said service, or by the widow, next of kin, executors, or administrators of any such person, shall be valid or sufficient to entitle any person to receive any wages, prize money, or other allowance of money of any kind for the service of any such person in his majesty's navy, unless such letter of attorney shall be therein expressed to be revocable; and that no such letter of attorney shall be valid or sufficient to entitle any person to receive any such wages or other monies, nor shall any will made or to be made by any petty officer or seaman, non-commissioned officer of marines or marine, who shall be or shall have been in the naval service of his majesty, be valid or sufficient to pass any such wages, prize money, or other moneys, unless such letter of attorney or will respectively shall contain the name of the ship to which the

(1) The provisions of this statute do not affect the provisions of Stat. 11 Geo. 4 & 1 Gul. 4, c. 20, respecting the wills of petty officers, &c. *Vide Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 12.*

person executing the same belonged at the time or to which he last belonged, nor unless such letter of attorney, if made by an executor or administrator, shall contain the name of the ship to which his or her testator or intestate last belonged, and also in every case a full description of the degree of relationship or residence of the person or persons to whom or in whose favour, either as attorney or attorneys, executor or executors, the same shall be made, and also the day of the month and year and the name of the place when and where the same shall have been executed; nor shall any such letter of attorney or will be valid for the purposes aforesaid unless the same respectively shall, in the several cases hereinafter specified, be executed and attested in the manner hereinafter mentioned; (that is to say,) in case any such letter of attorney or will shall be made by any such petty officer or seaman, non-commissioned officer of marines or marine, while belonging to and on board of any ship of his majesty as part of her complement, or borne on the books thereof as a supernumerary or as an invalid, or for victuals only, the same shall be executed in the presence of and be attested by the captain, or (in his absence) by the commanding officer for the time being, and who in that case shall state at the foot of the attestation the absence of the captain at the time, and the occasion thereof; and in case of the inability of the captain, by reason of wounds or sickness, to attest any such will or letter of attorney, then the same shall be executed in the presence of and be attested by the officer next in command, who shall state at the foot of such attestation the inability of the captain to attest the same, and the cause thereof; and if made in any of his majesty's hospital ships, or in any naval or other hospital, or at any sick quarters either at home or abroad, the same shall be executed in the presence of and be attested by the governor, physician, surgeon, assistant surgeon, agent, or chaplain of any such hospital or sick quarters, or by the commanding officer, agent, physician, surgeon, assistant surgeon, or chaplain for the time being of any such hospital ship, or by the physician, surgeon, assistant surgeon, agent, chaplain, or chief officer of any military or merchant hospital or other sick quarters, or one of them; and if made on board of any ship or vessel in the transport service, or in any other merchant ship or vessel, the same shall be executed in the presence of and be attested by some commission or warrant officer or chaplain in his majesty's navy, or some commission officer or chaplain belonging to his majesty's land forces or royal marines, or the governor, physician, surgeon, or agent of any hospital in his majesty's naval or military service, if any such shall be then on board, or by the master or first mate thereof; and if made after he shall have been discharged from his majesty's service, or if such letter of attorney be made by the executor or administrator of any such petty officer or seaman, non-commissioned officer of marines or marine, if the party making the same shall then reside in London or within the bills of mortality, the same shall be executed in the presence of and be attested by the inspector for the time being of seamen's wills and powers of attorney, or his assistant or clerk; or if the party making the same shall then reside at or within the distance of seven miles from any port or place where the wages of seamen in his majesty's service are paid, the same shall be executed in the presence of and be attested by one of the clerks of the treasurer of the navy resident at such port or place; or if the party making such letter of attorney or will shall then reside at any other place in Great Britain or Ireland, or in the islands of Guernsey, Jersey, Alderney, Sark, or Man, the same shall be executed in the presence of and be attested by one of his majesty's justices of the peace, or by the minister or officiating minister or curate of the parish or place in which the same shall be executed; or if the party making the same shall then reside in any other part of his majesty's dominions, or in any colony, plantation, settlement, fort, factory, or any other foreign possession of his majesty, or any settlement within the charter of the East India Company, the same shall be executed in the presence of and be attested by some commission or warrant officer or chaplain of his majesty's navy, or commission officer of royal marines, or the commissioner of the navy, or naval storekeeper at one of his majesty's naval yards, or a minister of the church of England or Scotland, or a magistrate or principal officer residing in any of such places respectively; or if the

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

party making the same shall then reside at any place not within his majesty's dominions or any of the places last mentioned, the same shall be executed in the presence of and be attested by the British consul or vice-consul, or some officer having a public appointment or commission, civil, naval, or military, under his majesty's government, or by a magistrate or notary public of or near the place where such letter of attorney or will shall be executed; nor shall any will of any petty officer, seaman, non-commissioned officer of marines or marine, be deemed good or valid in law, to any intent or purpose, which shall be contained, printed, or written in the same instrument, paper, or parchment with a power of attorney: provided always nevertheless, that if it shall appear to the satisfaction of the treasurer of his majesty's navy, in the case of any will or letter of attorney executed on board any of his majesty's ships, that in the attestation thereof the captain's signature hath by accident or inadvertence been omitted, and that in all other respects the execution has been conformable to the provisions and to the intent and meaning of this act, it shall be lawful for the inspector of seamen's wills and powers to pass the same as valid and sufficient.

Exception as
to wills made
by prisoners of
war.

"XLIX. Provided always, and be it further enacted, that every letter of attorney or will which hath been or which hereafter shall be made by any petty officer or seaman, non-commissioned officer of marines or marine, while any such person hath been or shall be a prisoner of war, shall be valid to all intents and purposes, provided it shall have been executed in the presence of and be attested by some commission officer of the army, navy, or royal marines, or by some warrant officer of his majesty's navy, or by a physician, surgeon, or assistant surgeon in the army or navy, agent to some naval hospital, or chaplain of the army or navy, or by any notary public; but so as not to invalidate or disturb any payment which hath been already made under any letter of administration, certificates, or otherwise, in consequence of the rejection of any such wills by the inspector of seamen's wills for want of the due attestation thereof according to the directions of any former act of parliament.

Wills, &c. to
be noted in the
muster book.

"L. And be it further enacted, that all officers commanding ships shall, upon their monthly muster books or returns, distinguish which of the persons therein named have made any letter of attorney or will during that month, or other space of time from the preceding return, by inserting the date of such letter of attorney or will opposite the party's name, under the heads of 'Letter of Attorney' or 'Will,' or both, as the case may require; and shall likewise transmit to the treasurer of the navy, at the time such returns are transmitted to the navy office, a list to the same effect of all such persons.

Letters of
attorney and
wills to be
examined by
the inspector.

"LI. And be it further enacted, that before any letter of attorney or will shall be attempted to be acted upon or put in force, the same shall be sent to the treasurer of the navy, at the Navy Pay Office, London, in order that it may be examined by the inspector of seamen's wills and letters of attorney, who, or his assistant, shall on receipt thereof, duly register the same in a numerical and alphabetical manner in separate books to be kept for that purpose, specifying the date, the place where executed, the name and description of the party making the same, the names and additions of the persons described therein either as attorneys or executors, and also of the witnesses attesting the same, and shall mark the same with the corresponding numbers in the ship's books; and the said inspector shall take due means to ascertain the authenticity of every such letter of attorney and will, and in case he shall have reason to suspect its authenticity he shall give notice in writing to the attorney or executor, as the case may be, that the same is stopped, and the reason thereof, and shall also report the same to the treasurer of the navy, and shall enter his caveat against such letter of attorney or will, which shall prevent any money from being received thereon until the same shall be authenticated to the satisfaction of the said treasurer; but if there shall be no reason, upon such examination, to doubt its authenticity, the said inspector or his assistant shall sign his name thereto, and also put a stamp thereon in token of his approbation thereof, and, as to such letters of attorney, forthwith send to the person therein named as attorney a check specifying the number of such letter of

attorney, the name and description of the person granting the same, the name and addition of the person in whose favour the same is granted, the date and place when and where executed, and the names of the witnesses attesting the same, which check shall be a sufficient authority for the attorney to demand and receive payment of and to give acquittances for all such wages, pay, or other allowances of money to which the person granting the same was entitled for his service on board any of his majesty's ships.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

"LV. And be it enacted, that when any petty officer or seaman, non-commissioned officer of marines, or marine, who shall have belonged to any ship of his majesty, shall have died, leaving a will, no wages, prize money, or other allowances of money shall be paid over to or recovered by his executor or executors except upon the probate of the will, to be obtained in the following manner; *videlicet*, after such will shall have been so transmitted, registered, and approved as hereinbefore directed, the inspector shall cause to be issued to the person named therein as executor a cheque in lien thereof, containing directions to return the same, with his or her signature thereto, upon the testator's death, to the treasurer of his majesty's navy, which cheque shall be in the form heretofore used in such cases, or in such other form as the treasurer of the navy shall deem most expedient and conducive to the purposes of this act, and shall have the requisite certificates in blank subscribed thereto, to be filled up as hereinafter mentioned; and in the event of the testator's death, the minister or curate of the parish in which the party named as executor shall then reside shall, upon the application of the executor examine him, and such two inhabitant householders of the parish as may be disposed to certify their personal knowledge of the holder of the cheque, touching his claim, and that they are satisfied of his being the person therein described as executor; and the said executor shall subscribe his name to the application, and the two householders their names to the certificate for that purpose subjoined to the cheque, (the blanks therein being first filled up agreeable to truth,) in the presence of the minister or curate, for which respective purposes the said executor and householders shall attend at such time and place as shall be appointed by the minister or curate, who being, upon examination of the several parties, satisfied with their answers, and that the person holding the cheque is the executor therein named, and that the two persons certifying as before required are inhabitant householders of the parish, and having seen the said parties sign the application and certificate respectively, (which he is hereby required to do,) shall add thereto a description of the height, complexion, colour of eyes and hair, age, and any particular marks about the person of the party claiming as executor, and, after the several blanks shall have been filled up agreeable to truth, shall certify to the several particulars by subscribing his signature thereto; and the said executor shall, before signing the application, pay to the said minister or curate a fee of two shillings and sixpence for his trouble on the occasion; and the said application and certificates being in all things completed according to the directions therein and hereby given, the same shall be transmitted by the said minister or curate by the general post, addressed to the Treasurer of the Navy, London; and the said original will having been passed in the manner directed by this act, the inspector shall note thereon the amount of the wages due to the deceased, as calculated on the search to be obtained from the navy office, and shall then forward such will to a proctor, in order to his obtaining probate thereof; and in case the executor shall not reside within the bills of mortality, the inspector shall also forward to such proctor a letter addressed to the minister, in the usual or other requisite form, for the purpose of its being transmitted to him with the commission for administering the necessary oath to the party as executor; and such proctor, having received the will and the said letter of the inspector, (in case such letter shall be necessary,) shall immediately sue out the previous commission or requisition, or take such other steps as may be necessary towards enabling the executor to obtain probate, and shall inclose in the said letter a copy of the will and the commission or requisition, with instructions for executing the same, and forward the same to the minister by the general post, agreeably to the address put thereon by the inspector.

Made by which
executors are
to obtain
probate.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

Mode of ob-
taining admi-
nistration to
intestate's
effects.

"LVI. And be it further enacted, that when any petty officer or seaman, non-commissioned officer of marines, or marine, shall die intestate, leaving any wages, prize money, or other allowances of money of any kind due to him in respect of services in his majesty's navy, the same shall not be paid to his representatives, except upon letters of administration to be obtained in the following manner; *videlicet*, the person claiming administration shall send a letter to the inspector, stating his place of abode, the parish in which the same is situate, his degree of relationship to the deceased, the name of the deceased, and of the ship or ships to which he belonged, that he has been informed of the intestate's death, and requesting the inspector to give such directions as may enable him to procure letters of administration to the deceased's effects, or to the like effect, upon receipt whereof the inspector shall send by post, under cover of the minister of the parish wherein the claimant shall reside, a petition in the form heretofore in such cases used, or in such other form as the treasurer of the navy shall deem most expedient and conducive to the purposes of this act, together with the requisite certificates in blank, to be filled up as hereafter mentioned, and a letter pointing out the steps to be taken thereon as hereinafter in that behalf contained, and shall also send to the claimant a letter advising him of the forwarding of the said petition or paper as aforesaid, and pointing out the measures to be taken by him for substantiating his claim; and upon receipt of the said petition the minister, officiating minister, or curate shall, on the application of the claimant, examine him, and also such two inhabitant householders of the parish as may be disposed to certify their personal knowledge of him, and their belief of his right to administer to the effects of the intestate, according to the degree of relationship set forth at the head of the petition; and the minister or curate being, upon due examination of the claimant and the said two householders, satisfied of the truth of their answers, and having seen the claimant sign the application, and the two householders sign the certificate, (which the minister is required to do,) shall add thereto a description of the height, complexion, colour of eyes and hair, age, and any particular marks about the person of the claimant, and after the blanks in the said petition, certificates, and description for those several purposes shall have been filled up agreeable to truth, shall certify to the several particulars by subscribing his signature thereto, for which respective purposes the said claimant and the householders shall attend at such time and place as the minister or curate shall appoint; and the claimant shall, before signing the petition, pay to the minister or curate a fee of two shillings and sixpence for his trouble on the occasion; and the said paper being in all things completed according to the directions therein and hereby given, the minister shall return the same by the general post, addressed to the treasurer of the navy, London; and upon the receipt thereof at the navy pay office, the inspector shall examine the same, and, being satisfied of the claim, he shall transmit to a proctor a certificate thereof; (in the form heretofore used, or in such other form as the treasurer of the navy shall deem expedient;) and in case the claimant shall not reside within the bills of mortality, the inspector shall at the same time inclose and send to the said proctor a letter addressed to the minister and churchwardens or elders (as the case may be) of the parish within which the claimant then shall reside, signifying the transmission of a commission (which the proctor is to obtain) for swearing the claimant as administrator, with the necessary instructions for executing the same; and the proctor shall, upon receipt thereof, take the requisite steps towards enabling the claimant to obtain letters of administration, and shall, in the inspector's letter to the minister, inclose the commission or other necessary instrument, with instructions for executing the same, and shall forward such letter and inclosures by the general post, agreeably to the address put thereon by the said inspector.

Minister or
curate rejecting
petition to state
his reasons.

"LVII. Provided always, and be it further enacted, that in case the minister or curate shall reject any petition for want of satisfactory proof of the claim, he shall state his reasons for such rejection on the said petition, and forthwith return the same to the treasurer of the navy as aforesaid; and in case no application shall be made to the minister or curate by the claimant, or no effectual steps shall be

taken by him to complete the petition and the certificates within the space of two calendar months from the date of the inspector's letter accompanying such petition, the minister or curate shall, at the expiration of that time, return the petition to the treasurer of the navy as aforesaid, with his reason for doing so noted thereon.

“LVIII. And be it enacted, that every minister to whom any such letter, with a commission or requisition for swearing any executor or administrator, shall be transmitted, shall, immediately upon the receipt thereof, take the necessary steps for procuring the execution of the same, and shall transmit the same, when executed, directed to the treasurer of his majesty's navy, London; and if the executor or administrator shall reside at a distance from the place where the wages or other allowances of money are payable, he shall specify the name and residence of the nearest or most convenient collector of customs or of excise; and upon receipt of the said commission at the navy pay office, the same shall be forwarded to the proctor, who, in pursuance thereof, shall forthwith procure the requisite probate or letters of administration, and when obtained transmit the same to the inspector at the navy pay office.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

Minister to
procure
execution of
commission.

“LIX. And be it further enacted, that when any probate or letters of administration shall have been so obtained, the proctor employed therein shall immediately send the same to the treasurer of the navy, with a copy of the will, (in the case of probate,) and an account of his charges for the same; and upon receipt thereof the inspector shall issue a check containing the heads of such probate or letters of administration, and shall note thereon the amount of the proctor's charges and the address of the claimant, which check shall be in the form heretofore used in the navy pay office, or in such other form as the treasurer of the navy shall deem most expedient for the purpose; and so soon as the wages and prize money due to the deceased shall have been calculated in the proper departments, the amount shall be noted on the check, and, after abating the proctor's charges, the balance shall be paid to the party personally, or by means of a remittance bill, in the manner and under similar regulations as are hereinbefore provided with respect to other remittances of wages, and the check shall then be delivered to the party to stand instead of probate or letters of administration, to enable him to receive whatever other sums may become payable to the deceased's estate.

Check to be
issued by
inspector.

“LX. And be it further enacted, that if any proctor, registrar, or other officer of any ecclesiastical court, shall deliver or cause to be delivered any letters of administration, probate of will, or letters of administration with will annexed, to any other person than the treasurer of the navy or the said inspector, in the manner directed by this act, such proctor or other officer so offending shall for every such offence forfeit the sum of one hundred pounds; and if any agent or agents for prizes shall pay any prize money due to a petty officer or seaman, non-commissioned officer of marines, or marine, under any authority whatever, other than the inspector's check directed by this act, such payment shall be null and void, and the agent or agents so paying the same shall forfeit for every and each such offence a sum equal to the amount of the prize money paid.

No proctor to
deliver out
probate or
letters of ad-
ministration to
any other than
the treasurer.

“LXI. And be it further enacted, that no registrar, proctor, or other officer of any ecclesiastical court shall, under any pretence, take or receive any more for the stamp, seal, parchment, writing, fees, and trouble attending the suing forth the probate of any will or any letters of administration to the effects of any warrant or petty officer or seaman, non-commissioned officer of marines or marine, whereby any person may be enabled to obtain any wages, prize money, or other allowance of money of any kind in respect of services in the navy, than the several sums specified in the schedule hereunto annexed: provided nevertheless, that if any increase or diminution shall take place in the stamp duties payable on any instrument connected therewith, then the charges shall be increased or diminished to the extent of the change in such duties, but no further: provided always, that in cases of extraordinary trouble or expense, the proctor shall be allowed to make additional charges in proportion thereto, and if the same shall appear reasonable to the inspector he may allow the same, but otherwise the same shall be submitted to

Limiting the
expense of
probate.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

Penalty on
proctors, &c.
offending
against this
act.

Manner of
proceeding in
case of execu-
tors, &c. dying
before the re-
ceipt of wages.

For preventing
fraudulent
claims by pre-
tended credi-
tors of seamen
and marines.

the treasurer of the navy, and if he shall disapprove thereof, the same shall be taxed by the proper officer of the court, without fee or reward, unless the charges shall have arisen in consequence of any litigation or suit, in which case a fee of three shillings shall be allowed to the officer for taxation.

“LXII. And be it further enacted, that if any officer, proctor, or other person shall take more than the several sums allowed in the said schedule, every person so offending shall forfeit the sum of fifty pounds, with full costs of suit; or if any registrar, proctor, or other officer of any ecclesiastical court shall knowingly or willingly be aiding or assisting in procuring probate of any will or letters of administration, whereby any person may be enabled to claim any wages, pay, prize money, or allowance of money of any kind for the services of any such petty officer or seaman, non-commissioned officer of marines or marine, otherwise than in the manner prescribed by this act, every such registrar, proctor, or other officer shall for every such offence forfeit and pay the sum of five hundred pounds, and shall moreover forfeit his office and be rendered incapable of acting in any capacity in any court of admiralty or ecclesiastical jurisdiction.

“LXIII. And be it further enacted, that when the executor or administrator of a deceased petty officer or seaman, non-commissioned officer of marines or marine, shall die before he shall have received the wages, prize money, or other allowances payable to his testator or intestate, it shall be lawful for the inspector to investigate the right of any person claiming payment of the same, or to represent according to law the person of such deceased petty officer or seaman, non-commissioned officer of marines, or marine, and, being satisfied of such right, to certify the name and place of abode of such person upon the check or certificate, and that in his judgment the claimant is the rightful representative of such deceased petty officer or seaman, non-commissioned officer of marines, or marine, and entitled to receive whatever may remain due in respect of his services as aforesaid; and thereupon, if the wages, prize money, and other allowances remaining unpaid shall appear to the inspector not to amount nor likely to amount to more than the sum of twenty pounds, then it shall be lawful for the said treasurer, and also for any agent or agents for prizes respectively, to pay to such person all wages, pay, prize money, bounty money, and other allowances of money so due or to become payable, without requiring him to take out fresh letters of administration; but if the same shall amount or appear to the said inspector to be likely to amount to more than that sum, then the same shall only be paid upon fresh letters of administration, to be obtained in the manner hereinbefore directed.

“LXIV. And for preventing frauds, which have been frequently practised by persons falsely pretending to be creditors of deceased seamen and marines, be it further enacted, that no letters of administration shall be granted to any person claiming as a creditor of any deceased petty officer or seaman, non-commissioned officer of marines, or marine, but that every such creditor shall be entitled to receive the amount of his claim (if just) out of the assets of the deceased, or so far as the same will extend for that purpose, when the just amount of the debt or claim shall have been ascertained and approved as hereinafter provided; (that is to say,) that every person claiming as a creditor shall deliver to the said inspector an account in writing, subscribed with his name, stating the particulars of the demand and the place of his abode, and verified by his oath, or, being a Quaker, by his affirmation in writing taken before any justice of the peace, which oath or affirmation any such justice is hereby empowered to administer; and if any application for a certificate to obtain probate of the will or letters of administration to the effects of the deceased shall be made, the inspector shall give notice to the applicant of the name and place of abode of the creditor, and the amount of the debt, and shall also cause notice to be given to the creditor of the place of abode of such applicant; but if no such application shall have been made at the time of the delivery of the claim, the inspector or other person authorized by the said treasurer shall proceed to investigate the account of such creditor, for which purpose he is hereby empowered and directed to require from such creditor a production before him of all books, accounts, vouchers, and papers relating to his demand, and satisfactory evi-

dence thereof; and if such creditor shall, by due proof, satisfy the said inspector or other authorized person of the justice of the demand in part or in the whole, then the same shall be allowed as shall appear just; but if all books, accounts, vouchers, and papers shall not be produced, or a sufficient reason assigned for not producing the same, or if the said inspector or other authorized person shall not be satisfied of the justice of the demand, then he shall disallow the same: provided always, that in case such creditor shall be dissatisfied, he shall be at liberty to appeal against such decision to the said treasurer, who shall thereupon inquire into the same by the examination of the parties and their witnesses upon oath or affirmation taken or made before the said treasurer or any justice of the peace, (which oath or affirmation the said treasurer and any justice as aforesaid are hereby severally authorized to administer,) and to allow or disallow the claim, in part or in the whole, as to the said treasurer shall seem fit, and the decision of the said treasurer shall be final and conclusive in the premises: provided always, that no claim of any creditor shall be admitted or allowed unless the same be made within two years next after the death of the party upon whose assets the claim is made, nor unless the same shall appear to have accrued within three years next before the death of such party.

“LXV. And be it further enacted, that if within the space of twelve calendar months from the delivery of the claim no application shall have been made by any person in the character either of executor or administrator, the creditor shall be entitled to receive so much as shall have been allowed to be due to him as aforesaid out of the monies payable in respect of the services of the deceased, so far as they will extend to satisfy the same, and thereupon the inspector shall grant to the creditor a certificate of the allowance of such claim in the form heretofore used, or in such other form as shall by the said treasurer be deemed expedient, and so much of such wages as shall be sufficient to satisfy the claim so allowed shall be paid or remitted to the creditor in the manner herein provided for the remittance of wages to executors or administrators: provided always, that if any prize money or bounty money shall be due to the deceased, the same shall be payable to such creditor only in the manner hereinafter directed; (that is to say,) if the wages and other allowances of money shall not be sufficient to discharge the claim, the proper officer in the navy pay office shall state at the foot of the certificate the amount paid to the creditor, and it shall not be lawful for the creditor to demand or receive from any person any prize money or bounty money due to the deceased except as hereinafter next mentioned; (that is to say,) such prize and bounty money, if the same shall be in the hands of an agent, shall be paid over as in cases of unclaimed prize money, and the creditor, on the production of such certificate to the officer appointed to pay the prize money, shall be entitled to receive from him so much of the deceased's prize money or other allowances as shall be sufficient to discharge his demand, and upon the same being satisfied the inspector shall retain the certificate as a voucher or document of office: provided also, that if there shall be more creditors than one they shall be satisfied according to the priority of the allowance of their respective claims, but so as not to deprive any creditor of any priority he may by law be entitled to by reason of any specialty, provided notice in writing of the particulars of such specialty shall have been given to the treasurer of the navy in due time.

“LXXXV. And be it further enacted, that if any person shall fraudulently and deceitfully take a false oath, in order to obtain probate of any will or letters of administration of the effects of any deceased commission, warrant, or petty officer, or seaman, or commission or non-commissioned officer of marines, or marine; or if any person shall fraudulently receive or demand any wages, pay, prize money, bounty money, pension, or any part thereof, or any allowance of money whatever, payable or supposed to be payable in respect of the services of any such officer, seaman, or marine, or from the compassionate fund of the navy, or any pension to the widow of an officer, upon or by virtue of any probate of a will or letters of administration, knowing such will to be forged, or such probate or letters of administration to have been obtained by means of a false oath, with

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

Creditors to be paid if there are no executors or administrators.

Punishment for taking a false oath in order to obtain probate, &c.

STAT. II GEO. 4 & 1 GUL. 4, c. 20.

intent in any of the said cases to defraud any person whomsoever, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.

Punishment
for subscribing
false petition.

“LXXXVI. And be it further enacted, that if any person shall subscribe any false petition or application to the treasurer of his majesty’s navy or to the paymaster of royal marines, falsely and deceitfully representing himself or himself therein to be the widow, executer, nearest or one of the nearest of kindred of any deceased commission or warrant officer of the navy, or commission officer of marines, or of any petty officer or seaman, non-commissioned officer of marines, or marine, or shall utter or publish any such petition or application, knowing the same to be false, in order to procure, or to enable any other person to procure, a certificate from the said inspector of seamen’s wills or from the paymaster of royal marines as hereinbefore respectively provided, thereby to obtain, or to enable any other person to obtain, without probate or letters of administration, payment of any wages, pay, half pay, or pension, or any allowance from the compassionate fund of the navy, or payment of any wages, prize money, or allowances payable in respect of the services of any officer, seaman, or marine in the royal navy, or thereby to obtain, or to enable any other person to obtain, probate of the will or letters of administration of the effects of any deceased petty officer, seaman, non-commissioned officer of marines or marine; or if any person shall receive or demand any wages, pay, half pay, prize money, bounty money, pension, or arrears thereof, or any other allowance due or payable in respect of the services of any commission or warrant officer of the navy, or commission officer of royal marines, or of any petty officer, seaman, non-commissioned officer of marines or marine, upon or by virtue of any certificate of the inspector of seamen’s wills or paymaster of royal marines respectively as aforesaid, knowing any such certificate to have been obtained by any false representation or pretence; every such offender shall be deemed guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years and not less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year.

Punishment
for forging
certificates, &c.
or uttering
false vouchers.

“LXXXVII. And be it further enacted, that if any person shall forge, or shall utter, offer, or exhibit, knowing the same to be forged, any paper writing purporting to be an extract from any register of marriage, baptism, or burial, or any certificate of marriage, baptism, or burial, in order to sustain any claim to any wages, prize money, or other monies due or payable in respect of the services of any officer, seaman, or marine in his majesty’s navy, or to sustain any claim to any half-pay payable to an officer of the royal navy or marines, or to any pension as the widow of an officer, or to any payment or allowance from the compassionate fund of the navy, or to any gratuity or bounty of his majesty given to the relatives of persons slain in fight with the enemy; or if any person shall make any false affidavit, or utter or exhibit any false affidavit, certificate, or other voucher or document, in order fraudulently to procure any person to be admitted a pensioner as the widow of an officer of the royal navy, or in order to sustain any claim to any wages, prize money, or other monies, or to any half-pay or pension, or arrears thereof, or any allowance from the compassionate fund of the navy, or to any gratuity or bounty as aforesaid, with intent to defraud any person whomsoever; every person in any of the said cases offending shall be deemed guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years and not less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year.’

SCHEDULE.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

Table of Fees to be taken for Probates of Wills, Letters of Administration, and Letters of Administration with Will annexed, of Warrant and Petty Officers, and Non-commissioned Officers of Marines, and also of Common Seamen and Marines, in pursuance of this Act.

PROBATES.					
	Under what Sum the Effects sworn.	Where the Deceased was a Warrant or Petty Officer in the Navy, or a Non-commissioned Officer of Marines.		Where the Deceased was a Common Seaman or Marine.	
		If the Executor be a Wife, Child, Parent, Brother, or Sister of the Deceased.	If the Executor be more remotely related, or a Stranger in Blood to him.	If the Executor be a Wife, Child, Parent, Brother, or Sister of the Deceased.	If the Executor be more remotely related, or a Stranger in Blood to him.
If the executor sworn in London . . .	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
	20	0 7 0	0 16 6	0 7 0	0 16 6
	40	1 0 6	1 10 6	0 11 0	1 1 0
	60	1 4 0	1 13 0	0 14 6	1 3 6
	100	1 8 6	1 15 6	0 19 0	1 6 0
If the executor sworn in the country, by commission . . .	20	0 19 0	1 12 0	0 19 0	1 12 0
	40	1 17 0	2 12 6	1 7 6	2 3 0
	60	2 1 6	2 15 0	1 12 0	2 5 6
	100	2 8 0	2 17 6	1 18 6	2 8 0
ADMINISTRATIONS, AND ADMINISTRATIONS WITH WILL ANNEXED.					
	Under what Sum the Effects sworn.	Where the Deceased was a Warrant or Petty Officer in the Navy, or a Non-commissioned Officer of Marines.			
		If the Administrator be a Wife, Child, Parent, Brother, or Sister of the Deceased.		If the Administrator be more remotely related, or a Stranger in Blood to him.	
		Administra- tions Intestate.	Administra- tions, Will annexed.	Administra- tions Intestate.	Administra- tions, Will annexed.
If the administrator sworn in London	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
	20	0 12 6	0 15 0	1 3 0	1 8 0
	40	2 5 6	2 9 0	2 16 0	3 2 0
	60	2 9 0	2 14 0	3 6 6	3 14 0
	100	2 13 6	2 18 6	3 9 0	3 16 6
If the administrator sworn by commission in the country	20	0 12 6	0 15 0	1 3 0	1 8 0
	40	0 16 0	0 19 6	2 6 6	2 12 6
	60	0 19 6	1 4 6	2 17 0	3 4 6
	100	1 4 0	1 9 0	2 19 6	3 7 0

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 20.

ADMINISTRATIONS, AND ADMINISTRATIONS WITH WILL ANNEXED.					
	Under what Sum the Effects sworn.	Where the Deceased was a Common Seaman or Marine.			
		If the Administrator be a Wife, Child, Parent, Brother, or Sister of the Deceased.		If the Administrator be more remotely related, or a Stranger in Blood to him.	
		Administra- tions Intestate.	Administra- tions, Will annexed.	Administra- tions Intestate.	Administra- tions, Will annexed.
If the administrator sworn in London	£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
	20	0 19 6	1 2 0	1 13 6	1 18 6
	40	2 17 0	3 0 6	3 13 0	3 19 0
	60	3 1 6	3 6 6	4 2 6	4 10 0
	100	3 8 0	3 13 0	4 5 0	4 12 6
If the administrator sworn by commis- sion in the country	20	0 19 6	1 2 0	1 13 6	1 18 6
	40	1 7 6	1 11 0	3 3 6	3 9 6
	60	1 12 0	1 17 0	3 13 0	4 0 6
	100	1 18 6	2 3 6	3 15 6	4 3 0

STAT. 11 GEO.
4 & 1 GUL. 4,
cap. xxii.

CCLII. STAT. 11 GEORGII 4 & 1 GULIELMI 4, cap. xxii. A.D. 1830.
"An Act for enabling the Bishop of London to grant Building Leases of certain Estates belonging to the said See."

STAT. 11 GEO.
4 & 1 GUL. 4,
cap. xxiv.

CCLIII. STAT. 11 GEORGII 4 & 1 GULIELMI 4, cap. xxiv. A.D. 1830.
"An Act to enable the Trustees under the Marriage Settlement of Bouchier Marshall, Clerk, deceased, and Elizabeth his Wife, also deceased, to effect a Sale of the Advowson of the Church of Bow, otherwise Nymet Tracey, in the County of Devon."

STAT. 11 GEO.
4 & 1 GUL. 4,
cap. xxv.

CCLIV. STAT. 11 GEORGII 4 & 1 GULIELMI 4, cap. xxv. A.D. 1830.
"An Act to enable the Wardens and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of Sir Roger Cholmeley, Knight, in Highgate, to pull down their present Chapel, and to contribute towards the Erection of a new Chapel or Church in Highgate, and for other Purposes."

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 40.

CCLV. STAT. 11 GEORGII 4 & 1 GULIELMI 4, c. 40. A.D. 1830.
"An Act for making better Provision for the Disposal of the Undisposed-of Residues of the Effects of Testators."

After 1st Sep-
tember, 1830,
executors
deemed to be

"Whereas testators by their wills frequently appoint executors, without making any express disposition of the residue of their personal estate: and whereas executors so appointed become by law entitled to the whole residue of such personal estate; and courts of equity have so far followed the law as to hold such executors to be entitled to retain such residue for their own use, unless it appears to have been their testator's intention to exclude them from the beneficial interest therein, in which case they are held to be trustees for the person or persons (if any) who would be entitled to such estate under the Statute of Distributions, if the testator has died intestate: and whereas it is desirable that the law should be

extended in that respect: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that when any person shall die, after the first day of September next after the passing of this act, having by his or her will, or any codicil or codicils thereto, appointed any person or persons to be his or her executor or executors, such executor or executors shall be deemed by courts of equity to be a trustee or trustees for the person or persons (if any) who would be entitled to the estate under the Statute of Distributions, in respect of any residue not expressly disposed of, unless it shall appear by the will, or any codicil thereto, the person or persons so appointed executor or executors was or were intended to take such residue beneficially.

"II. Provided also, and be it further enacted, that nothing herein contained shall affect or prejudice any right to which any executor, if this act had not been passed, would have been entitled, in cases where there is not any person who would be entitled to the testator's estate under the Statute of Distributions, in respect of any residue not expressly disposed of.

"III. Provided always, and be it further enacted, that nothing herein contained shall extend to that part of the United Kingdom called Scotland."

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 40.

trustees for persons entitled to any residue under the Statute of Distributions, unless otherwise directed by will.

Not to affect rights of executors where there is not any person entitled to the residue.

Not to extend to Scotland.

CCLVI. STAT. 11 GEORGII 4 & 1 GULIELMI 4, CAP. XL. A.D. 1830.

"An Act for endowing a Church in the Township of Eberton, in the Parish of Walton-on-the-Hill, in the County Palatine of Lancaster."

STAT. 11 GEO.
4 & 1 GUL. 4,
CAP. XL.

CCLVII. STAT. 11 GEORGII 4 & 1 GULIELMI 4, CAP. XLIV. A.D. 1830.

"An Act to authorize the granting of Leases of Lands, parcel of the Prebend of Stoke Newington, or Newington, otherwise Newington, in the County of Middlesex, founded in the Cathedral Church of Saint Paul, in London, to the Governor and Company of the New River brought from Chadwell and Amwell to London, and for empowering the Prebendary of the said Prebend and the Rector of the Rectory or Parsonage of Stoke Newington respectively, to grant Building Leases, and for other Purposes."

STAT. 11 GEO.
4 & 1 GUL. 4,
CAP. XLIV.

CCLVIII. STAT. 11 GEORGII 4 & 1 GULIELMI 4, C. 47 (1). A.D. 1830.

"An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate."

STAT. 11 GEO.
4 & 1 GUL. 4,
C. 47.

CCLIX. STAT. 11 GEORGII 4 & 1 GULIELMI 4, C. 56. [IRELAND.] A.D. 1830.

"An Act to amend an Act of the fifty-third year of King George the Third, for the Appointment of Commissioners for the Regulation of the several Endowed Schools of Public and Private Foundation in Ireland."

STAT. 11 GEO.
4 & 1 GUL. 4,
C. 56. [IR.]

CCLX. STAT. 11 GEORGII 4 & 1 GULIELMI 4, C. 59. A.D. 1830.

"An Act for endowing the Parish Church of Newborough, in the County of Northampton, and three Chapels, called Portland Chapel, Oxford Chapel, and Welbeck Chapel, situate in the Parish of St. Mary-le-bone, in the County of Middlesex, and also a Chapel erected on Sunk Island, in the River Humber."

STAT. 11 GEO.
4 & 1 GUL. 4,
C. 59.

CCLXI. STAT. 11 GEORGII 4 & 1 GULIELMI 4, C. 60. A.D. 1830.

"An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees; and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases."

STAT. 11 GEO.
4 & 1 GUL. 4,
C. 60.

"XXI. And be it further enacted, that the provisions hereinbefore contained shall extend and be construed to extend to all cases of petitions in which the lord

Act to extend to petitions in

(1) The title of Stat. 11 Geo. 4 & 1 Gul. 4, its provisions have, however, been omitted, c. 47, has been given, because it has been as they do not directly apply to the objects referred to in some of the preceding pages; of this publication.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 60.

cases of charity
and friendly
societies.

In certain
cases the lord
chancellor or
court of Chan-
cery may
appoint new
trustees, upon
petition.

Court of Chan-
cery empower-
ed to appoint
new trustees
of charities.

Powers given
to courts in
England may
be exercised by
the same courts
in Ireland.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 66.

Inserting any
false entry in

chancellor, intrusted as aforesaid, or the court of Chancery, or any of the judges thereof, is by law authorized and empowered to grant relief and make summary orders without suit, either in matters of charity, or relative to or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof, or in matters relative to any benefit or friendly societies, for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof.

“XXII. And whereas cases may occur, upon applications by petition under this act for a conveyance or transfer, where the recent creation or declaration of the trust or other circumstances may render it safe and expedient for the lord chancellor, intrusted as aforesaid, or the court of Chancery, (as the case may require,) to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees, without compelling the parties seeking such appointment to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees; be it therefore further enacted, that in any such case it shall be lawful for the lord chancellor, intrusted as aforesaid, or the said court of Chancery, to appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under this act, after hearing all such parties as the said court shall think necessary; and thereupon a conveyance or transfer shall and may be made and executed, according to the provisions hereinbefore contained, to or so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually and in the same manner as if such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted.

“XXIII. And be it further enacted, that where all the persons in whom any land may have been vested, in trust for any charity or charitable or public purpose, shall be dead, it shall be lawful for the court of Chancery, on the petition of the persons or body administering such charity or superintending such public purpose, or of any person on behalf thereof, to direct any master or other officer of the said court to cause two successive advertisements to be inserted in the London Gazette and in one or more of the newspapers circulated in the county, city, or place where such land shall be situated, giving notice that the representative of the last surviving trustee do within twenty-eight days appear or give notice of his title to such master or other officer, and prove his pedigree or other title as trustee; and if no person shall appear to give such notice within such twenty-eight days, or the person who may appear or give such notice shall not, within thirty-one days after such appearance or notice, prove his title to the satisfaction of such master or other officer, then and in such case it shall be lawful for the said court to appoint any new trustees for such charity or charitable or public purpose; and such land may be conveyed to such new trustees by any person whom the said court respectively may direct for that purpose, by virtue of the provisions in this act, without the necessity of any decree.

“XXXI. And be it further enacted, that the powers and authorities given by this act to the courts of Chancery and Exchequer in England, and the provisions contained in this act relating to the same courts, shall and may be exercised in like manner and are hereby given and extended to the several courts of Chancery and Exchequer in Ireland, with respect to all land and stock in Ireland.”

CCLXII. STAT. 11 GEORGII 4 & 1 GULIELMI 4, c. 66(1). A.D. 1830.

“An Act for reducing into one Act all such Forgeries as shall henceforth be punished with Death, and for otherwise amending the Laws relative to Forgery.”

“XX. And be it enacted, that if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any register of baptisms, marriages, or

(1) *Vide* Stat. 2 & 3 Gul. 4, c. 123; and Stat. 6 & 7 Gul. 4, c. 86, s. 49.

Stat. 11 Geo. 4 & 1 Gul. 4, c. 66, repeals so much of Stat. 4 Geo. 4, c. 76, as relates

burial, which hath been or shall be made or kept by the rector, vicar, curate, or officiating minister of any parish, district-parish, or chapelry in England, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter in any such registry any entry of any matter relating to any baptism, marriage, or burial; or shall utter any writing as and for a copy of an entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such writing to be false, forged, or altered; or if any person shall utter any entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such entry to be false, forged, or altered, or shall utter any copy of such entry, knowing such entry to be false, forged, or altered, or shall wilfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any such register or any part thereof; or shall forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage: every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.

“XXI. Provided always, and be it enacted, that no rector, vicar, curate, or officiating minister of any parish, district-parish, or chapelry, who shall discover any error in the form or substance of the entry in the register of any baptism, marriage, or burial respectively by him solemnized, shall be liable to any of the penalties herein mentioned, if he shall, within one calendar month after the discovery of such error, in the presence of the parent or parents of the child baptized, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in the case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid: provided also, that in the copy of the registry which shall be transmitted to the registrar of the diocese, the said rector, vicar, curate, or officiating minister shall certify the corrections so made by him as aforesaid.

“XXII. And whereas copies of the registers of baptisms, marriages, and burials, such copies being signed and verified by the written declaration of the rector, vicar, curate, or officiating minister of every parish, district-parish, and chapelry in England where the ceremonies of baptism, marriage, and burial may lawfully be performed, are directed by law to be made and transmitted to the registrar of the diocese within which such parish, district-parish, or chapelry may be situated; be it therefore enacted, that if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register so directed to be transmitted as aforesaid, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall utter knowing

STAT. 11 GEO. 4 & 1 GUL. 4, c. 66.

any register of baptisms, marriages, or burials; forging or altering any such entry; uttering any false or forged entry; destroying, &c. the register; forging any licence of marriage; transportation for life, &c.

Rector, &c. not liable to any penalty for correcting, in the mode prescribed, accidental errors in the register.

Inserting in any copy of a register of baptisms, marriages, or burials, transmitted to the registrar, any false entry; or forging or verifying any copy knowing

any person who shall knowingly and wilfully insert in the register book any false entry of any matter relating to any marriage, or shall falsely make, alter, forge, or counterfeited any such entry in the register, or any licence of marriage, or shall utter or publish as true, any false, altered, forged, or counterfeited register of marriage, or a copy thereof, or any false, altered, forged, or counterfeited licence of marriage, knowing such register or licence of marriage respectively to be false, altered, forged, or counterfeited, or shall wilfully destroy any register book of marriages or any part thereof, or shall cause or procure, or assist in the

commission of any of the said several offences. 2 Russell on Crimes, by Greaves, 486.

Mr. Lonsdale, (Cr. L. 105.) observes that the enactments contained in Stat. 11 Geo. 4 & 1 Gul. 4, c. 66, ss. 20 & 22, appear to be incidentally repealed by sect. 43 of Stat. 6 & 7 Gul. 4, c. 86, so far as they relate to the falsifying or destroying marriage register books. With respect to registers of baptisms and burials they are still in force, Stat. 6 & 7 Gul. 4, c. 86, s. 49, having provided, that nothing therein contained, shall affect the registration of baptisms or burials, as then by law established.

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 66.

it to be false,
transportation
for seven years,
&c.

the same to be forged or altered, any copy of any register so directed to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so directed to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years nor less than one year."

STAT. 11 GEO.
4 & 1 GUL. 4,
c. 73.

CCLXIII. STAT. 11 GEORGHII 4 & 1 GULIELMI 4, c. 73. A.D. 1830.

"An Act to repeal so much of an Act of the sixtieth year of His late Majesty King George the Third, for the more effectual Prevention and Punishment of Blasphemous and Seditious Libels, as relates to the Sentence of Banishment for the second Offence. . . ."

60 Geo. 3, c. 8.

"Whereas by an act passed in the sixtieth year of the reign of his late majesty King George the Third, intituled, 'An Act for the more effectual Prevention and Punishment of blasphemous and seditious Libels,' it was amongst other things enacted, that if any person should, after the passing of that act, be legally convicted of having composed, printed, or published any blasphemous libel or any such seditious libel as in the said act is before-mentioned, and shall after being so convicted offend a second time, and be thereof legally convicted before any commission of oyer and terminer or gaol delivery, or in his majesty's court of King's Bench, such person might on such second conviction be adjudged, at the discretion of the court, either to suffer such punishment as might by law be inflicted in cases of high misdemeanor, or to be banished from the United Kingdom and all other parts of his majesty's dominions for such term of years as the court in which such conviction should take place should order: and whereas it is expedient to repeal so much of the said act as relates to the sentence of banishment for the second offence; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much and such parts of the said act as relate to the sentence of banishment for the second offence be and the same are hereby wholly repealed."

Punishment of
banishment
repealed.

STAT. 11 GEO.
4 & 1 GUL. 4,
CAP. LXXIX.

CCLXIV. STAT. 11 GEORGHII 4 & 1 GULIELMI 4, CAP. LXXIX. A.D. 1830.

"An Act to commute for Lands and a Corn Rent the Ancient Compositions in lieu of Tithes and Glebe Lands payable to the Rector of the Parish of Barnwell Saint Andrew with Barnwell All Saints annexed in the County of Northampton."

STAT. 11 GEO.
4 & 1 GUL. 4,
CAP. CXXXII.

CCLXV. STAT. 11 GEORGHII 4 & 1 GULIELMI 4, CAP. CXXXII. A.D. 1830.

"An Act for prohibiting Burying and Funeral Service in a Chapel of Ease intended to be built for the Parish of Saint George Bloomsbury, in the County of Middlesex."

STATUTA GULIELMI IV.

A.D. 1830—1837.

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STAT. 1 GUL.
4, cap. i.

I. STAT. 1 GULIELMI 4, cap. i.(1). A.D. 1830.

"An Act for dividing, allotting, and inclosing Lands within the Parish of Piddleshinton, in the County of Dorset."

(1) The following is a list of the Local and Personal, and Private Statutes, from the octavo edition of the Statutes, which were passed in the reign of William the Fourth, for inclosing lands, and in such statutes allotments were made to the impropriators, in lieu of tithes, the rights of leasing were reserved to the clerical incumbents, and other powers or advantages given, according to the circumstances of each case, so as to protect the rights of the church to its property, in the most ample manner.

Stat. 1 Gul. 4, c. 2,
for inclosing lands in the parish of Compton Bassett, in the county of Wilts.

Stat. 1 & 2 Gul. 4, c. 4,
for settling disputed rights respecting tithes within the parish of Ashton-under-Lyne, in the county palatine of Lancaster, and for fixing certain annual payments in lieu thereof.

Stat. 1 & 2 Gul. 4, c. 9,
for inclosing lands within the townships or divisions of Hugill, Applethwaite, and Troutbeck, in the parishes of Kirkby-in-Kendal and Windermere, in the county of Westmorland.

Stat. 1 & 2 Gul. 4, c. 18,
for inclosing lands in the parish of Woolvercot, in the county of Oxford, and for commutating the tithes of the said parish.

Stat. 1 & 2 Gul. 4, c. 50,
for extinguishing tithes, and customary payments in lieu of tithes, within the parish of Llanelly, in the county of Carmarthen, and for making compensation in lieu thereof.

Stat. 1 & 2 Gul. 4, c. 57,
for inclosing, draining, and warping lands

within the townships or hamlets of Frodingham, Scunthorpe, and Gunhouse, (otherwise Gunnes,) all in the parish of Frodingham, in the county of Lincoln.

Stat. 2 & 3 Gul. 4, c. 1,
for inclosing lands in the parish of Aston Rowant, in the county of Oxford.

Stat. 2 & 3 Gul. 4, c. 3,
for inclosing lands in the townships of Babwith and Harlethorpe, in the parish of Babwith, in the east riding of the county of York.

Stat. 2 & 3 Gul. 4, c. 4,
for inclosing and exonerating from tithes, lands in the parish of Clifton, in the county of Bedford.

Stat. 2 & 3 Gul. 4, c. 5,
for inclosing certain commons or tracts of waste lands, called Harberrow and Blakelown Commons, in the parish of Hagley, in the county of Worcester.

Stat. 2 & 3 Gul. 4, c. 7,
for inclosing lands in the township of Billesley, otherwise Bausley, within the parish of Albury, in the county of Montgomery.

Stat. 2 & 3 Gul. 4, c. 13,
for inclosing lands within the hamlet of Hill and Moor, in the parish of Fladbury, in the county of Worcester.

Stat. 2 & 3 Gul. 4, c. 22,
for disafforesting and inclosing so much of the forest of Rockingham, as is situate within the bailiwick of Rockingham, and for inclosing open and common field lands in Greeton, all within the county of Northampton.

STATUTA GULIELMI IV. A.D. 1836—1837.

Stat. 3 & 4 Gul. 4, c. 1,
for dividing, allotting, and inclosing lands in
the tithing of Hanging Langford, within
the parish of Steeple Langford in the
county of Wilts.

Stat. 3 & 4 Gul. 4, c. 9,
for inclosing, dividing, and allotting the
commons, droves, and waste lands in the
parish of Wisbech St. Mary's, in the Isle
of Ely, in the county of Cambridge.

Stat. 3 & 4 Gul. 4, c. 12,
for inclosing lands in the parish of Elkstone,
in the county of Gloucester.

Stat. 3 & 4 Gul. 4, c. 13,
for inclosing certain moors or commons,
called West moor, East moor, and Middle
moor, in the county of Somerset.

Stat. 3 & 4 Gul. 4, c. 14,
for inclosing lands in the township of Great
Givendale, in the east riding of the county
of York.

Stat. 3 & 4 Gul. 4, c. 15,
for inclosing lands in the parish of Oaking-
ton, in the county of Cambridge, and for
commuting the tithes of the said parish.

Stat. 3 & 4 Gul. 4, c. 16,
for inclosing lands within the parish of La-
kenbeath, in the county of Suffolk

Stat. 3 & 4 Gul. 4, c. 17,
for inclosing lands in the parish of Yardley,
in the county of Worcester, and for com-
muting the tithes of the said parish.

Stat. 3 & 4 Gul. 4, c. 20,
for inclosing lands within the manor of Little
Salkeld, in the parish of Addingham, in
the county of Cumberland.

Stat. 3 & 4 Gul. 4, c. 111,
to alter and amend three several acts made
in the seventh and forty-second years of
the reign of King George the Third, and
the sixth year of the reign of his late ma-
jesty King George the Fourth, for draining
lands within the level of Ancholme, in the
county of Lincoln, and making certain
parts of the river Ancholme navigable.

Stat. 4 & 5 Gul. 4, c. 1,
for amending an act of the eleventh year of
the reign of his late majesty King George
the Fourth, intituled, "An Act for in-
closing Lands in the Tithings of Arle and
Arleston, otherwise Allstone, in the Parish
of Cheltenham, in the County of Gloucester,
and for discharging from Tithes Lands
in the said Tithings."

Stat. 4 & 5 Gul. 4, c. 3,
for inclosing lands in the parish of Great
Shelford in the county of Cambridge, and
for commuting the tithes of the said pa-

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r of Glouces-
m tithes the

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l in the High
places within
reviding other

Stat. 4 & 5 Gul. 4, c. 9,
to commute for a corn rent certain
within the parish of Kirkby Lonsd.
the county of Westmorland.

Stat. 4 & 5 Gul. 4, c. 11,
for inclosing lands in the parish of M
ton in Teesdale, in the county of Dr

Stat. 4 & 5 Gul. 4, c. 12,
for dividing, allotting, inclosing, and
wise improving the open fields, cou
and waste lands in the liberty of
Langley, in the county of Derby.

Stat. 4 & 5 Gul. 4, c. 13,
for inclosing and exonerating from
lands in the parish of Colmworth
county of Bedford.

Stat. 4 & 5 Gul. 4, c. 14,
for inclosing, dividing, and allotting
commons, droves, banks, and waste
in the parish of Elm, in the Isle of
the county of Cambridge.

Stat. 4 & 5 Gul. 4, c. 15,
for inclosing lands within the townat
Alstonefield, Warslow, Lower Ell
Fawfieldhead, Hollingsclough, Hes
and Quarnford, all in the parish
stonefield, in the county of Stafford.

Stat. 4 & 5 Gul. 4, c. 18,
to commute for a corn rent, the tith
dues payable to the rectors and vi
the parish of Kendal, otherwise I
Kendal, in the county of Westmorla

Stat. 4 & 5 Gul. 4, c. 29,
for inclosing lands within the paris
manor of Stanwick, in the count
Northampton, and for extinguishin
tithes therein.

Stat. 5 & 6 Gul. 4, c. 13,
for inclosing and allotting lands in the
of Stretham, in the Isle of Ely and
of Cambridge, and for the commute
tithes.

Stat. 6 & 7 Gul. 4, c. 1,
for inclosing lands in the parish of Har
in the county of Cambridge.

Stat. 6 & 7 Gul. 4, c. 2,
for inclosing lands in the parish of Wo
in the county of Bedford.

Stat. 6 & 7 Gul. 4, c. 3,
for inclosing lands in the parish of C
in the county of Cambridge, and for
muting the tithes of the said parish.

Stat. 6 & 7 Gul. 4, c. 7,
for dividing, allotting, and inclosing
within the parish and manor of Go
stone, in the county of Dorset.

Stat. 6 & 7 Gul. 4, c. 8,
for inclosing and exonerating from
lands in the parish of Stevinglev,
county of Bedford.

Stat. 6 & 7 Gul. 4, c. 16,
for dividing, allotting, and laying in
rally, lands in the parishes of Mew
don and Toot Baldon, in the cou
Oxford.

Stat. 7 Gul. 4 & 1 Vict. c. 1,
for inclosing and exonerating from
lands in the parish of Cranfield, i
county of Bedford.

STAT. 1 GUL.
4, cap. iii.

II. STAT. 1 GULIELMI 4, cap. iii. A.D. 1831.

"An Act for assisting the Dean and Chapter of the Cathedral and Metropolitane Church of Christ, Canterbury, to take down and rebuild the North-western Tower of the same Church."

STAT. 1 GUL.
4, cap. iv.

III. STAT. 1 GULIELMI 4, cap. iv. A.D. 1831.

"An Act to enable the Right Reverend the Lord Bishop of Worcester, and his Successors, to grant Leases of certain Hereditaments belonging to the Episcopal See of Worcester, situate, arising, or growing within the Parish of Ripple, in the County of Worcester."

STAT. 1 GUL.
4, cap. xx.

IV. STAT. 1 GULIELMI 4, cap. xx. A.D. 1831.

"An Act to amend an Act of the forty-seventh year of King George the Third, for enlarging the Churchyard belonging to the Parish of Saint Martin, in the Town of Birmingham, in the County of Warwick; and for providing an additional Cemetery or Burial Ground for the use of the said Parish."

STAT. 1 GUL.
4, c. 21.

V. STAT. 1 GULIELMI 4, c. 21(1). A.D. 1831.

"An Act to improve the Proceedings in Prohibition(2), and on Writs of Mandamus."

Applications for writs of prohibitions may be made on affidavit only. Contents of declaration in case the party is directed to declare in prohibition.

"Whereas the filing a suggestion of record on application for a writ of prohibition is productive of unnecessary expense, and the allegation of contempt in a declaration in prohibition filed before writ issued is an unnecessary form; and it is expedient to make some better provision for payment of costs in cases of prohibition; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall not be necessary to file a suggestion on any application for a writ of prohibition, but such application may be made on affidavits only; and in case the party applying shall be directed to declare in prohibition before writ issued, such declaration shall be expressed to be on behalf of such party only, and not, as heretofore, on the behalf of the party and of his majesty, and shall contain and set forth in a concise manner so much only of the proceeding in the court below as may be necessary to show the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue; to which declaration the party defendant may demur, or *plead such matters* (3), by

Stat. 7 Gul. 4 & 1 Vict. c. 3,
for inclosing lands in the township of Loft-
house-cum-Carlton, in the parish of Roth-
well, in the west riding of the county of
York.

Stat. 7 Gul. 4 & 1 Vict. c. 4,
for inclosing lands in the parishes of Win-
frith Newburgh and Wool, in the county
of Dorset.

Stat. 7 Gul. 4 & 1 Vict. c. 9,
for inclosing lands in the honour or lordship
and forest of Clun, in the county of Salop.

Stat. 7 Gul. 4 & 1 Vict. c. 10,
to enable the minister of the parish of Banff,
in the county of Banff, to feu the glebe
lands of the said parish.

Stat. 7 Gul. 4 & 1 Vict. c. 90,
for draining, inclosing, dividing, and allot-
ting, certain lands in the parish of Over,
in the county of Cambridge.

(1) *Vide* Stat. 13 Edw. 1, St. IV. (*antè* 24); Stat. 24 Edw. 1 (*antè* 28); Stat. 9 Edw. 2, St. I. c. 1 (*antè* 33); Stat. 1 Edw. 3, St. II. c. 11 (*antè* 44); Stat. 18 Edw. 3, St. III. c. 5 (*antè* 51); Stat. 45 Edw. 3, c. 3 (*antè* 72); Stat. 50 Edw. 3, c. 4 (*antè* 73); Stat. 8 & 9 Gul. 3, c. 11 (*antè* 666); Stat. 1 & 2 Gul. 4, c. 58; and Stat. 3 & 4 Vict. c. 93.

(2) *Prohibition*:—*Vide* Stephens on Clerical Law, tit. PROHIBITION. *Vide* Stephens on Nisi Prius, tit. MANDAMUS.

(3) *Plead such matters*:—It seems, that several pleas may now be pleaded to an action in prohibition. The reason why, formerly, only one plea could be pleaded in prohibition was, that the plaintiff was obliged to make the king a party to the suit, and the king not being named in Stat. 4 Ann. c. 16, s. 4, which allows several pleas, that statute was held not to extend to the action in prohibition; but this being no longer necessary, that reason ceases. *Hell v. Mankie*, 5 N. & M. 455.

STATUTA GULIELMI IV. A.D. 1830—1837.

way of traverse or otherwise, as may be proper to show that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given, that the writ of prohibition do or do not issue (1), as justice may require; and the party in whose favour judgment shall be given, whether on non-suit, verdict, demurrer, or otherwise, shall be entitled to the costs attending the application and subsequent proceedings (2), and have judgment to recover the same; and in case a verdict shall be given for the party plaintiff in such declaration, it shall be lawful for the jury to assess damages, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs.

"II. And be it further enacted, that so much of an act passed in the second and third years of the reign of King Edward the Sixth, intituled, 'An Act for

(1) *Writ of prohibition do or do not issue*:—The court will grant a writ of prohibition to a spiritual court to stay proceedings in a suit of defamation, even after sentence, if it appear, that the court has exceeded its jurisdiction.

The onus of establishing such excess of jurisdiction lies upon the applicant party; therefore, where by the sentence in the suit, in the court below, which was a suit for defaming a spiritual person, it was found that the defendant had "maliciously said several words in the libel mentioned," and it appeared, that some of the words imputed a temporal offence, the court left the applicant to declare in prohibition, in order that it might be ascertained whether the sentence had proceeded upon those words. Thus, in *Es parte Mary Evans*, (2 Dowl. P. C. N. S. 726,) Mr. Justice Williams observed, "This case was discussed before me a few days ago. It was a motion for a prohibition to stay proceedings in the Consistory court of the Bishop of St. David's, after sentence pronounced therein. Several questions were raised in the course of the argument, and the first of these was, whether the application came too late? Upon that point, however, I entertain no doubt. It seems to me to be clear, that the application is not too late if an excess of jurisdiction appears; that is to be considered as being either decided or recognised in *Carslake v. Mepledoram*, (2 T. R. 473,) and *Hart v. Marsh* (Clerk), (5 A. & E. 591.) But it appears, from those cases, that the onus of showing such want of jurisdiction is cast on the party applying. The other questions discussed, resolve themselves into this, whether that want of jurisdiction is here shown? Here, however, there are not, as there were in *Hart v. Marsh*, some matters of ecclesiastical, some of temporal cognizance. In that case the sentence was founded on some of the charges only, and there was nothing to show, that the sentence did not proceed on those of ecclesiastical cognizance only. Here is an article not charging misconduct only, but the libel charges the defamation of a spiritual person, and it imputes an offence, or offences, also of temporal cognizance. There are authorities to show, that where in libels for defamation, in the ecclesiastical courts, the defamation consists of temporal offences only, the jurisdiction of the ecclesiastical courts is ousted,

and prohibition will lie. *Evans v. Brown*, 2 Ld. Raym. 1161. *Holingshead's case*, Cro. Car. 229. And a case of *Legat v. Wright*, is cited by Mr. Burn as an authority. But there is a difficulty, whether the sentence in this case must be understood, as proceeding at all on that part of the words which impute a temporal offence; a proposition which should be clearly established before this rule is made absolute. This is my impression at present, but I shall enlarge the rule, and give the defendant below an opportunity of declaring in prohibition, if he shall be so advised, by which means the whole matter will be brought before the court. I am the more inclined to do so, because I find an indisposition to make such a rule absolute, when a question of costs is the subject of dispute. I will give the defendant time to declare, up to the first day of next term, and if she fails to do so in that time, the rule must be discharged."

In *Cardew v. Ostley*, (7 Dowl. P. C. 666,) which was a suit for tithes in the ecclesiastical court, it was held, that if the defendant plead a plea, which raises a question beyond the jurisdiction of the court, but afterwards waives it, the court of Queen's Bench will not grant a prohibition in that stage of the proceedings.

(2) *The costs attending the application and subsequent proceedings*:—Reg. Gen. H. T. 2 Gul. 4, l. 64, which directs, that where a new trial is granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeed on the second, equally applies to issues in prohibition, even since Stat. 1 Gul. 4, c. 21, s. 1. *Craven v. Sanderson*, 7 A. & E. 897, n. (a).

In *Tessimond v. Yardley*, (5 B. & Ad. 458,) it was holden, that Stat. 1 Gul. 4, c. 21, did not enable the court of Queen's Bench, where a party had declared in prohibition and succeeded, to grant him his cost incurred in the ecclesiastical court.

Where a rule was made absolute for issuing a prohibition, it was decided, that the costs of the rule could not be granted to the successful party under Stat. 1 Gul. 4, c. 2 s. 1, because that statute only applied cases, where there had been pleadings in prohibition. *Rex v. Keating*, 1 Dowl. P. 440.

STAT. 1 GUL.
4, c. 21.

The enactments
of 9 Ann. c. 20,
relating to re-
turns to writs
of mandamus
therein men-
tioned, and the
proceedings
thereon, ex-
tended to all
other writs of
mandamus.

For protection
of certain
officers to
whom writs of
mandamus are
directed

Proceedings
not to abate
by removal of
officer.

Costs to be in
the discretion
of the court.

Payment of Tithes,' as relates to prohibition, shall be and the same is hereby repealed.

"III. And whereas the provisions contained in a certain act of parliament passed in the ninth year of the reign of Queen Anne, intituled, 'An Act for rendering the Proceedings upon Writs of Mandamus and Informations in the Nature of a *Quo warranto* more speedy and effectual, and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs,' relating to the writs of mandamus therein mentioned, have been found useful and convenient, and the same ought to be extended to the proceeding on other such writs; be it therefore enacted, that the several enactments contained in the said statute relating to the return to writs of mandamus, and the proceedings on such returns, and to the recovery of damages and costs, shall be and the same are hereby extended and made applicable to all other writs of mandamus, and the proceedings thereon, except so far only as the same may be varied or altered by this act.

"IV. And whereas writs of mandamus, other than such as relate to the offices and franchises mentioned in or provided for by the said act made in the ninth year of the reign of Queen Anne, are sometimes issued to officers and other persons, commanding them to admit to offices, or do or perform other matters, in respect whereof the persons to whom such writs are directed claim no right or interest, or whose functions are merely ministerial in relation to such offices or matters; and it may be proper that such officers and persons should in certain cases be protected against the payment of damages or costs to which they may otherwise become liable; be it therefore enacted, that it shall be lawful for the court to which application may be made for any writ of mandamus, (other than such as relate to the said offices and franchises mentioned in or provided for by the said act made in the reign of Queen Anne,) if such court shall see fit so to do, to make rules and orders, calling, not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of costs of the application, and upon the appearance of such other person in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders, applicable to the case, as are or may be given or mentioned by or in any act passed or to be passed during this present session of parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims; provided always, that the return to be made to any such writ, and issues joined in fact or in law upon any traverse thereof, or upon any demurrer, shall be made and joined by and in the name of the person to whom such writ shall be directed; but nevertheless the same shall and may, if the court shall think fit so to direct, be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules; and in that case such other person shall be permitted to frame the return, and to conduct the subsequent proceedings, at his own expense; and in such case, if any judgment shall be given for or against the party suing such writ, such judgment shall be given against or for the person or persons on whose behalf the return shall be expressed to be made, and who shall have the like remedy for the recovery of costs and enforcing the judgment as the person to whom the writ shall have been directed might and would otherwise have had.

"V. And be it further enacted, that in case the return to any such writ shall, in pursuance of the authority given by this act, be expressed to be made on behalf of any other person as aforesaid, the further proceedings on such writ shall not abate or be discontinued by the death or resignation of, or removal from office of, the person having made such return, but the same shall and may be continued and carried on in the name of such person; and if a peremptory writ shall be awarded, the same shall and may be directed to any successor in office or right to such person.

"VI. And for making some further provision for the payment of costs on applications for mandamus, be it further enacted, that in all cases of application for any

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writ of mandamus whatsoever, the costs of such application, whether the writ shall be granted or refused, and also the costs of the writ, if the same be issued and obeyed, shall be in the discretion of the court, and the court is authorized to order and direct by whom and to whom the same shall be paid

VI. STAT. 1 GULIELMI 4, CAP. XXI. A.D. 1831.

"An Act for the better assessing and recovering of the Rates for the Relief of the Poor, and of the Ecclesiastical or Church Rates, upon small Tenements, in the Parish of Liverpool, in the County Palatine of Lancaster."

VII. STAT. 1 GULIELMI 4, CAP. XXII. A.D. 1831.

"An Act for raising a further Sum of Money to defray the outstanding in respect of the building the Crypt and Tower to the additional Church in the Parish of Saint Mary Magdalen, Bermondsey, in the County of Surrey, and of inclosing the Burial Ground thereof."

VIII. STAT. 1 GULIELMI 4, CAP. XXIII. A.D. 1831.

"An Act for building a Church or Chapel, with a Cemetery to the same, in the Township of Liscard, in the Parish of Wallasey, in the County Palatine of Chester."

IX. STAT. 1 GULIELMI 4, CAP. XXIV. A.D. 1831.

"An Act for erecting a Chapel in the Parish of Saint Leonard's, within the Town and Port of Hastings, in the County of Sussex, for the accommodation of the Inhabitants of the said Parish, and of the Parish of Saint Mary Magdalen, within the said Liberty and County."

X. STAT. 1 GULIELMI 4, CAP. XXV. A.D. 1831.

"An Act for taking down the Parish Church of Great Marlborough, in the County of Buckingham, and for rebuilding the same on or near the premises thereof."

XI. STAT. 1 & 2 GULIELMI 4, CAP. III. A.D. 1831.

"An Act for the Establishment of a Chapel of Ease, to be called 'Grosvener's Chapel' in the Parish of Saint George, Hanover Square, in the County of Middlesex, and for providing for the Maintenance of the said Chapel, and a Stipend for the Minister thereof."

XII. STAT. 1 & 2 GULIELMI 4, C. 9(1). A.D. 1831.

"An Act to repeal so much of certain Acts as requires certain Oaths to be taken by Members of the House of Commons before the Lord Steward or his Deputy."

XIII. STAT. 1 & 2 GULIELMI 4, CAP. XVII. A.D. 1831.

"An Act to enable the Governors of the Possessions, Revenues, and Grants of the Free Grammar School of King Edward the Sixth, in Birmingham, in the County of Warwick, to erect a School House, Masters' House, and suitable Accommodations for the said School, and to extend the 'Charity' thereof, and for other Purposes."

(1) Vide Stat. 5 Eliz. c. 1 (entd 403); 2, St. II. (entd 624); and Stat. 1 & 2 Stat. 7 Jac. 1, c. 6 (entd 535); Stat. 30 Car. c. 8 (entd 629).

STAT. 1 & 2
GUL. 4, c. 22.

XIV. STAT. 1 & 2 GULIELMI 4, c. 22. A.D. 1831.

"An Act to amend the Laws relating to Hackney Carriages, and to Waggon, Carts, and Drays, used in the Metropolis; and to place the Collection of the Duties on Hackney Carriages, and on Hawkers and Pedlars, in England, under the Commissioners of Stamps."

Drivers may
ply and shall
be compellable
to drive on
Sundays.

"XXXVII. And be it enacted, that it shall be lawful for the proprietor or driver of any hackney-carriage which shall be licensed under the authority of this act to stand and ply for hire with such carriage, and to drive the same on the Lord's day, any former act or acts to the contrary notwithstanding; and that such proprietor or driver who shall so stand or ply for hire as aforesaid, shall be liable and compellable to do the like work on the Lord's day as such proprietor or driver is by this act liable or compellable to do on any other day of the week."

STAT. 1 & 2
GUL. 4, c. 32.

XV. STAT. 1 & 2 GULIELMI 4, c. 32. A.D. 1831.

"An Act to amend the Laws in England relative to Game."

"III. And be it enacted, that if any person whatsoever shall kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game on a Sunday or Christmas day, such person shall, on conviction thereof before two justices of the peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction . . ."

STAT. 1 & 2
GUL. 4, c. 34.

XVI. STAT. 1 & 2 GULIELMI 4, c. 34. A.D. 1831.

"An Act for appointing Commissioners to continue the Inquiries concerning Charities in England and Wales for two Years, and from thence to the end of the then next Session of Parliament."

STAT. 1 & 2
GUL. 4, c. 38.

XVII. STAT. 1 & 2 GULIELMI 4, c. 38(1). A.D. 1831.

"An Act to amend and render more effectual an Act passed in the seventh and eighth years of the Reign of His late Majesty, intituled, An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes."

58Geo.3,c.45.

"Whereas an act was passed in the fifty-eighth year of the reign of his majesty King George the Third, intituled, 'An Act for building and promoting the build-

(1) The right of nominating to a chapel under Stat. 1 & 2 Gul. 4, c. 38, cannot be acquired, unless the conditions required by the act be strictly complied with. Thus, in the office of the judge, promoted by *Williams v. Brown*, (1 Curt. 53,) Dr. Lushington observed, "In this case, the office of the judge has been promoted by the Rev. Mr. Williams, the incumbent of the parish of Hendon, against the Rev. Mr. Brown, and the object of the suit, as I understand, is, to ascertain in this form, whether Mr. Brown has been officiating in the parish of Hendon under a competent authority or not. Although the form of the suit is a criminal one, I apprehend that all that is sought to be determined, upon the facts before the court, is, the rights of the respective parties. Undoubtedly the question to be decided is of very considerable importance, and I have deemed it my duty to give it very serious consideration, and to endeavour, if possible, on a consideration of the act of parliament, to find out its true construction, with reference to the facts and circumstances proved in evidence. Be-

fore I proceed minutely to consider the facts and the law, I think it right to make an observation upon the jurisdiction of the court in this case. When the suit was originally instituted, I certainly entertained some doubt how far it was competent for this court to exercise jurisdiction to the fullest extent to which the case might be carried. But on reference to authorities, the cases of *Bliss v. Woods*, (3 Hagg. 486,) of *Portland (Duke of) v. Bingham*, (1 Const. 157,) of *Curr v. Marsh*, (2 Phill. 198,) of *Moysey v. Hillcoat (D.D.)*, (2 Hagg. 30,) especially with reference to the first, I could entertain no doubt that this court had jurisdiction, and the power of expressing its opinion upon the question. But I will state candidly the difficulty which presented itself to my mind, which was this:—in the course of the discussion it might, perhaps, incidentally happen that I should be trying the right to a perpetual curacy, and there was a doubt in my mind, whether the court was competent to come to a decision upon this point; or, at least, whether it would not have been open to either party

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ing of additional Churches in populous Parishes; and whereas another act passed in the fifty-ninth year of the reign of his majesty King George the 1

to have applied for a prohibition, if the court proceeded. However, the authorities which I have mentioned, of cases in these courts, and which have not been in the slightest degree impugned, no prohibition having been applied for, are sufficient to warrant me in considering the circumstances of this case.

"It appears that the chapel in question was built by the late Mr. Wilberforce, and was consecrated a few days after his death, and it purports to have been built under the statute of 1 & 2 Gul. 4, c. 38. No doubt can be entertained as to the general principle of the law, where any clergyman attempts to officiate in a church or chapel within the limits of a parish, without the permission of the incumbent. That has been laid down in the case of *Bham v. Woods*, (3 Hagg. 486,) by Sir John Nicholl, precisely as was laid down by his learned predecessors, and all authorities; namely, that it is not competent for any clergyman of the church of England to enter a parish without leave of the incumbent, and to officiate in performing the duties of his vocation. The defence on the part of Mr. Brown is, that this case is brought within an exception to the general principle of the law, and it is alleged, that under the provisions of the act 1 & 2 Gul. 4, it was competent to Mr. Wilberforce to erect this chapel with the consent of the incumbent or patron, and after sufficient endowment and compliance with the various provisions of the statute, to obtain the right of nominating the minister, who might be duly licensed by the ordinary of the diocese, and that a licence has been obtained. It is unnecessary to consider one part of the case; namely, whether there was a performance of divine service before a licence was obtained; because that was not a question in the citation as originally taken out in the cause, and is not applicable to the important point; namely, the various rights of the parties.

"The question shortly comes to this: have the provisions of the statute been complied with or not?

"And if they have not, the next question is, what are the legal consequences to be deduced therefrom?

"The provisions of the statute, to which the facts of the case have reference, are contained in the second section of the statute itself; and I must take the act of parliament as my guide, and endeavour, as far as it is in my power, to arrive at a just construction of it, with reference to the facts and circum-

proved in the cause. he conditions of the mplied with, I shall sider, whether these or not; because if dent to the right of t appears that those carried into effect, ill never have vested any licence which . a supposition, that

such conditions had been complied and that the right of nomination had falls to the ground. The sole ground which the ordinary grants a licence is the right of nomination has vested person who has nominated the indi who comes so to be licensed. It may be understood, that where a party has of the authority of the ordinary, that aut is conclusive. It is not competent ordinary himself without consent of incumbent, to license any person to o within the limits of the parish of that bent. It is not necessary to travel t the whole of the provisions of the act liament; but I shall first consider the tions, and whether they are supported evidence in the cause.

"The objections resolve themselves four heads:

"The first objection is, that, at tl of the passing of the act, the chapel w built and completed within the terms of the subsequent sections of the act.

"The second objection is, that the ing fund is not sufficient.

"The third is, that the free seats of sufficient extent, according to the tions of the statute.

"The fourth is, that the nominati not been rightly exercised.

"With respect to the first point, looked through the whole of the e with reference to the question, whet chapel was built and completed at tl of the passing of the act, according true meaning of the legislature; an the best consideration I can give evidence, I have come to the conclusi the act of parliament has been on th sufficiently complied with. The vex tion is one of the greatest difficulty case; and for the purpose of determini question, I must first refer to the te the act of parliament itself. The act liament directs that 'where any pei persons, belonging to the church of E shall declare his, her, or their inten building a church or chapel for the p ances of divine service, [as aforesaid where such person or persons shall their intention of providing a sum thousand pounds at the least by way dowment for such church or chape secured upon lands or money in the in addition to the pew-rents and arising from the said church or chu case any such rents shall be taken, as also declare his, her, or their inten providing a fund for the repairs of d church or chapel, in manner foll namely, one sum equal in amount pounds upon every one hundred pan the original cost of erecting and fixt or of purchasing such chapel or build be secured upon lands or money in the as aforesaid; and also a further sum reserved annually out of the pew-rents said church or chapel, after the rate

STAT. 1 & 2 intitled, 'An Act to amend and render more effectual an Act passed in the last
GUL. 4, c. 38. Session of Parliament, for building and promoting the building of additional

pounds for every one hundred pounds of the sum so to be provided, as last aforesaid.' Now after having looked through the evidence, I think it unnecessary to refer to it in detail, but I shall advert to such parts of it as bear upon the point I have to determine, whether or not a repairing fund 'equal in amount to five pounds for every one hundred pounds of the original cost of erecting and fitting up' the chapel, has been set apart.

"The evidence on this part of the case consists of the testimony of Mr. Ravenscroft, and Mr. Philip Flood Page. I have read this evidence in order to see whether it established the sufficiency of the repair fund, and I must say, that looking to this evidence, and the defect of it, I think it is a most unsatisfactory mode of establishing so important a fact. Nothing could have been more easy than to have produced to the court a statement of the actual sum expended in the erection and fitting up of this chapel, and it would have been competent for the party defendant in this cause to have stated the component items of the account, out of which the sum of five pounds per cent. ought to be assessed. Instead of that, I have the evidence of Mr. William Ravenscroft, the solicitor, acting in the lifetime of the late Mr. Wilberforce, who gives the following account of the transaction. He knows nothing of his own knowledge as to the cost of erecting and fitting up the chapel: he was informed by another person the amount upon which the five per cent. was to be calculated upon. His evidence is this: he states that he applied to Mr. Samuel Flood Page, the architect, who told him that the amount was 3,600*l.*, and that he inserted that sum in the deed of endowment, and the sum of 180*l.* as the amount of five per cent. on that principal sum. Every part of the testimony of this witness tends to show, that in his judgment there was a perfect *bona fides*, that it was intended that the act should be accurately complied with, and that all that was requisite and necessary was to be done. In his answer to the fourth interrogatory, he goes on to say, that he cannot swear either one way or the other; so that no information is obtained from this witness.

"The next witness is Mr. Philip Flood Page, and he is the brother of the architect who was employed on the occasion, and he knows nothing of the cost of erecting the chapel, except so far as he is enabled to speak from the papers in his office, and except so far as he considers himself competent, without reference to the actual cost and expenditure under the act of parliament, to make an estimate of the sum. This witness was not the architect, but his brother was; and his brother has not been called upon to give evidence. He is now in the Isle of Man, having left the business and gone into the church, and it might be attended with some inconvenience to examine him. But if the party in the cause did not think it right or expedient to examine the brother, some bet-

ter account might surely have been given of the costs and expense of building this chapel. The account which this gentleman gives, appears to me singular. I presume Mr. Ravenscroft gave him some information as to the principle of the estimate required. He, however, states: 'The sum I gave to Mr. Ravenscroft to insert in the deed of endowment as the cost of erecting and fitting up the chapel in question, was 3600*l.* I gave him that as a round sum.' The act of parliament does not speak of a round sum at all. The act of parliament directs that there shall be set apart five per cent. upon 'the original cost of erecting and fitting up.' This was not for the purpose of selling the chapel. The act speaks elsewhere of the purchase of such chapel; but where the right of patronage is assigned to the builder and endower of a chapel, it is made a condition that five per cent. of the actual prime cost of erecting and fitting up shall be set apart as a repair fund. 'I gave that as a round sum, for my calculation made it amount to only 3325*l.* 18*s.* 8*d.* I had no communication with Mr. Wilberforce on the subject; the application to me and my answer to it, so far as I know, were quite unknown to Mr. Wilberforce. I made my calculation in this manner—I took the sums paid to Messrs. Bowden and Mr. Castellow, who had the contract for building the chapel; 3080*l.* 2*s.* 3*d.* paid to Messrs. Bowden, and 560*l.* 16*s.* 10*d.* paid to Mr. Castellow, making 3640*l.* 19*s.* 1*d.*;' this exceeds the amount given to Mr. Ravenscroft by 40*l.* 19*s.* 1*d.* 'Then I deducted from that the duties upon the building materials, 221*l.* 3*s.* 4*d.*'

"Now really it is necessary to direct our attention to this item, for I am bound to see whether the act of parliament has been carried into full effect. I listened to the argument of counsel for Mr. Brown, to endeavor to learn on what principle this deduction was justified. I am aware that under other Church-building Acts, duties were allowed to be remitted; but I am not aware that where a church or chapel has been built under the act, there is authority given by any act of parliament for a remission of any part of the duty. But I should like to know whether the duty has *de facto* been remitted. For whether it was or was not remitted, it is a matter of serious consideration for the court, considering how the question presses on the party, whether the fact of the duty being remitted and repaid ought not to have been pleaded and proved in order to be made a fit subject for consideration: because, how is it possible for me to decide whether this sum of 221*l.* 3*s.* 4*d.* is a legal deduction from 3630*l.* 19*s.* 1*d.* if no statement is made to me of the authority under which the deduction is made, and when it is not averred that there has been any remission at all? I apprehend I am under the necessity of coming to the conclusion that the item of 221*l.* 3*s.* 4*d.* forms a part of the original cost of erecting and fitting up this chapel, and that it is

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Churches in populous Parishes; and whereas another act was passed in the third year of the reign of his late majesty King George the Fourth, intituled, 'An Act to

not fit to be deducted. This gentleman goes on, 'I did not deduct the salary and expenses of the clerk of the works, nor the cost of the iron railing, or of the hot-air stove, nor the fee of the architect, nor the painted window-

ments; for those I in the gross sum. My calculation of the . Then I deducted, building materials, as paid to Messrs. for the brickwork to . 4½d. for the brick-; 1s. 14s. for rough ce; 9s. for inclosing nter of 1829-30, and al coat of paint, ren-: chapel having been not consecrated till paid for the painted

Of the whole sum to Messrs. Bowden, s, in which were in-specified.' Now this terrogatory says, 'I erecting and fitting ion actually cost the v than 3600l.' Now ly as I can into the

various items, and to the principles of calculation which this gentleman proceeded on, to see whether, according to any calculation I can make in conformity to the statute, I am able to reduce the amount of the actual cost of erecting and fitting up of the chapel to 3600l.; and I have done so with reference to the statement of this witness, that the cost was only 3225l.

"Mr. Wilberforce, (and it is a fact which is mainly relied upon by Mr. Williams,) in the month of April, 1831, was desirous of disposing of the chapel at Mill Hill to the patron of the parish, on the principle of a simple reimbursement to himself of the cost of the chapel and security for the same; and it appears, from a letter from the secretary to the church commissioners, to the address of Mr. Williams, that a statement had been made by Mr. Wilberforce of the cost of the chapel, which statement is annexed to the letter, and is to the following effect: 'Cost of Mr. Wilberforce's chapel, at Mill Hill, as nearly as can just now be ascertained. Account of Messrs. Bowden, the contractor, (it is doubtful whether or not 90l. of this amount still remains to be paid,) 3080l. 2s. 3d. Clerk

her incidental expenses, nt of Messrs. Cantelow, 10d. Mr. Smalley, iron r stove, 56l. Architect, window-guard, adver- 12l. 4s. Altar window ear of the particulars of .2s. 6d.' The whole is n there are blanks for , and for 'law charges.' 'I am told that it is to be more payments, l. to 400l. or even 500l.

additional. It is expected there will be a repayment of the amount of duties paid on bricks to the amount perhaps of 100l.; but these particulars may be supplied hereafter, if the general negotiation proceeds.' Now I have not the least information before me of a date subsequent to that of this paper, as to whether any of these anticipated payments were made, or whether or not Mr. Wilberforce calculated upon the items stated here; and I cannot but think that it was incumbent on the party whose duty it was to make it appear that 3600l. was the whole amount of the cost of erecting and fitting up this chapel, to show that the sum actually paid by Mr. Wilberforce on account of the chapel did not exceed that sum; or, at least, to show what was paid, and why some of the items should be considered as extras, and not to be included. I am also without any evidence as to what Mr. Wilberforce meant by other payments to the amount of 350l. or 400l., and even 500l. more. Looking to the items in this statement, as they are before me, they amount to 4176l. Which of these items, consistently with the act of parliament, should I be justified in rejecting? 'Clerk of the works and other incidental expenses.' The words of the statute are, 'the original cost of erecting and fitting up.' I can only understand, unless the word 'cost' has received by law some different interpretation, that its meaning is, the actual cost incurred by the individual for erecting and fitting up the chapel; and I am of opinion that one of these expenses must be that of the clerk of the works. But if I entertaind any doubts upon this point, what am I to say to 'other incidental expenses'? What other expenses? And how are they to be excluded from the calculation? Then there is 'Architect, &c., 170l.' I am at a loss to understand why that should be excluded, or that for the hot-air stove. The window-guard, being ornamental, might perhaps be excluded. But it appears to me that, if it be contended that any of these items are not fairly included in the calculation, the party is bound to point out what items, and on what principle they are to be excluded. I confess that the only attempt which has been made to do so, has been wholly unsatisfactory to my mind, although I acknowledge I have the strongest predisposition to come to an opposite conclusion, if the law would allow me. Because, when I see what has been the extent of the expenditure by Mr. Wilberforce, and the great advantage to the public which has been afforded by the erection of this chapel, in the parish of Hendon, I feel disposed, to the utmost extent to which the law allowed me, to sustain the right of nomination. But I am bound to put the real construction upon the act of parliament, whatever may be the consequences to the party; for I am aware of nothing more injurious than to attempt to fit the limits of an act of parliament to the circumstances of a particular case. I am compelled, therefore, to conclude, that the act of

STAT. 1 & 2 amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, for building and promoting the building of additional Churches in populous Parishes;’ and whereas another act was passed in the fifth year of the reign of his late majesty King George the Fourth, intituled, ‘An Act to make further Provision, and to amend and render more effectual three Acts, passed in the fifty-eighth and fifty-ninth years of His late Majesty and in the third year of His present Majesty, for building and promoting the building of additional Churches in populous Parishes;’ and whereas another act was passed in the seventh and eighth years of the reign of his late majesty, intituled, ‘An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes;’ and whereas by the said recited act passed in the fifth year of the reign of his late majesty it was amongst other things enacted, that with a view to afford facility to the erection of churches and chapels it should be lawful

7 & 8 Geo. 4,
c. 72.

parliament has not been complied with, according to the terms of it.

“Then what are the effects? The act of parliament goes on to say: ‘It shall be lawful for the bishop of the diocese in which such parish or extra-parochial place is locally situate, if he shall see fit, and he is hereby authorised, to declare by writing under his hand and seal, that the right of nominating a minister to such church or chapel, when so built or purchased, and endowed, as aforesaid, and when the conditions hereinbefore mentioned shall have been performed, shall for ever thereafter be in the person so building, or purchasing, and endowing the same, his, her, or their heirs and assigns.’ Then did the right of nomination vest, or was it forfeited? I apprehend it is as clear as words can express it, that the performance of the conditions is a condition precedent to the vesting of the right of nomination.

“In this view of the case, I am compelled to come to the next step, and to conclude that the right of nomination never vested in Mr. Wilberforce; and if so, it follows that the licence which was granted under a supposition that the right of nomination did so vest, cannot be supported. Now the result which I have assumed leads me directly to the conclusion, according to my view of the case, that Mr. Brown is not at present legally entitled to perform the duty of a clergyman within the limits of the parish of Hendon. Two other objections remain to be disposed of: one is, that the room assigned for free seats is not sufficient. Looking to the whole of the evidence in the case, it appears to me, that this objection could not be sustained. The total dimensions of the chapel are 609 feet, of which 252 feet are assigned to free seats: so that there appears to be sufficient to satisfy the requisites of the act. But an objection has been taken, that part of the free seats are in the gallery, and that the gallery is appropriated to the children of the national school. Now I have looked into all the measurements of the architects, and into the different modes of estimate, and I think I may take it thus: that two children occupy the room of one grown person. I am of opinion with reference to this mode, that sufficient room for free seats has been set apart in the chapel; and I am very clearly of opinion, that it is a sufficient fulfilment of the act of parliament, to set apart a space which shall include the accommodation for children;

for I can never go the length of saying, that under this act of parliament, the whole of the accommodation as free seats must be for adult persons. The children of the poor are as much entitled as grown-up persons to have accommodation for attending divine service, and I consider this objection not supported. The court has then only to consider the remaining objection as to the mode in which the nomination was made. I am of opinion, that I am not called upon to consider that question. I think if the right of nomination had vested in Mr. Wilberforce, it would not have been necessary for me to consider, whether the form of the nomination had been precisely consistent with regularity or not. This is not the substantial question before the court.

“Looking at all the circumstances of the case, I am compelled to come to the conclusion, that as far as I am enabled to form a judgment of the true construction of the act of parliament, and of the evidence, the provisions of the act have not been complied with; that a compliance with the provisions of the act is a condition precedent to the vesting of the right of nomination; and the right not having vested, the licence granted under a supposition that the right had vested, cannot be supported.

“I wish it to be distinctly understood, that I impute no blame to any of the parties whatever. I have no doubt of the *bona fides*, and of the intention of all to fulfil the terms of the act of parliament; but I must say that it is most unfortunate, that where the conditions of an act of parliament are so clear and explicit, and where a reference to the act of parliament might have enabled the individuals to have understood its directions and conditions, and to have complied with them literally, instead of that, reference was made not to the architect of the chapel, but to another individual who could give no information to the other party, who had no knowledge of the circumstances; and that a computation should have been made, not with reference to the actual cost of the building and fitting up of the chapel, the only criterion prescribed by the act of parliament. On these grounds I am under the necessity of coming to the conclusion, that the articles have been proved. It is clear that this is a case in which I should not think of giving costs on either side.”

for certain persons building or purchasing the same, and endowing them with pew rents, to nominate for forty years spiritual persons to serve such churches or chapels respectively, subject to the consent of the bishop of the diocese, and to certain regulations therein provided; and whereas by the said recited act passed in the seventh and eighth years of the reign of his late majesty farther encouragement was given to the same object by authorizing his majesty's commissioners for building new churches to declare that any person or persons building a chapel, and endowing the same to the satisfaction of the said commissioners, with some permanent provision in land or monies in the funds, should have the perpetual right of nominating the minister to serve the same; and whereas the said provisions of the said last-recited act have been found insufficient for such their purposes, and require amendment, in order to provide more effectually for the improved pastoral superintendence of his majesty's subjects; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said recited act passed in the seventh and eighth years of the reign of his late majesty as authorizes the said commissioners to declare, in the cases therein provided, the right of nominating the spiritual persons to serve the chapels therein named respectively to be in the person or persons building and endowing the same, his, her, or their heirs and assigns or appointees, shall be and the same is hereby repealed.

"II. And be it enacted, that in all parishes and extra-parochial places the population of which, according to the returns then last made in pursuance of any act or acts of parliament, shall amount to two thousand persons, and in which the existing churches or chapels do not afford accommodation for more than one-third of the inhabitants for the attendance upon divine service according to the rites of the united church of England and Ireland, and also in all parishes and extra-parochial places in which three hundred persons, whatever may be the amount of the whole population, shall be resident upwards of two miles from any such existing church or chapel, and within one mile of the site upon which a new church or chapel is proposed to be erected under the provisions of this act, and where any person or persons belonging to the church of England shall declare his, her, or their intention of building a church or chapel, or of purchasing any building fit in all respects to be used as a church or chapel, for the performance of divine service as aforesaid, or where a church or chapel has already been built on the faith of the said recited act of the seventh and eighth years of the reign of King George the Fourth, in such a situation within the said parish or place as shall be adapted to the convenience of that part of the inhabitants for whom such additional accommodation is necessary, and where such person or persons shall declare their intention of providing a sum of one thousand pounds at the least by way of endowment for such church or chapel, to be secured upon lands or money in the funds, in addition to the pew-rents and profits arising from the said church or chapel, in case any such rents shall be taken, and shall also declare his, her, or their intention of providing a fund for the repairs of the said church or chapel, in manner following, (namely,) one sum, equal in amount to five pounds upon every one hundred pounds of the original cost of erecting and fitting up or of purchasing such chapel or building, to be secured upon lands or money in the funds as aforesaid, and also a further sum to be reserved annually out of the pew-rents of the said church or chapel, after the rate of five pounds for every one hundred pounds of the sum so to be provided as last aforesaid, and also if such person or persons shall further declare his, her, or their intention of setting apart or appropriating one third at least of the sittings in such church or chapel to be and continue for ever as free sittings, it shall be lawful for the bishop of the diocese in which such parish or extra-parochial place is locally situate, if he shall see fit, and he is hereby authorized, to declare by writing under his hand and seal that the right of nominating a minister to such church or chapel, when so built or purchased and endowed as aforesaid, and when the conditions hereinbefore mentioned shall have been performed, shall for ever thereafter be in the person or persons so building or purchas-

STAT. 1 & 2
GUL. 4, c. 38.

So much of
7 & 8 Geo. 4,
c. 72, as au-
thorizes the
commissioners
in certain cases
to declare the
right of
nominating,
repealed.

In parishes
where the
population
amounts to
2000, and the
churches do
not afford
accommoda-
tion, or where
300 persons
reside more
than two miles
from the
church, if any
person shall
declare his
intention of
building a
church or
chapel, accord-
ing to the
conditions
herein men-
tioned, the
bishop may
declare the
right of nomi-
nating to be in
such person or
his trustees.

STAT. 1 & 2
GUL. 4, c. 38.

In case of
failure of
appointment of
trustees.

Limiting the
patronage in
trust.

New church
not to be
within two
miles of exist-
ing church.

Previous to
nomination, a
certificate of
the facts to be
produced to
the bishop.

Pews may be
let.

In all other
cases where a
church or
chapel has

ing and endowing the same, his, her, or their heirs and assigns, and in such trustees or trustees, being members of the united church of England and Ireland, as he, she, or they shall appoint, and in such future trustee or trustees, being members of the united church of England and Ireland, as shall from time to time be nominated by writing under the hand or hands of the trustees or trustee for the time being of the said church or chapel, or the major part of them, or chosen in such manner as may in the first instance be agreed upon by the persons building and endowing such church or chapel, or the major part of them, and the bishop of the diocese, in writing under their hands and seals, in the place and stead of any one or more who shall from time to time die, resign, or become incapable of acting, or in such ecclesiastical person or body corporate, and his or their successors, as the persons so applying shall at the time of application to the bishop nominate and appoint: provided always, that if it should happen that all the trustees of the said church or chapel for the time being should die without having appointed any other trustee or trustees as their successors, then and in such case it shall be lawful for the incumbent for the time being of the said church or chapel, with consent of the bishop of the diocese, to appoint a requisite number of the trustees to supply the vacancies; and provided also, that the patronage of any such church or chapel shall not at any time be vested in or held in trust by more than five persons, except in cases where such patronage shall pass by descent to coparceners, or by the custom of gavelkind to more than five, or shall be conveyed by will or deed to more than five children, grandchildren, nephews, or nieces of the grantor or deviser: provided also, that no church or chapel built for the accommodation of three hundred persons residents upwards of two miles from the existing parochial church or chapel shall be placed nearer than two miles from such existing church or chapel.

"III. Provided also, and be it further enacted, that previous to any bishop making such declaration of the right of nomination as aforesaid, there shall be produced to him a certificate, signed by an architect or surveyor, and attested by two or more respectable householders in the parish, to the effect that the existing churches or chapels do not afford, by actual admeasurement, accommodation for more than one third of the inhabitants; or a certificate, signed by three or more respectable householders in the parish, that there are in such parish or extra-parochial place three hundred persons resident upwards of two miles from any such existing church or chapel, and within one mile of the site upon which a new church or chapel is intended to be built under the provisions of this act.

"IV. And be it further enacted, that the pews or sittings in such church or chapel shall be let by the churchwardens or chapelwardens, or by some person appointed by the trustees or person or persons building and endowing the same, to act in that behalf, according to a scale of pew rents fixed by the trustees or such person or persons as aforesaid, and approved of by the bishop, which scale it shall be lawful for the trustees or such person or persons as aforesaid, with consent of the bishop, to alter from time to time as occasion may require: provided always, that all such pews as shall not be taken at the rent respectively fixed thereon, within fourteen days after the commencement of the ensuing year, shall in every such case be let to any inhabitant of any adjoining parishes, or places in which there shall not be sufficient accommodation in the churches and chapels of the parish or place for the inhabitants thereof, at the rent respectively so affixed upon such pews, for any term not exceeding the end of the year, and at the expiration of the year, and also of every succeeding year in which any such pews shall be rented by inhabitants of any adjoining parishes, such pews shall be inserted in the list of vacant pews, to be taken in preference by the inhabitants of the parish or place to which the church or chapel shall belong; and all such pews as may not be so taken by any inhabitants of the parish or place may again be let, and so on from year to year, to any inhabitants of any adjoining parish or place.

"V. And be it further enacted, that in all other cases not hereinbefore provided for, in which any person or persons shall have already endowed, with the sanction of the said commissioners, or shall endow or declare their intention of endowing, to the satisfaction of the said commissioners, any church or chapel built or intended

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to be built by such person or persons, with some permanent provision in land, in money charged upon land, or money in the funds, exclusively of and in addition to the pew rents or profits arising from the said church or chapel, in case any such rents should be taken, and also of providing a sufficient fund for the repairs of the said church or chapel, it shall be lawful for the said commissioners, with the consent of the bishop of the diocese, if under all the circumstances it shall appear them fit and proper so to do, to declare, that after certain conditions hereinafter mentioned are performed or shall have been already satisfied, the right of nominating a minister to such church or chapel shall for ever thereafter be in the person or persons building and endowing or having built and endowed the same, his, her, their heirs and assigns, or in such person or persons, ecclesiastical person or body corporate, and his or their successors, as he, she, or they shall appoint; and in case such church or chapel shall have been or shall be built by subscription, then such person or persons, their heirs or assigns, or in such ecclesiastical person or body corporate, and his and their successors, as the major part in value of such subscribers shall, at the time of the application to the commissioners, nominate and appoint: provided always, that the patronage of any such church or chapel shall no time be vested in or held in trust for more than five persons, except in case where the said commissioners shall have already sanctioned a larger number of trustees, or such patronage shall pass by descent to coparceners, or by the custom of gavelkind to more than five, or shall be conveyed by will or deed to more than five children, grandchildren, nephews, or nieces of the grantor or deviser.

“VI. Provided always, and be it further enacted, that previous to such declaration of the right of nomination as aforesaid being made by the said commissioners, application in writing shall be made to the said commissioners, setting forth the population of the parish in which such church or chapel is built or proposed to be built, together with the accommodation provided in the several churches or chapels built or building or intended to be built within such parish together with the population of the district for which such church or chapel is intended to provide, and the accommodation proposed to be provided in such church or chapel, and its distance from the existing churches or chapels in such parish; and that copies of such application shall, in every such case, be sent to the said commissioners to the patron and incumbent respectively of the parish, chapel, township, or extra-parochial place in which such church or chapel is built or intended to be built, in order to afford such patron and incumbent an opportunity of laying before the said commissioners any statement relating thereto, and the said commissioners shall not declare, or signify their intention of declaring such right of nomination as aforesaid, until after the expiration of three calendar months from the time when they shall have sent such copies to such patron and incumbent respectively, except in those cases where the said commissioners shall before the passing of this act have already expressed their satisfaction with the endowments proposed, and their willingness to accede to the conditions proposed, and such church or chapel shall have been built or be now building in pursuance thereof.

“VII. And be it further enacted, that in all cases whatsoever under this act any person or persons intending to build or purchase and endow any such church or chapel, or building as aforesaid, in any such parish as aforesaid, shall, in the first place, cause to be served upon the patron or patrons and incumbent of such parish a notice in writing of such intention, which notice shall specify the various particulars hereinbefore mentioned, and shall also state the number of persons intended to be accommodated in such church or chapel, and the amount of money intended to be laid out in the building or purchasing thereof; and in case such patron or patrons shall, within two calendar months after being served with such notice aforesaid, bind him, her, or themselves, by bond or other sufficient security, to the said commissioners in such cases as shall come before them, and to the bishop of the diocese in all other cases, that he, she, or they shall within two years thereafter build or purchase, and completely finish and endow, an additional church or chapel in such parish, to the satisfaction of the bishop of the diocese, and that the

STAT. 1 & 2
GUL. 4, c. 38.
satisfaction of
the bishop of
the diocese, he
shall be pre-
ferred.

Preference to
be given to
enlargement of
churches in
certain cases.

As soon as
churches or
chapels are
finished and
consecrated,
the right of
nomination to
be vested in
the persons
building and
endowing.

she, or they shall also comply with and perform all and singular the conditions hereinbefore mentioned, then and in such case such patron or patrons shall be preferred to any other person or persons so intending to build or purchase such additional church or chapel as aforesaid: provided always, that no declaration of the right of nominating a minister to any church or chapel built and endowed under the provisions of this act shall in any case take effect until such church or chapel shall have been duly consecrated: provided always, that in case any such church or chapel has been or shall hereafter be built or endowed by subscription, the application to the bishop or commissioners of the major part in value of the subscribers shall be deemed and taken to be the application of the party building or endowing the same: provided always, that the churches or chapels already built and completed on the faith of the said recited act of the seventh and eighth years of the reign of King George the Fourth be excepted as to the two months' notice, such notice having already been given to his majesty's said board of commissioners and incumbents when such churches or chapels were built.

"VIII. And be it further enacted, that where there is a population of not less than one thousand persons in any parish, district parish, district chapelry, or extra-parochial place within two miles from an existing church, if there be any person or persons who shall be desirous of enlarging the church accommodation therein, and who shall, with the consent of the select vestry or persons exercising the powers of vestry in such parish, signify such their intention to the bishop of the diocese, or to the said commissioners, as the case may be, and shall also bind themselves in a bond or other sufficient security to the said bishop, or to the said commissioners, as the case may be, that they will within two years from the date of declaring such their intention as aforesaid enlarge the existing church so as to add one fourth to its then existing church accommodation, so that more than one third of the parishioners shall be accommodated, then and in all such cases such persons, having complied with such conditions as aforesaid, shall be preferred to any person or persons proposing to build and endow any new chapel in such parish or extra-parochial place under the provisions of this act: provided always, that plans for the enlargement of such existing church shall in all cases be prepared, and before the commencement of such enlargement shall be laid before the bishop of the diocese, or the said commissioners, as the case may be, for his or their approbation thereof; and that a certificate from an architect employed therein, as to the due execution of such plans, shall in every case be sent to the said bishop, or to the said commissioners, as the case may be, on the completion of the enlargement of such church.

"IX. And be it further enacted, that as soon as conveniently may be after any such church or chapel as aforesaid shall have been so built or purchased and endowed as aforesaid, and completely furnished and fitted up for the performance of divine service, and the other conditions hereinbefore mentioned shall have been performed, and the said church or chapel shall have been consecrated, the right of nominating a minister to the same, and also the land, ground, and site whereon the same shall be built, with the cemetery thereto belonging, if any, which land, ground, and site shall be specified and described in the sentence of consecration of the church or chapel, shall be and are hereby declared to be for ever vested in the person or persons building or purchasing and endowing the said church or chapel, his, her, or their heirs and assigns, or in such trustee or trustees, or ecclesiastical person or body corporate, as are hereinbefore mentioned, by such name and style as shall be specified in the sentence of consecration of the church or chapel; and such right of nomination shall and may be exercised without requiring the consent of the patron or incumbent of the parish or district in which such chapel shall be built, and notwithstanding no compensation shall have been made to them or either of them, without prejudice however to the fees hereinafter mentioned; and such right of nomination, when vested in more than two persons, shall in all cases be exercised by the majority; and the person or persons in whom the said right of nomination, and the said land, ground, and site, shall be so vested, shall in every such case have perpetual succession in the name and style specified in the sentence of consecration, and shall hold the said right of nomination, and also the said lands,

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grounds, and sites so vested in them, as bodies corporate, by such name and without incurring or being subjected to any of the penalties or forfeitures Statute of Mortmain, or of any other law or statute whatsoever, to the use, and purpose that every such church or chapel, with the cemetery to the same, shall, when consecrated, be for ever thereafter set apart and dedicated to the service of Almighty God, as a place of divine worship according to the liturgical usages of the united church of England and Ireland as by law established.

"X. And be it further enacted, that the said commissioners, with the consent of the bishop of the diocese, in all such cases as shall come before them, as bishop of the diocese alone in all such other cases as are hereinbefore mentioned and also with the consent of the patron and incumbent in all other cases in which additional churches or chapels shall have been already built and endowed,

to assign a particular district to every such church or chapel, and in special circumstances they shall deem fit, each such district shall be under the immediate jurisdiction of a clergyman duly licensed to serve such church or chapel, and to perform the duties of the sick and other pastoral duties, and other purposes whatsoever: provided always that the said commissioners, with the consent of the bishop of the diocese, before the said commissioners, and for the purpose to determine whether baptisms, churchwardens, or other officers formed in any such church or chapel, or in any such district, or respectively, as the case may be, shall be respectively assigned by them to such church or chapel, or to the district of the bishop of the diocese, and shall

cause their order and direction in writing, as to all offices to be performed in such church or chapel, to be registered in the registry of the diocese.

"XI. Provided always, and be it enacted, that in cases where the district provided for any church or chapel erected or to be erected shall extend into more than one parish, all the conditions hereby directed to be complied with as observed with respect to the patrons and incumbents of each parish any of which shall be comprised in such district, and the patron or patrons, incumbent or incumbents, of each such parish, shall be entitled to such and the same rights and such and the same rights and privileges, as if such district were solely comprised in one only of such parishes.

"XII. And be it further enacted, that every such church or chapel to which a particular district has been assigned as aforesaid shall be deemed a parsonage, and shall be considered in law as a benefice presentative, so far only as the licence thereto shall operate in the same manner as institution to any benefice, and shall render voidable other livings in like manner as institution to any such benefice; and the spiritual person serving the same shall be deemed incumbent thereof; and such incumbents shall have perpetual succession, and be and are hereby declared to be bodies politic and corporate, and may receive and take such endowments in lands or tithes, or both, or any such augmentation shall be granted to them or their successors; and all such incumbents, and persons presenting or appointing any such incumbents, shall respectively be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions, regulations, penalties, and forfeitures contained in any acts of parliament in force at the time of the passing of this act respectively; and in case of any failure or neglect in not presenting or appointing any such incumbent for the space of six months, such presentative appointment shall thereupon lapse, as in cases of actual benefices; and all churches or chapels built or appropriated under the provisions of this act shall be subject to the jurisdiction of the bishop of the diocese and the archdeacon of the archdeaconry within which the same shall be locally situated.

"XIII. And be it further enacted, that no such church or chapel to which a particular district has been assigned as aforesaid shall be tenable or holden by any person other than the original church of the parish, chapelry, or place in which such church or chapel has been built, or with any other benefice having cure of souls: provided that

STAT. 1 & 2
GUL. 4, c. 38.

The laws
relating to
baptisms,
burials, &c.
to apply to the
churches here-
by authorized
to perform
them.
Fees.

To whom
copies of
applications
shall be sent,
in case the
patronage of
any place shall
be in the
crown.

Churchwar-
dens to be
appointed.

that no person holding any benefice shall be exempt from residence upon such benefice in respect of any duty which he may perform in any such church or chapel to which no district shall have been assigned as aforesaid.

"XIV. And be it further enacted, that where the said commissioners or bishop of the diocese respectively, as the case may be, shall have determined that baptisms, churchings, or burials shall be solemnized or performed in any such churches or chapels, all acts of parliament, laws, and customs relating to the performance of such offices of the church shall apply to such churches or chapels as to the performance of such offices respectively: provided always, that all fees, dues, offerings, and other emoluments, which of right or custom belong to the incumbent or clerk of any parish, chapelry, or place in which such church or chapel shall have been or shall be erected, shall be received by or for and on account of such incumbent and clerk respectively, and be paid over to them, anything in the said recited acts contained to the contrary notwithstanding, except such portion of the said fees, dues, offerings, or other emoluments as the said commissioners, with the consents of the bishop of the diocese, the patron, and the said incumbent respectively, in those cases which shall come before the said commissioners, by order under their common seal, or the bishop of the diocese alone, with the consent of the patron and incumbent, in all such other cases as hereinbefore mentioned, by order under his hand and seal, shall assign to the minister of such church or chapel; and every such instrument of assignment shall be registered in the registry of the bishop of the diocese within which such church or chapel shall be locally situated.

"XV. Provided always, that where the patronage of any living or benefice of any parish, chapelry, or place as aforesaid shall be in the crown, and such living or benefice shall be above the yearly value of twenty pounds in the king's books, a copy of the application made to the said commissioners as aforesaid shall in every such case be sent to the lord high treasurer or first lord commissioner of the treasury for the time being, instead of being sent to the patron of such living or benefice, as hereinbefore directed; and that if such living or benefice shall not exceed the value of twenty pounds yearly in the king's books, a copy of the application as aforesaid shall in every such case be sent to the lord high chancellor, lord keeper or commissioners of the great seal, for the time being; and that if such living or benefice shall be within the patronage of the crown in right of the duchy of Lancaster, then and in every such case a copy of the application as aforesaid shall be sent to the chancellor of the duchy for the time being, instead of being sent to the patron of such living or benefice, as hereinbefore directed; and the sending a copy of such application to the said party or parties, as the circumstances may be, shall be as effectual for the purposes of this act in all such cases, as if the same had been sent to the patron of such living or benefice: provided also, that in all cases respecting the building, endowment, or disposition of the patronage of any church or chapel heretofore built or hereafter to be built, where the patronage of the living or benefice in which such church or chapel is or shall be situate is in the crown, it shall and may be lawful for the lord high treasurer or first lord commissioner of the treasury for the time being (if such living or benefice shall exceed the value of twenty pounds yearly in the king's books), and for the lord high chancellor, lord keeper or commissioner of the great seal for the time being (if such living or benefice shall not exceed the value of twenty pounds yearly in the king's books), to give such consent by any instrument under his or their hand and seal or hands and seals, on behalf of the crown, and such consent shall be as binding and effectual to all intents and purposes as if given by the crown itself.

"XVI. And be it further enacted, that two fit and proper persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the provisions of this act, at the usual period of appointing parish officers in every year, and shall be chosen, one by the incumbent of the church or chapel for the time being, and the other by the renters of pews in such church or chapel: and the two persons, when so elected churchwardens, shall appear, and be admitted and sworn according to law, and shall collect and receive the rents of the seats and pews, and pay over the residue thereof which shall remain after the annual reser-

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ation aforesaid for repairs, and after paying the salary of the clerk, beadle, organist, and other expenses incident to the performance of divine service, the minister of the said church or chapel, to be taken by the said minister to his own use by way of stipend, in addition to the yearly interest or dividend which shall arise from the landed or funded endowment hereinbefore mentioned, and the said churchwardens shall also do, perform, and execute all lawfully required and requisite for and concerning the repairs, and the good order and decency of behaviour to be kept and observed in the church or chapel; and the persons so to be appointed shall continue in their said office until others be appointed in their stead; and all the persons so chosen churchwardens shall be empowered, in case of nonpayment of the rents or tithes of the church or chapel for which they shall be appointed, to sue for and recover the same by action or otherwise; and the said churchwardens shall have full power to do all such things as the case shall or may require, without specifying the same in writ or petition; and no such action shall be brought or commenced against any such churchwarden while he is acting in the discharge of his duty, or going out of office of any such churchwarden.

"XVII. And be it further enacted, that from and after the expiration of five years after the transfer or conveyance of any messuages, lands, grounds, tenements, or hereditaments to any person or persons, as a site for any church or chapel, or any church or chapel yard or cemetery, under the provisions of this act, the said messuages, lands, grounds, tenements, or hereditaments shall become and remain absolutely vested in the person or persons to whom the same are conveyed, his, her, or their heirs and assigns; provided that any person to whom any such messuages, lands, grounds, tenements, or hereditaments shall have been conveyed for the purposes of this act shall, within two months after any judgment in ejectment shall have been obtained against him for such messuages, lands, grounds, tenements, or hereditaments, tender or pay to the lessor of the plaintiff in such ejectment the costs on such ejectment, and such sum of money as a jury shall in the said judgment find to have been the value of the said messuages, lands, grounds, tenements, or hereditaments, at the time when such messuages, lands, grounds, tenements, or hereditaments were conveyed for the purposes of this act.

"XVIII. And be it further enacted, that the jury who shall try any ejectment brought for the recovery of any messuages, lands, grounds, tenements, or hereditaments which have been conveyed for the purposes of this act, or if judgment shall have been obtained by default, or for not confessing lease, answer, or payment, a jury under a writ of inquiry (which writ of inquiry the court in such action shall be brought is hereby empowered to issue) shall ascertain the value of such messuages, lands, grounds, tenements, or hereditaments at the time when they were conveyed for the purposes of this act; and the value so ascertained shall be indorsed by the judge who tried the ejectment on the postea, or returned to the court by the sheriff or under sheriff or other person before any writ of inquiry shall be executed under this act, in the same manner as inquests are returned on writs of inquiry.

"XIX. And be it further enacted, that the common seal of the said commissioners shall be affixed to every instrument declaring the right of nominating a minister to any church or chapel, in all such cases as shall come before the said commissioners; and that every instrument shall be registered in the registry of the diocese within which such church or chapel shall be locally situated.

"XX. And be it further enacted, that where any deed or deeds shall be made before the passing of this act with the seal of the said commissioners, for the purpose of declaring the right of nominating a minister to any church or chapel, or of endowing to the satisfaction of the said commissioners, every such deed or deeds shall be deemed to have been lawfully built, and every such deed shall be deemed to be valid for the purpose of declaring and vesting the right of nominating a minister to such chapel, and for effectuating the other objects of the said deed.

UJIELMI IV. A.D. 1830—1837.

aid commissioners acting under the powers of the
h year of the reign of King George the Third have
for the purpose of discharging subscribers towards
and also subscribers towards purchasing sites on
e been built, from the payment of pew rents in such
reas doubts have arisen whether the powers of the
persons subscribing towards purchasing sites for
cted, that it shall be lawful for the said commis-
they shall deem it expedient, to make and execute
confirm any deed or instrument already made by
r persons subscribing towards either of the purposes
part, from the payment of pew rents in the said
r or period and in the manner in the said act men-
struments, whether hereafter to be made or already
d in pursuance of the power hereby given, shall, as
such deed or instrument, be good and valid to all
r; anything in the said recited acts or any of them

5.
enacted, that it shall be lawful for the said commis-
t, in all such cases as shall come before the said
irect that such church or chapel shall be subject to
cited acts or this act as to apportionment of accom-
ngs, and as to pew rents.

certain parishes of large extent there exist chapels
e from the parish church, having chapelries, town-
supposed to belong thereto; be it therefore enacted,
ms shall be willing to endow any such chapel with
land, money in the funds, tithes, or other heredita-
f the bishop of the diocese be sufficient to ensure a
ter of such chapel, it shall be lawful for the bishop,
and incumbent of the parish, by writing under his
uch chapel, when so endowed, shall thenceforth be
of the parish church, and that the chapelry, town-
supposed to belong thereto, shall be thenceforth a
all spiritual purposes.

enacted, that it shall be lawful for the patron, with
ake any agreement with the bishop of the diocese
minating a minister to such chapel, such agreement
ed by the bishop, patron, and incumbent; and that
ster to such chapel shall for ever thereafter be exer-
such agreement; provided always, that if the incum-
a chapel of ease is situate shall refuse his consent to
then the declaration of separation, and the deed of
of nominating a minister to such chapel, when
> and patron, shall be good and valid in law, and
after the next avoidance of the parish church, and
tion of separation, and every deed of agreement,
this act, shall be registered in the registry of the

enacted, that two fit and proper persons shall be
of choosing parish officers, out of the inhabitants
ed, being members of the established church, to act
arish, one to be chosen by the minister, and one by
re of vestry in the said new parish; and the persons
ed and sworn, and shall do all things pertaining to
s to ecclesiastical matters, in the said new parish,
same had been of old time a separate and distinct

"XXVI. And be it further enacted, that in all cases wherein the consent of the patron is required, under the provisions of this act, or of any of the acts herebefore recited, the consent of bishops, deans, and chapters, or other ecclesiastical corporations or colleges, acting as patrons of benefices in right of their bishoprics, dignities, or corporate capacities, shall be as good and valid, for all the purposes of the said acts, as though such consent had been given by a patron in fee simple.

STAT. 1 & 2
GUL. 4, c. 38.
Consent of
patrons.

"XXVII. And be it further enacted, that nothing in this act contained shall extend or be construed to extend to repeal, alter, vary, or affect any powers, authorities, clauses, or provisions contained in any act or acts passed relating to any particular parish or place, so far as relates to any church or chapel already built, unless with the consent of the patron and incumbent and of the select vestry or persons exercising the powers of vestry in such parish or place, or contained in any deed or deeds of trust executed under the sanction of the bishop of any diocese, for the regulation of any church or chapel already built.

Act not to
affect any
local act with
respect to
churches
already built,
unless with the
consent of the
patron.

"XXVIII. And be it further enacted, that all the provisions of this act shall extend and be construed to extend to the Isle of Man, and to the islands of Guernsey, Jersey, Alderney, and Sark."

Act to extend
to the Isle of
Man, &c.

XVIII. STAT. 1 & 2 GULIELMI 4, c. 45(1). A.D. 1831.

STAT. 1 & 2
GUL. 4, c. 45.

"An Act to extend the Provisions of an Act passed in the twenty-ninth year of the Reign of His Majesty King Charles the Second(2), intituled, An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies; and for other Purposes."

"Whereas by an act passed in the twenty-ninth year of the reign of his late majesty King Charles the Second, intituled, 'An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies,' it was amongst other things enacted, that all and every augmentation, of what nature soever, granted, reserved, or agreed to be made payable, or intended to be granted, reserved, or made payable, since the first day of June in the twelfth year of his said majesty's reign, or which should at any time thereafter be granted, reserved, or made payable to any vicar or curate, or reserved by way of increase of rent to the lessors, but intended to be to or for the use or benefit of any vicar or curate, by any archbishop, bishop, dean, provost, dean and chapter, archdeacon, prebendary, or other ecclesiastical corporation, person or persons whatsoever, so making the said reservation out of any rectory impropriate or portion of tithes belonging to any archbishop, bishop, dean, provost, dean and chapter, or other ecclesiastical corporation, person or persons, should be deemed and adjudged to continue, and be and should for ever thereafter continue and remain, as well during the continuance of the estate or term upon which the said augmentations were granted, reserved, or agreed to be made payable, as afterwards, in whose hands soever the said rectories or portions of tithes should be or come, which rectories or portions of tithes should be chargeable therewith, whether the same should be reserved again or not; and the said vicars and curates respectively were thereby adjudged to be in the actual possession thereof for the use of themselves and their successors, and the same should for ever thereafter be taken, received, and enjoyed by the said vicars and curates, and their successors, as well during the continuance of the term or estate upon which the said augmentations were granted, reserved, or agreed to be made payable, as afterwards; and the said vicars and curates should have remedy for the same, either by distress upon the rectories impropriate or portions of tithes charged therewith, or by action of debt against that person who ought to have paid the same, his executors or administrators, any disability in the person or persons, bodies politic or corporate so granting, or any disability or inca-

29 Car. 2, c. 8.

(1) Vide Stat. 1 & 2 Vict. c. 107, s. 14; & 5 Vict. c. 39, s. 26.
Stat. 3 & 4 Vict. c. 113, s. 76; and Stat. 4 (2) Antè 619.

TUTA GULIELMI IV. A.D. 1830-1837.

or curates to whom or to or for whose use or benefit the same should be granted, the statute of mortmain, or any other law, matter or thing whatsoever, to the contrary notwithstanding; that no future augmentation should be confirmed by virtue of the said recited act, which should exceed one moiety of the clear yearly value above all reprises appropriate out of which the same should be granted or reserved; also enacted, that if any question should thereafter arise concerning such grants, or any other matter or thing in that act mentioned, such favourable constructions, and such remedy, if need be, made for the benefit of the vicars and curates as theretofore had or might be had for other charitable uses upon the statutes for which whereas it is expedient that the powers and provisions of the said recited act be amended and enlarged; be it therefore enacted by the king's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, that the said recited provision by which the amount of any augmentation should be limited to one moiety of the clear yearly value above all reprises appropriate out of which the same should be granted, so far as relates to any augmentation which may be granted by virtue of this act, be and the same is hereby repealed.

And whereas doubts may arise by reason of the mention of the portion of the said recited act; be it enacted, that the provisions of the said recited act, in relation to any augmentation to be made out of the tithes, although the portion of tithes; and further, that it shall be lawful, under the authority of the said recited act, to grant, reserve, or make payable any such augmentation to the incumbent of any church or chapel within the parish in which the rectory impropriate shall lie, or in which the tithes or portions thereof shall arise, (as the case may be,) whether such incumbent shall be the incumbent or otherwise; provided also, that no such augmentation shall be granted to any other person whomsoever.

And further enacted, that in every case in which any augmentation should hereafter be granted, reserved, or made payable to the incumbent of any church or chapel, or reserved by way of increase of rent to the lessors, but not for the use or benefit of any incumbent, by the master and fellows of any college, or the master or guardian of any hospital so making the augmentation out of any rectory impropriate, or tithes, or portion of the tithes, or the master and fellows of such college, or the master or guardian of any hospital, all the provisions hereinbefore recited and set forth, except those hereby repealed, shall apply to such case in the same manner as they do apply to the cases hereinbefore recited, (with such alterations therein as the cases would require,) were herein expressly set forth and enacted thereto; provided always, that every such augmentation shall be made to the incumbent of some church or chapel within the parish or place in which the rectory impropriate shall lie, or in which the tithes or portions thereof shall arise (as the case may be).

And further enacted, that in every case in which any augmentation should hereafter be granted, reserved, or made payable to the incumbent of any church or chapel being in the patronage of the grantor or lessors, or be reserved by way of increase of rent to the lessors, but not for the use or benefit of any such incumbent, by the bishop, dean, dean and chapter, archdeacon, prebendary, or corporation, person or persons whatsoever, or the master and fellows of any college, or the master or guardian of any hospital so making the augmentation out of any lands, tenements, or other hereditaments belonging to the bishop, dean, dean and chapter, archdeacon, prebendary, or corporation, person or persons whatsoever, or the master and fellows of any college, or the master or guardian of any hospital, all the provisions hereinbefore recited and set forth (except the provision hereinbefore repealed) shall

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apply to such case in the same manner as if the same provisions, except as aforesaid, (with such alterations therein as the difference between the cases would require,) were herein expressly set forth and enacted with reference thereto.

"V. Provided also, and be it further enacted and declared, that every augmentation which at any time hereafter shall be granted, reserved, or made payable, either under the power given by the said recited act, or under either of the powers hereinbefore contained, shall be in the form of an annual rent, and that the provisions of the said recited act, and the provisions hereinbefore contained, shall not entitle whatsoever to be made after the passing

acted and declared, that where any such rectory
1 of tithes, or any such lands, tenements or other
respectively be subject to any lease on which an
e payable to the person or persons or body politic
l be lawful, during the continuance of such lease,
e said recited act, or either of the powers herein-
same shall apply,) by granting to the incumbent
augmented a part of the rent which shall be so

reserved or made payable as aforesaid, and then and in every such case the same premises shall for ever, as well after the determination of such lease as during the continuance thereof, be chargeable to such incumbent, and his successors, with the augmentation which shall have been so granted to him as aforesaid; and from and after such time as notice of the said grant shall be given to the person or persons entitled in possession under the said lease, and thenceforth during the continuance of the same, such incumbent, and his successors, shall have all the same powers for enforcing payment of such augmentation as the person or persons or body politic by whom the augmentation shall have been granted might have had in that behalf in case no grant of the same had been made; and after the determination of the said lease, the said incumbent, and his successors, shall have such remedy for enforcing payment of such augmentation as aforesaid as is provided by the said recited act with respect to augmentations granted, reserved, or made payable under the authority thereof.

"VII. And be it further enacted, that where any such rectory impropriate, or tithes, or portion of tithes, lands, tenements, or other hereditaments as aforesaid, shall be subject to any lease for any term not exceeding twenty-one years or three lives, or (in the case of such houses as under the provisions of the act passed in the fourteenth year of the reign of her majesty Queen Elizabeth, intituled, 'An Act for Continuation, Explanation, Perfecting, and Enlarging of divers Statutes,' may lawfully be leased for forty years,) not exceeding forty years, on which lease the most improved rent at the time of making the same shall not have been reserved, it shall be lawful at any time during the continuance of such lease to exercise the power given by the said recited act, or either of the powers hereinbefore contained, by granting out of the said premises an augmentation, to take effect in possession after the expiration, surrender, or other determination of such lease, and then and in every such case the said premises shall, from and after the expiration, surrender, or other determination of the said lease, and for ever thereafter, be chargeable with the said augmentation; and the provisions of the said recited act and of this act respectively shall in all respects apply to every augmentation which shall be so granted in the same manner as in other cases of augmentations to be granted under the powers of the said recited act or of this act.

"VIII. And whereas it is apprehended that it may be desirable in many cases to make grants of augmentations in the manner last hereinbefore mentioned, and that such grants would be much discouraged if the augmentation to be granted should necessarily take effect in possession upon a surrender of the lease during which the same had been granted as aforesaid for the purpose of such lease being renewed; be it therefore further enacted, that in any case in which an augmentation shall have been granted to take effect in possession after the expiration, surrender, or other determination of any lease in the manner authorized by the clause

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if a renewal of such lease shall take place before the lawful in and by the renewed lease to defer the time when it is to take effect in possession as aforesaid until it is in that behalf; provided always, that the time to be so deferred shall be some time not exceeding one year of such houses as by the said act of her majesty (to be leased for forty years) not exceeding forty years, from the commencement of the lease during which the lease is granted.

And be it further enacted, that where any such augmentation shall become chargeable, under or by virtue of the said act, any rectory impropriate, tithes, portion of tithes, or hereditaments, if any lease shall afterwards be granted of such rectory impropriate, tithes, portion of tithes, or hereditaments separately from the rest thereof, then and in every case to time so often as the same shall happen, it shall be lawful for the persons granting such lease to provide and agree that there shall be paid out of such part of the augmentation charged therewith as shall be comprised in the said lease, and thenceforth during the lease so to be made as part of the said augmentation shall be charged on the said lease than such part of the said augmentation paid out of the same; provided always, that in every case in which shall be leased in severalty as aforesaid shall be a part of the said augmentation as shall be agreed and the remainder of the hereditaments originally comprised in the said augmentation shall be a competent security for the residue of the said augmentation.

And be it further enacted, that if upon the termination of any lease wherein such augmentation is comprised, any new lease of the premises, or any part thereof, shall be granted without express continuance of the said augmentation, the same shall be utterly void; be it further enacted, that the said act in so far as it relates to any augmentation which may be made by the said act, shall be and the same is hereby repealed.

And be it further enacted, that it shall be lawful for any archbishop, bishop, archdeacon, prebendary, or other ecclesiastical corporation, or the master and fellows of any college, or the corporation of any hospital, being, in his or their corporate capacity, the owner of any rectory impropriate, or of any tithes, or portion of tithes, or of any place, by a deed duly executed, to annex such rectory impropriate, or portion of tithes as aforesaid, or any lands or tenements, with the appurtenances, unto any church or chapel in which the rectory impropriate shall lie, or in which the tithes shall arise, to the intent and in order that the same shall be held and enjoyed by the incumbent for the time being of such church or chapel, by the incumbent for the time being of such church or chapel, such deed shall be effectual to all intents and purposes notwithstanding.

And be it further enacted, that it shall be lawful for any archbishop, bishop, archdeacon, prebendary, or other ecclesiastical corporation, or the master and fellows of any college, or the corporation of any hospital, being in his or their corporate capacity the owner of any rectory impropriate, or other hereditaments whatsoever, and also in his or their corporate capacity the patron or patrons of any church or chapel, to annex such lands, tenements, or other hereditaments, unto such church or chapel, to the intent and in order that the same shall be held and enjoyed by the incumbent for the time being of such church or chapel, such deed shall be effectual to all intents and purposes notwithstanding.

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and be it further enacted, that in any case in which any land, or portion of tithes, lands, tenements, or premises, shall be conveyed to any church or chapel, pursuant to either of the provisions hereinbefore contained, the annexation thereof shall be made to any lease or leases which previously to the making of the same shall have been made or granted of the same premises or any part thereof, and in every such case any rent or rents which may be payable on the said premises in and by such lease or leases, or which may have been also comprised in such lease or leases, shall be paid in such rent or rents, such proportional part to be fixed by the vestry or churchwardens by which the annexation shall be made, as may be due of the said lease or leases be payable to the incumbent of the church or chapel to which the premises shall be annexed, accordingly such incumbent for the time being as may be incumbent of the said lease or leases, have all the same powers for enforcing the payment of such rent or rents, or of such proportional part thereof as a tenant or tenants of any lease or body politic by whom the annexation shall be made, and in that behalf in case the said premises had been conveyed to any church or chapel, might lawfully exercise.

nacted and declared, that where any rectory in
es, lands, tenements, or other hereditaments, w
or chapel under either of the powers hereinb
y part thereof, shall have been anciently or a
reditaments in one lease, under one rent, or d
and after such annexation such other hereditan
f, shall be demised by a separate lease or leases
n the thirty-ninth and fortieth years of the rei
the Third, intituled, 'An Act for explaining
the thirty-second year of King Henry the Eiq
fourteenth years of the Reign of Queen Elizab
l by Archbishops, Bishops, Masters, and Fellow
of Cathedral and Collegiate Churches, Masters
thers, having any Spiritual or Ecclesiastical Li
take effect in the same manner as if the pre
aforesaid had been retained in the possessio
persons by whom such lease or leases as afor

nacted, that such of the powers hereinbefore
tained as are restricted to cases in which the corporation or person by whom
same may be exercised shall be the patron of the benefice which it shall be inte
or desired to augment, shall apply to and may be exercised in cases in which
corporation or person shall be entitled only to the alternate right of presentati
such benefice.

"XVI. Provided always, and be it further enacted, that the power give the said recited act shall not at any time hereafter, nor shall any of the powers hereinbefore contained, in any case, be exercised so as to augment in value any benefice whatsoever, which at the time of the exercise of the power shall exceed the clear annual value the sum of three hundred pounds, or so as to raise the annual value of any benefice to any greater amount than such sum of three hundred and fifty pounds, or three hundred pounds, not taking account of surplice fees.

and further enacted, that in every case in which it shall be necessary for any of the said powers, to ascertain, for the purpose of valuation, the yearly value of any benefice, or of any rectory impropriety, lands, tenements, or other hereditaments, it shall be lawful for the archbishop or bishop of the diocese within which the benefice or rectory shall be situated, or where the same shall be situate within a parsonage, to any archbishop or bishop, then for the archbishop

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rediction shall belong, to cause such clear yearly
ained by any two persons whom he shall appoint
r his hand, (which writing is hereby directed to
rument by which the power shall be exercised,)
rly value, written or endorsed on the instrument
rned, and signed by such persons as aforesaid,
act be conclusive evidence of such clear yearly

be it further enacted, that in every case in which
 said act, or any of the powers hereinbefore con-
 tained, shall be exercised by any bishop,
 or by the master or guardian of any hospital, the
 case of a bishop, with the consent of the arch-
 bishop of a dean, with the consent of the dean and
 archdeacon or prebendary, with the consent of the
 jurisdiction or control they shall be respectively
 master or guardian of a hospital, with the consent of
 visitors (if any) of such hospital, such consent as
 of archbishop, dean and chapter, bishop, or patron
 the case may require,) executing the instrument
 required.

be it further enacted, that the Incumbent of any
authorized to exercise any of the powers afore-
-aments to which he may be entitled in right of

it further enacted, that where the incumbent of same be entitled to any tithes or portion of tithes : being within the limits of such benefice, it shall the time being of such benefice, by a deed duly lites or portion of tithes as aforesaid, or any part within the parish or place in which such tithes or the intent that the same may be enjoyed by the such church or chapel ; and every such deed shall poses whatsoever, any law or statute to the con- always, that every such annexation as aforesaid of the archbishop or bishop of the diocese within situate, (or if the said benefice shall be situate inging to any archbishop or bishop, then with the ishop to whom such peculiar jurisdiction shall nt of the patron or patrons of the said benefice, as said archbishop or bishop and the said patron the instrument by which the annexation shall be

pedient that rectors and vicars should be enabled, ye their rectories and vicarages for the benefit and within such rectories and vicarages, as also in re further enacted, that it shall be lawful for any e of any rectory or vicarage, by a deed duly exe- chapel of ease or parochial chapel, or to any district having a district assigned thereto, whether already ch chapel of ease or other chapel or church, with same belongs, being situate within the limits, or said rectory or vicarage,) any part or parts of the elonging to such rectory or vicarage, or to grant ing of any such chapel of ease or other chapel or annual sum of money, to be payable by equal /ments, and to charge the same on all or any part

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of such tithes or other revenues as aforesaid, or on any lands or other hereditaments belonging to the said rectory or vicarage; and in every case in which a such tithes or other revenues shall be annexed to any such church or chapel aforesaid, the incumbent for the time being thereof shall thenceforth have all the same remedies for recovering and enforcing payment of the premises which shall be so annexed as the rector or vicar for the time being of the rectory or vicar might have had if such annexation had not been made; and in every case

shall be so granted as aforesaid, the incumbent shall have all such remedies for recovering a debt against the incumbent for the tithes or by distress upon the hereditaments to be so annexed in that behalf be specified and given as made: provided always, that every such annexation shall be made with the consent of the archbishop or bishop or vicar or vicarage shall be situate, (or if the rectory shall be situate within a peculiar jurisdiction belonging to a bishop or archbishop, with the consent of the archbishop or bishop to whom such jurisdiction shall be assigned,) and also with the consent of the patron or patrons respectively executing the annexation or grant shall be made.

passed in the fifty-eighth year of the reign of George IV. intitled, 'An Act for building and repairing churches in populous Places,' provision was made enabling any parish to be divided into two or more divisions, and in such cases the glebe lands, tithes, and other property of the parish to be divided among the respective divisions; and it was therein enacted, that during the incumbency of the existing church intended as the parish church, the said distinct parish should remain a chapel of ease, and the provisions herein before contained shall not

be exercised for the purpose of making an annexation or grant to any chapel of ease situate within any division which, under the provisions of the said last-recited Act, shall be intended to become a distinct parish.

"XXIII. And be it further enacted, that in any case in which the consent of the patron of any benefice shall be required to the exercise of any power given by this Act, and the patronage of such benefice shall be in the crown, the consent of the crown to the exercise of such power shall be testified in the manner hereinafter mentioned; (that is to say,) if such benefice shall be above the yearly value of twenty pounds in the king's books, the instrument by which the power shall be exercised shall be executed by the lord high treasurer or first lord commissioner of the treasury for the time being; and if such benefice shall not exceed the year value of twenty pounds in the king's books, such instrument shall be executed by the lord high chancellor, lord keeper or lords commissioners of the great seal for the time being; and if such benefice shall be within the patronage of the crown, the right of the duchy of Lancaster, such instrument shall be executed by the chancellor of the said duchy for the time being; and the execution of such instrument by such person or persons shall be deemed and taken, for the purposes of this Act, to be an execution by the patron of the benefice.

"XXIV. And be it further enacted, that in any case where the consent of the patron of any benefice shall be required to the exercise of any power given by this Act, and the patron of such benefice shall be a minor, idiot, lunatic, or feme covert, it shall be lawful for the guardian or guardians, committee or committees, or husband of such patron (but in case of a feme covert with her consent in writing,) to execute the instrument by which such power shall be exercised, in testimony of the consent of such patron; and such execution shall for the purposes of this Act be deemed and taken to be an execution by the patron of the benefice.

"XXV. And be it further enacted, that in any case in which the consent

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squired to the exercise of any power given by
t of patronage of such benefice shall be part of
wall, the consent of the patron of such benefice
l be testified in the manner hereinafter men-
ment by which the power shall be exercised
rnwall for the time being, if of full age, but if
ronage of the crown in right of the duchy of
xecuted by the same person or persons who is
fy the consent of the crown to the exercise of
spect of any benefice in the patronage of the
nstrument by such person or persons shall be
of this act, to be an execution by the patron of

e it further enacted, that in every case in which
act of the twenty-ninth year of the reign of
f the powers hereinbefore contained, shall be
the same shall be so exercised shall, within
of the same, be deposited in the registry of the
gmented or otherwise benefited shall be locally
situate within a peculiar jurisdiction belonging
the registry of such peculiar jurisdiction.

acted, that an office copy of any instrument
act shall be deposited in any such registry as
tified by the registrar or his deputy) shall be
courts and places, and every person shall be
opy, and shall also be allowed, at all usual and
ct any instrument which shall be so deposited,
to the sum of five shillings and no more for
fore said, and to the sum of one shilling and no
r inspection as aforesaid, and to the sum of six-
uty) for every law folio of seventy-two words
be certified as aforesaid.

acted, that the word 'benefice' in this act shall
end rectories, vicarages, donatives, perpetual
chapelries, district parishes and district chapel-
g a district assigned thereto.

cted, that the powers by this act given to the
shall apply to cases in which the head of the
dean, provost, president, rector, or principal
her denomination, and that such powers shall
be universities of Oxford and Cambridge, and
ter.

it further enacted, that this act shall extend
dom called England and Wales."

1 4, c. 48 (1). [IRELAND.] A.D. 1831.

*the Parliament of Ireland, in the fifth year
e Third, for establishing Public Hospitals in*

11 4, c. 49. [IRELAND.] A.D. 1831.

*passed in Ireland in the fourth year of King
r regulating the Town of Galway, and for
rest therein as limits the Franchise created by
"*

7 Stat. 3 & 4 Gul. 4, c. 92.

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XXI. STAT. 1 & 2 GULIELMI 4, CAP. XLIX. A.D. 1101.

*"An Act for endowing a Church called Saint Bridgett, in the Pa
pool, in the County Palatine of Lancaster."*

XXII. STAT. 1 & 2 GULIKEMI 4, c. 59. A.D. 183

*"An Act to enable Churchwardens and Overseers to inclose Land
Persons residing in the Parish*

[illegible]

it further enacted, that no poor man, woman or child, shall be liable to be sent to any parish or place to whom any land shall be let which shall have been or shall be hired or taken or inclosed under or by virtue of this act or this act, shall gain a settlement by reason of his renting or paying parochial taxes for such lands, either alone or with an apprentice.²⁹

XXIII. STAT. 1 & 2 GULIELMI 4, c. 60(1). A.D. 1

"An Act for the better Regulation of Vestries (2), and for the Auditors of Accounts, in certain Parishes of England and

"Whereas it is expedient to provide for the election of vestries of parish accounts, in certain parishes of England and Wales;

(1) The following is a list of the principal statutes relative to vestries :-

For the regulation of vestries	58 Geo. 3, c. 6
<i>Amended by</i>	59 Geo. 3, c. 1
<i>Vide etiam</i>	7 Gul. 4 & 1
Establishing select vestries	4 & 5 Gul. 4
<i>Repealed in part, and other provisions</i> <i>made, by</i>	59 Geo. 3, c. 1
For the better regulation of vestries in certain parishes	4 & 5 Gul. 4
<i>Vide etiam</i>	1 & 2 Gul. 4
Altering the mode of giving notices for holding vestries	4 & 5 Gul. 4
For the regulation of vestries in Ireland	7 Gul. 4 & 1
<i>Vide etiam</i>	7 Geo. 4, c. 2
	3 & 4 Gul. 4

(2) *Regulation of Vestries*—*Vide* Statutes on Clerical Law, tit. *Vestry*. Rogers' Eccles. Law, 865. Steer's Parish Law, by Clive, 266. 1 Burn's E. L. by Phillimore, 415 (c). Stat. 58 Geo. 3. c. 69 (*ante* 1137). Stat. 59 Geo. 3. c. 12. (*in* Stat. 59 Geo. 3. c. 12. (*in* to amend the Laws for the Poor,"⁽¹⁾ after reciting, that and more effectual

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nt majesty, by and with the advice and consent
and commons, in this present parliament assen-

mend- the members present, who shall preside
e law- therein; and in all cases of equality of votes
vestry upon any question there arising, the chair-
wered, men shall have the casting vote; and every
cerns such select vestry is hereby empowered and
that required to examine into the state and con-
see or dition of the poor of the parish, and to in-
qure into and determine upon the proper
d so objects of relief, and the nature and amount
lential of the relief to be given; and in each case
be a shall take into consideration the character
a sta- and conduct of the poor person to be re-
mem- lieved, and shall be at liberty to distinguish,
ember in the relief to be granted between the de-
409.] serving, and the idle, extravagant, or profligate
wored- poor; and such select vestry shall make
n five, orders in writing for such relief as they shall
t fit to think requisite, and shall inquire into and
ad the superintend the collection and administration
parish, of all money to be raised by the poor's rates,
(such and of all other funds and money raised or
to the applied by the parish to the relief of the
hurch- poor; and where any such select vestry shall
or the be established, the overseers of the poor are
ts who required, in the execution of their office, to
resid, conform to the directions of the select vestry,
e ap- and shall not, (except in cases of sudden
id seal emergency or urgent necessity, and to the
peace, extent only of such temporary relief as each
orized case shall require, and except by order of
stitute justices, in the cases hereinafter provided
sent of for,) give any further or other relief or al-
h, and lowance to the poor, than such as shall be
neither ordered by the select vestry.

poor,) " III. And be it further enacted, that
' Ass every select vestry, to be established by the
t when authority of this act, shall cause minutes to
t is a be fairly entered in books, to be for that
limited purpose provided, of all their meetings, pro-
public ceedings, resolutions, orders, and transac-
whole tions, and of all sums received, applied, and
of the expended, by their direction; and each
g may minutes shall from time to time be signed by
ed and the chairman; and shall, together with a
vestry summary or report of the accounts and transac-
ce, die tions of the select vestry, be laid before the
ecome inhabitants of the parish in general vestry
neg- assembled, twice in every year, that is to
which say, in the month of March and in the
s soon month of October, and at such other times
up by as the select vestry shall think fit; and the
manner minutes, proceedings, accounts, and reports
house- of every select vestry, shall belong to the
and so parish, and be preserved with the other
ch va- books, documents, accounts, and public pa-
nt ves- pers thereof.

to act " IV. Provided, and be it further enacted,
thereof that the churchwardens and overseers of the
ul ap- poor shall cause ten days' notice, at the least,
of the to be publicly given, in the usual manner, of
from every vestry to be holden for the purpose
newed of establishing any select vestry, or of nomi-
: and nating and electing the members, or any
nce in member thereof, and of every vestry to be
shall holden for the purpose of receiving the re-
ch, or port of the select vestry; and every notice
in the of any such vestry shall state the special pur-
chair- pose thereof." [See *vide* Stat. 4 & 5 Gul. 4,
ity of c. 76.]

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bled, and by the authority of the same, that this act and the several provisions

opted, under and subject to the regulations
ishes in England and Wales.

at when in any parish certain of the rate-
parish should come under the operation of
umber of rate-payers amounting at least to
sh, or any number of rate-payers amounting
ome day between the first day of December
quisition, by them signed, and describing
wardens, or to one of them, serving for the
hwardens to ascertain according to the man-
not a majority of the rate-payers of the said
act and the provisions thereof should be
n may be in the form or to the tenor and

ish of [insert here the name of the parish].
ubscribed, being rate-payers resident in the
assessed to the relief of the poor thereof, de-
rdens to ascertain and determine the adop-
cond year of the reign of King William the
"An Act [here insert the title of the act]."
in the year of our Lord

that the said churchwardens of the said
e month of March next after the receipt of

each requisition affix or cause to be affixed a notice to the principal doors of every
church and chapel within the said parish, specifying some day not earlier than ten
renty-one days after such Sunday, and at what place or
a, the rate-payers are required to signify their votes for
his act; which votes shall be received on three succes-
sive days, beginning at eight of the clock in the forenoon and ending at four o-
f each day; and the said notice shall be to the following

of this parish [insert here the name of the parish]
on duly signed according to the provisions of an act o-
f William the Fourth, chapter , for th-
e, the rate-payers of this parish of [insert here the name]
quired, all and each of them, on the day o-
f the two following days, to signify to the said churchwar-
den printed or written, or partly printed or partly written
one of the churchwardens at [insert here the place]
the adoption of the aforesaid act for the better regulation
of this parish.

"(Signed) Churchwardens."

is enacted, that the said declaration shall be to the fol-

street [or place or house] in thi-
sote [for or against, as the case may be,] the adoption o-
f the reign of William the Fourth, chapter
vestries by this parish."

is enacted, that the said churchwardens shall carefully
delivered as aforesaid, and shall compare them with th-
of the poor of the said parish, and shall be empowered
to examine any parish officer touching the said votes, or any
a, and after a full and fair summing-up of the said votes
ording to the form and manner hereinafter prescribed
; thirds of the votes given have been given in favour o-
f it: provided always, that the whole number of person-
s of the rate-payers of the parish: provided also, tha-

GULIELMI IV. A.D. 1830--1837.

on of this act shall be decided by such number of votes

and be it further enacted, that any of the rate-payers of exceeding five together, may inspect, at or in the vestry room place within the same parish, and they are hereby empowered to give for and against the adoption of this act, at a one month after such notice shall have been given: the said parish are hereby required carefully to preserve to permit and allow the examination thereof by the said parish at such reasonable times within the period

and be it enacted, that no person shall be deemed a voter, or do any other act, matter, or thing as such, unless he or she shall have been rated to the relief year immediately preceding his so voting or otherwise and shall have paid all the parochial rates, taxes, and or her at the time of so voting or acting, except such rates due within the six months immediately preceding

her enacted, that notice of the adoption of this act by the churchwardens for the time being of the said parish in the Gazette and in one or more of the public newspapers in which the said parish may be situated, and by affixing to the principal doors of every church and chapel within the parish shall be to the following effect:

That of [here insert the name of parish].

Whereas, that the above-named parish has adopted the act of the 4th year of King William the Fourth, chapter [here insert the title of the act]; and that the numbers of the votes given for and against the adoption of the said act are, [here insert the number of] votes for the adoption thereof, and the adoption thereof.

Given under the hand of [here insert name] in the year of our Lord

“(Signed) [here insert name] Churchwardens.”

and be it further enacted, that if the rate-payers shall be so disposed, against the adoption of this act, then and in as lawful to make another requisition for the same purposes as the first determination.

And be it enacted, that in any parish in which public notice of the manner as aforesaid shall be so made and given, this shall be in accordance with the law for electing vestrymen and auditors of rates in manner hereinafter mentioned.

And be it enacted, that if any churchwarden, rate-collector, or officer shall refuse to call meetings according to the provisions of this act, or neglect to make and give the declarations and notices as required by this act, or to receive the vote of any ratepayer, or shall in any manner whatsoever alter, falsify, conceal, or destroy any votes as aforesaid, such churchwarden, rate-collector, or officer shall be deemed and taken to be guilty of a

And be it enacted, that on some Sunday at least twenty-one days before the annual election of vestrymen, notice of election purporting to be signed by the churchwardens, shall be affixed to the principal door of the said parish, and at other usual places, in

That of [here insert name of parish].

And be it enacted, that any person qualified according to the provisions of the act of the 4th year of King William the Fourth, intituled, “An Act [here

insert the title of the act],” are hereby required to meet at _____ on the _____ day of _____ conformably to the provisions of the said act, and STAT. 1 & 2
then and there to consider of and elect fit and proper persons to be vestrymen and GUL. 4, c. 60.
auditors of accounts of the parish of _____
is to say, _____ for the ensuing year; that

“ “ Members of the vestry.
“ “ Auditors of accounts.’

"XIII. And be it further enacted, that the churchwardens may summon the rate-collectors to attend them on the said day of annual election, in order to assist them in ascertaining that the persons presenting themselves to vote are parishioners entitled to the relief of the poor of the said parish, and duly qualified to vote at the said election. Ratecollectors, &c. may be summoned to assist at the election.

“XIV. And be it further enacted, that on the day of annual election for vestrymen and auditors in any parish adopting this act, each parishioner then rated, and having been rated to the relief of the poor one year, desirous of voting, do meet at the place appointed for such election, then and there to *nominate eight rate-payers* of the said parish as fit and proper persons to be *inspectors of votes* (1), four of such

Form of proceeding at annual elections.

(1) *Nominatè eight rate-payers to be inspectors of votes*:—On the nomination of the eight inspectors to act in the election of vestrymen, under Stat. 1 & 2 Gul. 4, c. 60, s. 14, the decision of the chairman, as a show of hands, that one or the other party has a majority, is not conclusive, but he is bound on requisition from either side, to take steps for ascertaining the numbers: and it seems, that the proper course, on such requisition, will be to divide the meeting. *Regina v. St. Pancras, Middlesex (Vestrymen of)*, 11 A. & E. 15. See vide *Regina v. St. Mary, Lambeth (Churchwardens of)*, (3 N. & P. 416), where it was held, that at an election of parish officers, the poll, if demanded upon a show of hands, must be taken of the rate-payers generally: and that the election will be a nullity, if the poll be confined to persons present when the poll is demanded.

The mere existence of party feeling in the chairman is not sufficient ground for impeaching a nomination of inspectors under Stat. 1 & 2 Gal. 4, c. 60; but, if, after improperly refusing to ascertain the numbers voting he has declared certain persons to be the inspectors nominated by the meeting, and the election of vestrymen has thereupon taken place, the court will grant a *mandamus* for a new election, although a considerable time has elapsed. And if four inspectors have been improperly declared to be nominated by the meeting, such *mandamus* will be granted, although the other four inspectors were duly nominated by the churchwardens, and officiated at the election. Thus, in *Regina v. St. Pancras (Vestrymen of)*, (11 A. & E. 15.), Lord Denman stated: "This was an application to compel proceeding to a new election of vestrymen, on the ground that the election which took place in May was a nullity, the sense of the meeting in respect of the nomination of inspectors not having been duly taken by the churchwardens who presided there."

"The act 1 & 2 Gul. 4, requires, as preliminary to the election of vestrymen, the nomination of eight inspectors, four by the churchwardens, four by the meeting. On

this occasion the churchwardens, having nominated their four, called upon the meeting to nominate four others. Two lists of four were accordingly prepared by the two parties, and, on a shew of hands having been required on both successively, the churchwardens expressed their decision in favour of one set; upon which the friends of the other demanded a division of the voters present, that the numbers appearing on each side might be counted. This course the churchwardens refused to take, though frequently pressed to do so, and declared the election carried by the shew of hands as at first.

"The affidavits in support of the rule went into a vast deal of extraneous matter, not enough connected with our immediate subject to require notice here. Expressions of the more active churchwardens were deposed to, shewing a determination to favour his own party, which were by no means satisfactorily explained away by himself. The defeated party claimed the majority of votes at the meeting; but the other party were in much greater numbers, to their confident belief the other way. In arguing against the rule many propositions were laid down, which appear to us wholly untenable. It was boldly urged, that the decision of a returning officer is binding and conclusive, however partial and unfair, and in whatever degree his partiality and unfairness may have affected the result of the election. What he chooses to declare, (it was said,) must stand, though his misconduct may expose him to punishment. The claim of such a privilege refutes itself. Mere feelings of partiality in a returning officer towards the successful candidate cannot, indeed, be sufficient to vacate the election, conducted fairly and with regularity. But, if proper means are taken for challenging an election good in form, but reasonably suspected to be the result of maneuvering practised by persons in authority, for selfish or party purposes, we cannot be bound by a result so brought about, and cannot refuse to put the facts into a course of inquiry: and the temporary inconvenience, though much to be lamented, that may be produced

ed by the churchwardens, and the other four to be nominated id after such nomination the said parishioners shall elect such qualified as may be there proposed for the offices of vestrymen he chairman shall at such meeting declare the names of the ive been elected by a majority of votes at such meeting. always, and be it further enacted, that any five rate-payers, in writing or otherwise, demand a poll(1), which shall be h rate-payer delivering to the aforesaid inspectors two folded

lections is an evil influence which forced by this court to rupt abuse of lawful y, or impossibility, raw with the act of par f the lapse of time was med. For, though the take place in May, yet ice of this court is to oceedings held at the direct others in their t would be too great ce, if we should enable r the performance of a use it had done wrong

f nominating inspectors was described as not y, so that non-compl could not vitiate an elec- need say no more in e, than that the powers the inspectors place the self completely in their thing depends on their ated.

nt required much more returning officers say ted to their proceeding nds, and made a wrong . They contend that ction are known to the ew of hands, and by a jectors who complained the show of hands was have demanded a poll, ; should be divided and ide counted; an inter- own to the ordinary no returning officer troduce. On this point n support of the rule, nth section of the act, d mode of election, or is thereby introduced; of inspectors is to be g, that is, by such as t at the meeting; that, shew of hands is dis- at the meeting must be giving their votes on y the officer; that this a majority is practised rliament; and that a l parishioners to come e inconsistent with the ecision to that meeting. id sect. 14 of Stat. 1 &

truck by these observa- reasoning at least plan-

sible. The business of nominating inspectors is apparently intended to be begun and finished at that meeting, some reasonable precaution being taken that none but rate-payers are present; and the election of vestrymen is to follow without more delay: if the shew of hands and poll were the method, the preliminary process itself might be indefinitely prolonged; for the common-law right on that subject, is generally understood to be, that any voter, however satisfied with the correctness of the declaration on the shew of hands, yet may appeal from it to the whole body of electors, (*Campbell (Clerk) v. Mound*, 5 A. & E. 865; *Regina v. St. Mary, Lambeth (The Rector of)*, 8 *Ibid.* 356,) and keep a poll open till all have had the opportunity of attending to record their suffrages. Now, if the churchwardens were bound to declare the nomination of the four inspectors as made by that meeting, they had no other means of coming to a just conclusion, than by dividing and counting those present, as they were required to do, supposing any doubt to exist on which side the majority appeared.

"But we do not deem it absolutely necessary for our present decision to lay down any rule on the fourteenth section. For, whether that construction prevail, or the more ordinary method be adopted, the shew of hands ought to be fairly taken. Was it so taken? A strong doubt was expressed at the time whether the churchwardens had not made an erroneous report of the numbers on each side: it is even now sworn, by several who were present, that the majority was the other way; nothing could be more reasonable than the demand, that the numbers should divide and be counted. If this had been done with closed doors, certainty would have been obtained in a few minutes. But the churchwardens took upon themselves to declare the respective numbers in favour of that party to which they avowedly belong, at the very moment when they refused to ascertain the truth. The affidavits now produced by them and many others, of their belief respecting this doubtful matter, do not meet the just complaint that they might have spoken with perfect knowledge; and that belief is, indeed, founded on remarks and reasonings which are detailed, and are very far from being conclusive.

"These considerations have brought us to the opinion, that the mandamus ought to issue." Vide *Rex v. Birmingham (Rector & Churchwardens of)*, 7 *Ibid.* 254.

(1) Demand a poll:—As to the right of demanding a poll under a local act of parliament, vide *Campbell (Clerk) v. Mound*, 5 *Ibid.* 865.

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papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names of the persons for whom such parishioner may vote as fit and proper to be auditors of accounts; provided always, that each rate-payer shall have one vote and no more for the members of the vestry, and one vote and

no more for the auditors to be chosen in the said parish.

And it is enacted, that the inspectors of votes shall deposit the same, after having duly opened the same, in two separate sets of ballots for the vestry lists, and another for the auditors' lists; and the glasses or boxes shall be closed at the time fixed, that is, at four of the clock of the afternoon of

the day so enacted, that after the close of the said ballot the inspectors shall be at liberty to examine the said votes, and if necessary shall be at liberty to remain in the parish for a period of four days, not exceeding four days, and shall have decided upon the persons duly qualified of this act who may have been chosen to fill the

vacancies. And it is enacted, that if an equality of votes should appear in any case, the inspectors shall decide by lot upon the persons to be chosen.

And it is enacted, that if any person do forge or in any way falsify any paper or list purporting to contain the vote or list of persons to be chosen for vestrymen or auditors, or do by any means prevent the purposes of such mode of election, upon information laid, and conviction before any justice of the peace having jurisdiction in the parish so adopting the same, he shall be liable to a penalty of not less than ten and not more than fifty pounds,

and in default of payment thereof shall be imprisoned for a term not exceeding six months; and any fine so levied shall be given, half to the informer who shall have informed against the person so offending, and the other half to the poor of the parish in which the said offence shall have been committed.

"XX. And be it further enacted, that the aforesaid inspectors shall, immediately after they shall have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, serving for the parish so adopting this act, a list of the persons chosen by the parishioners to act as vestrymen and auditors of accounts; and the said list, or a copy thereof, shall be affixed to the doors of the churches and chapels or other places chosen for the purposes of public notice in the said parish.

"XXI. And be it further enacted, that if any inspector as aforesaid shall wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the said parish, and upon conviction for such offence, be liable to a penalty of not less than twenty-five pounds and not exceeding fifty pounds.

"XXII. And be it further enacted, that in all parishes adopting this act the meeting of parishioners for the election of the vestrymen and auditors of accounts by the parishioners shall take place in the month of May in every year; provided always, that when a ballot is demanded at such election the same shall commence on the following day, and continue for three successive days, commencing at eight of the clock of the forenoon and closing at four of the clock in the afternoon on each day; provided also, that the day on which such election shall commence shall in the first instance be appointed by the churchwardens of the parishes adopting this act, but in every subsequent year shall be appointed by the vestry; provided always, that when by reason of the populousness of any parish the said parish shall have been or shall be divided into districts for ecclesiastical or other purposes,

aid votes shall be taken, according to the aforesaid nient place, at the discretion of the churchwardens of the said parish.

enacted, that in all parishes adopting this act the hereinbefore mentioned shall, when the said act ist of a certain number of resident householders, 1 for every parish in which the number of rated e thousand; and twelve other additional vestry-men for every parish in which the rated house-d; and twelve other additional vestrymen, that is, parish in which the number of rated householders so on at the proportion of twelve additional vestry-ruseholders; provided always, that in no case the d one hundred and twenty; provided always, that number of vestrymen are given by special act of aforesaid will amount to, that then the number of ne as given by such act of parliament; and pro-strict rectors, vicar, perpetual curate, and church-constitute a part of the said vestry, and shall vote men as aforesaid elected under this act; provided ich rector or other such minister as aforesaid, from listric as aforesaid, shall *ex officio* be a part of or

enacted, that at the *first election*(1) for vestrymen any parish one third of the then *existing vestry* (2) ut not exceeding the same, shall retire from office, by lot,) and the parishioners duly qualified shall

at for the Gul. 4, c. ere must e annual umber of e act is must be restry, at umber of the full ry would umber sting; at original fiddiness . ct at the l persons election elected as

a parish uly been y a local of a ves- be taken pable of act; and scute the e same, lification ent from c. 60; it be taken he latter " With off under

the twenty-fourth section, three constructions of the clause in question present themselves. The first is that proposed by Sir James Scarlett. He argues that 'vestry' means the corporate body; and that one third of the total corporate body is to be taken out at the first election, and that the vacancies which had occurred are to make a part of this third, so that the number to be taken away by lot would be only twenty-six. I think it is im-possible to support this construction. It is clear that one third was to retire by lot; that cannot be made up of persons who have died, or resigned, before the election. The second construction is, that one third of the total corporate body should be lotted off, without taking notice of existing vacancies; that is, in the present case, that forty should be lotted off, independently of vacancies before created. This construction appears to me equally unreasonable with the first. Suppose the original body to have been reduced by vacancies as low as forty; then, if forty had retired, none of the original vestry would have been left after the first election; and the statute gives no power for filling up the number, except by the election of the forty new vestrymen. The third and only remain-ing construction must therefore be adapted; that is, that the fraction to be lotted off is to be estimated upon the number of then exist-ing vestrymen. This is what has been actu-ally done. With respect to the method of taking the poll, it is said that the four dis-tricts of this parish satisfy the words 'divided for other purposes.' But it is sufficiently explained in the affidavits, that this is merely

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elect a number of vestrymen equal to one third of the vestry to be chosen according to the provisions of this act; and that on the next ensuing annual election for vestrymen one half, or as nearly as may be one half, of the remaining part of the first aforesaid vestry shall retire from office, (such portion to be determined by lot,) and the parishioners duly qualified shall again elect a number of vestrymen equal to one third of the vestry, to be chosen according to the provisions of this act (1); and that on the next, that is to say, the third annual election for vestrymen, the last remaining portion of the vestry as aforesaid shall retire from office, and the parishioners duly qualified shall elect vestrymen in like manner and number as at the two preceding elections, so as to fill up the vestry to the exact number of vestrymen prescribed by this act.

“XXV. And be it further enacted, that at every subsequent annual election those vestrymen who have been three years in office shall go out of office, and the parishioners shall elect, according to the provisions of this act, other vestrymen, to the number of one third of the total number of which such vestry shall consist, as also fill up any vacancies which may have occurred from death or other causes; provided always, that any or all of the vestrymen so going out by rotation may be immediately eligible for re-election.

“XXVI. And be it further enacted, that the vestry elected under this act in any parish not within the metropolitan police district of the city of London shall

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a division which has been made for the convenience of the collectors, and that it may be varied at any time. It is also said, that a division has been made by the annexation of a part, for ecclesiastical purposes, to the adjoining parish. But that is not a division 'into districts;' it is only a subtraction of a part from the rest of the parish. Another ground of objection was the alleged want of qualification of some of the vestrymen, under the twenty-sixth section. I have no doubt of the construction which we ought to give to this section. It is not impossible that the framers of the clause may have had a different construction in view, in the several cases of parishes without and parishes within the metropolitan police district. He may have meant that, in the former case, the rating might be on the land, and in the latter on the house only. But the rule for construing a statute is, to collect the meaning from its grammatical construction, unless that leads to an incongruity. Now, by the words of this section, it is sufficient if the householder be rated in any way; it is not necessary that he should be rated in respect of the subject of his occupation. As to this, the provision is the same for parishes in the country or in

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find no express provision that the rate shall be in respect of the property occupied; and I cannot infer such an intention. Certainly the clause is inaccurately expressed. But, supposing some of the vestrymen to be improperly elected, from want of qualification, it is clearly my opinion that there would still be no ground for issuing this *mandamus*. The election would be void so far only; there would have been elected less than forty, by the number not duly qualified. The *mandamus* should, therefore, direct the supplying this number only; and this disposes of so much of the objection as relates to the persons who have become qualified only since the election. I think these persons were not duly elected; but that does not make the whole proceeding void: such a construction would entail most serious consequences upon corporations. Supposing one of a common council were illegally elected, it would be monstrous to say that all elected at the same time were badly elected. The objection respecting the oath is disposed of by the fact, that the oath is no longer applicable. It was imposed to secure the existence of a particular qualification in the persons acting; the qualification is now changed, and the evidence of it is different. I am therefore clearly of opinion, that this *mandamus* ought not to issue, and that the rule should be discharged." *Res v. St. Pancras, Middlesex* (*Churchwardens, &c*) 1 A. & E. 80.

(1) *Chosen according to the provisions of this act*:—Where a parish adopting the act had previously been divided into four districts, for the more conveniently collecting the rates, and this division had been adopted for taking the poll in the election of members of parliament; a small part also of the parish was annexed to a part of an adjoining parish, and separated from the original parish, for ecclesiastical purposes: it was held, that the election of vestrymen and auditors might be made in one place of the parish only. *Ibid.*

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ed or assessed to the relief of the poor upon a
id no person shall be capable of acting (1) as one
the occupier of a house, lands, tenements, or
n the afore-mentioned amount of rental within
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nted to the said vestry; provided always, that
, construed, or taken to repeal, alter, or invali-
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enacted, that all powers or duties to be per-
h adopting this act may be exercised and per-
part of such vestry assembled at any meeting,
rymen present at a meeting of a vestry which
vestrymen and not exceeding twenty-three, and
present at a meeting of a vestry which consists
trymen and not exceeding thirty-five, and not
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wards; and all orders and directions given and
ered into by the vestrymen present at any such
then assembled, shall be as valid and effectual
said vestrymen for the time being, and shall be
such vestrymen, provided that the same is con-
ting of the vestry.

eting: joournment, in a particular event, being part
of the original appointment. Lord Den-
mum observing, "The objection has been
voiced distinctly and plausibly put. But those who
Med at summon a meeting of this kind must ne-
g and cessarily lay down some order for the pro-
Phill. ceedings: and I think it is competent to
in all them to say, that the meeting shall be held in
of the one place, and, in a certain event which may
stry is require it, shall be removed to another. There
is no surprise or injustice proved in this case.
(f), (1 It is not like *Stoughton v. Reynolds*, (3 Str.
vestry 1045.) There it was held, that the chairman
for the could not adjourn the business of the vestry
given while it was in progress; but here the busi-
parish ness was not in progress at the time of the
ded, it removal to the town hall. It had been an-
At the nounced that, if there should be a poll, it
, upon would be taken in the town hall; and ne-
respon ther the show of hands nor the poll was
of the interrupted by the proceeding which took
e town place."

s held, "In the course of the argument, the court
business adverted to a case of *Rex v. St. Mary*,
he ad-

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"XXIX. And be it further enacted, that in any case in which the vestry room of any parish in any city or town shall not be sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish or place, but not in the church or chapel thereof.

"XXX. And be it further enacted, that at every meeting of any vestry, in the absence of the persons authorized by law or custom to take the chair, the members present shall elect a chairman for the occasion before proceeding to other business.

"XXXI. And be it further enacted, that the vestry of every parish adopting this act shall cause to be provided and kept a proper book or books, and proper entries to be made therein of the names of the several vestrymen who shall attend the respective meetings of the vestry, and of all orders and proceedings made or taken at such meetings; and all such books shall at all reasonable times be open to the inspection of the said vestrymen, and of any person rated or assessed to the relief of the poor of the said parish, and of any creditor on the rates of the said parish, without fee or reward; and the said vestrymen, persons, and creditors, or any of them, shall and may take copies of or extracts from such books respectively, without paying anything for the same; and in case the clerk to the said vestry, or other person having the care of such books, shall refuse to permit or shall not per-

Lambeth (Churchwardens of), T. T. 1832. in which a rule nisi had been obtained for a *mandamus* to elect churchwardens, &c., on the ground, that on the occasion when the persons then acting were supposed to have been elected, the rector, who was in the chair, had, upon a poll being claimed, adjourned the meeting for that purpose from the school-house (where it was holden by appointment) to the church, of his own authority, and that he had postponed the poll till some other business, which he considered necessary, had been disposed of. The poll was gone into on the same day, and continued on subsequent ones, at the church. No previous notice had been given of such adjournment. The affidavits were numerous, and went into much detail. The statements in opposition to the rule tended to show, that the poll could not have been properly, if at all, taken in the school-house, from the nature of the place, and the numbers and tumultuous state of the meeting; and the rule was also opposed on other grounds, independent of the discretionary power of the chairman to adjourn; viz., a former practice of electing at the church, and an alleged acquiescence, on the present occasion, by the parties now complaining. *Stoughton v. Reynolds*, (2 Str. 1046,) was cited in support of the rule, upon which Mr. Justice *Parker* observed, that in that case the adjournment was to a subsequent day, and asked if the poll could not have been adjourned from one room into another? The court considering the question too important

to further consideration, and it was brought on being term, it was proposed, parties, that the judgment rely in the vacation, and at the last day of term. The court, ordered that the rule be granted, but it was understood that the rule was not to be granted.

Saviour's, Southwark, (1 Ibid. 390,) Lord

Dennis delivered the judgment of the court in the following language: "A rule was obtained in the Bail court, in Hilary term, to show cause why a *mandamus* should not issue, directing the churchwardens of the parish of St. Saviour's, Southwark, to assemble the parishioners of the said parish, for the purpose of taking the poll upon a motion put to the vote by a shew of hands at the general or vestry meeting of the inhabitants of the said parish, holden on the 21st of January last, viz., that the resolutions of the general or vestry meeting of the inhabitants of the said parish, holden on the 7th of January then instant, as to the monuments to be erected to the memory of certain persons, might be confirmed. These persons had bequeathed property to be applied to particular objects of charity in the parish. At a vestry meeting, holden on the 7th of January last, a resolution was proposed and carried, that a tablet or monument should be erected to record the bequests of the donors, to be paid for out of the funds issuing from the bequests. On the 21st of January another vestry meeting was held, at which the resolution of the last meeting was confirmed upon a shew of hands. A poll was demanded by the opponents of the resolution; but the churchwarden, who presided at the meeting, refused to grant it. Then the present rule was obtained. It was objected, that such an application of the funds would be a breach of trust, and that the court ought not to grant a *mandamus* for the purpose of putting it to the vote, whether such a breach of trust should be committed. We are of opinion that a *mandamus* cannot be granted, and for the reason suggested. It may be said, that the object in demanding the poll was to set aside the illegal resolution which had been passed by the shew of hands; but we cannot assume that the result of the poll would be to rescind the resolution. If the result were the other way, it would be said that the poll was taken under the authority of a *mandamus* from this court."

ELMI IV. A.D. 1830—1837.

reons or creditors to inspect the same, or to take
, such clerk or other person shall forfeit and pay
ten pounds for every such offence.

enacted, that the said vestry shall and they are
or books to be provided and kept, and true and
rein of all sums of money received and disbursed
poses, and of the several articles, matters, and
oney shall have been so received and disbursed;
easonable times be open to the inspection of the
or persons rated to the relief of the poor of the
r creditors on the same, without fee or reward;
s and creditors as aforesaid, or any of them, shall
ts from the said book or books, or any part or
thing for the same; and in case the clerk to the
rith whom such books shall remain, shall on any
it or shall not permit the said vestrymen, per-
n, to inspect the said book or books, or to take
id, such clerk or other person as aforesaid shall
ding ten pounds for every such offence.

enacted, that in any and every parish adopting
alified to vote for vestrymen as aforesaid shall
arish, who shall have signified in writing their
counts, which auditors shall be so elected on the
m shall be chosen after such parish shall have
o the same forms of voting as are hereinbefore
aid vestry: provided always, that no person shall
f auditor of accounts, who shall not be qualified
act, as hereinbefore stated, to fill the office of
and provided always, that no person shall be
ditor of accounts who shall be one of the vestry
mon on the day of annual election shall be chosen
y and an auditor of accounts, the said vestry at
ction shall declare the said person incapable of
lso, that no person shall be eligible to fill the
who shall be interested, either directly or indi-
ness, or employ, or in providing or supplying
parish for which he is to serve; and any person
election, to be so interested, shall cease to be an

enacted, that the aforesaid auditors of accounts
year, at the board room of the vestry, and (a
; present at such meetings) shall proceed to audit
for the preceding half year, in presence of the
are hereby required, by their said clerk, to pro-
tors at every such meeting a true and just state-
ompanied with proper vouchers, of all sums of
the hands of the said vestry or of their treasurer,
nt, or expended by them, or by any churchwar-
r persons by them employed, and responsible to
od up to which the accounts of the said vestry
in which other boards shall have control over
ure, the said auditors shall have the same power
ficers thereof as of examining the accounts and
the accounts (1) of the said boards in the same
of the said vestries.

Res v. E. 535,) where a *mandamus* to account before
A. & auditors under Stat. 1 & 2 Gal. 4, c. 68, re-

STATUTA GULIELMI IV. A.D. 1830-1837.

* XXXV. And be it further enacted, that the said auditors shall have summon and call before them, by a writing for that purpose, signed by a

cited that the auditors "duly appointed and acting under and by virtue of an act," &c., "in exercise of the powers given to them by the said act," had summoned the parties to account: it was held, that, in a *mandamus* for this purpose, it was not necessary to state more fully the adoption of the act by the parish, and the due appointment of the auditors.

The statute enacts that the auditors "shall meet twice at least in each year, at the board room of the vestry, and (a majority of the said auditors being present at such meetings,) shall audit the accounts of such vestry; and the vestry are required, "at every such meeting," to produce a true account in writing, &c. And the auditors are to have the same power of examining the accounts of certain other boards, and are to audit them in the same manner. A *mandamus* issued, calling upon a board to attend with, and produce to the auditors, their accounts, at such time and place, or at such times and places, as a majority of the auditors might appoint, and then and there give such information as to the accounts as they might be enabled to give, according to the directions of the act.

On return to such *mandamus*, and conclusions obtained on the part of the crown: it was held, that the *mandamus* exceeded the authority given by the act; and that the court could not in part enforce it, by a peremptory *mandamus* limited as to the place of meeting. And the court quashed the *mandamus*: Lord Denman observing, "It is quite clear that we cannot grant a peremptory *mandamus* calling on these parties to do what they are not obliged to do by law. The *mandamus* requires the trustees to do a particular act, that is, to attend with, and produce to the auditors, their accounts, in any place and at any time that a majority of the auditors may think fit to appoint. The auditors had no power to make such a requisition. It may be that the power, if exercised, would not be abused, but we cannot call upon these parties to obey a demand made in terms which are contrary to the restriction of the statute. It is said that the generality of the demand is qualified by the words, "according to the directions of the said act;" but it cannot be so qualified by an expression which would require the parties to whom the writ is directed to look into an act of parliament. It is contended, that the requisition of the writ may be partly good and partly bad, and that the valid part may be enforced; and it is true that, in *Res v. Leicester (The Justices of)*, (4 B. & C. 891,) on a motion being made for a *mandamus*, requiring more than the court thought fit to be demanded, a rule was granted in less comprehensive terms, adopting that part of the motion which the court thought good. But here the thing which we are required to enforce is irregular. The court said there, that they would mould the rule so as to meet the justice of the case. But here it is not a rule, but the writ itself, that is before us. We must enforce it in

the terms in which it has issued, *ali.*"

In *Res v. St. Pancras (Chas free of)*, (6 A. & E. 314,) it was trustees appointed under a local act for a new parish church, with powers for that purpose and for debts to be incurred under the act, to account before parochial as appointed under the Vestry Act, 5 Gul. 4, c. 60, as a board having or part of the parochial expenditure: the local act requires such trustees an account of the assessments, repayments under the act, to be examined once a year at quarter sessions, though, by the same act, their accounts open to inspection (on payment any person liable to the above rate

A *mandamus* calling on such trustees to produce before the auditors "the (without limit as to time) kept by the local act, and requiring the trustees to produce the books which may concern the above account held to be bad, as exceeding the given by Stat. 1 & 2 Gul. 4, c. 60, 35; although such *mandamus* be citing a demand made by the auditors the trustees in terms conformable and a refusal to comply with such Lord Denman stating, "Two objections made to the writ. The former grounds either urged against the issuing of the writ, or applicable which might then have been urged have considered this part of the writ with much attention; but we see to depart from the opinion which upon the previous discussion, and to the judgment given upon that and which was not come to with consideration. The judgment will in 5 N. & M. 223. [*S. C. Res v. St. Pancras (Church Trustees of)*, 6 A. & E. (a).] It is unnecessary to add to what is there laid down.

"The second objection arose mandatory part of the writ, which to go farther than was warranted by the recitals of the writ, or by 5 Gul. 4, c. 60, ss. 34, 35, under which writ had issued. The writ recited that the trustees had been called on to lay and audit of the parish a true and correct account in writing, as with proper vouchers, of all sums monies paid and expended, within year preceding the 31st of May past; and the recital also states that the clerk had been required to bring a true account, writings, papers, and which might concern the said parish. Now, by the thirty-fourth section of the act, the auditors are to meet twice in each year, and to have laid before them a true and just statement or account, accompanied with proper vouchers

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' parish adopting this act, any parish
er concerned in the said accounts, and
l the said auditors at any meeting or
all books of accounts, writings, papers,
n the said accounts, and to give such
accounts as he, she, or they shall be
other person refusing so to attend, or
of such inquiry, shall be deemed guilty

that the said accounts, when audited
major part of them, shall be by them
aforesaid vestry of any parish adopting
all also affix his signature to the same;
ors to subjoin such remarks thereto as

hat the said accounts, when so audited
clerk of the said vestry; and that the
and accessible for the examination, at
he relief of the poor of the said parish,
vided always, that nothing in this act
luty of auditors shall debar the parish-
essed by the law of the land.

that an abstract of the accounts of all
y in any parish adopting this act shall
fter the same shall have been audited
ut by the said vestry, either in writing
ll be delivered to all persons applying
lief of the poor of the said parish, such
d which copies the said clerk is hereby
in writing or print, and distributed

hat in any parish adopting this act the
east in every year, a list of the several
and of all charitable foundations and
sh, and under the control of the said
tailed account of the place where such
ite, or in what mode and security such
se yearly rental of each, and the parti-
the names of the persons partaking of
all be allotted to the poor of the parish
case, and also stating the name and
estates are vested, and the names and
r: provided always, that the aforesaid
rate-payers, at the office of the vestry

be writ commands them to produce 'the
accounts' kept by them under the act of 56
Geo. 3, and also those kept by them under
be act of 1 & 2 Geo. 4, as trustees as afore-
aid, and commands the clerk to bring with
im the books of account, writings, papers,
nd documents, which may concern 'the said
accounts' kept by the said trustees. These
eneral words would certainly not be construed
y obeying the limited requisition stated in
be recital, to which alone the refusal of the
rustees applies, and to which alone in our
pinion the statute of 1 & 2 Geo. 4 extends.
or this reason we think the writ cannot be
sustained. The *monedamus* must, therefore,
e quashed."

clerk, at the same time with the accounts, when audited according to the provisions of this act.

STAT. 1 & 2
GUL. 4, c. 60.

“XL. Provided always, and be it further enacted, that this act or anything therein contained shall not extend or be construed to extend to invalidate or avoid any ecclesiastical law or constitution of the church of England, save and except so far as concerns the appointment of vestries, or to destroy any of the rights or powers belonging to the archbishops, bishops, deans, or other of the clergy of the said established church, either as individuals or as corporate bodies, or in anywise to abridge or control their ordinary jurisdiction over or relating to any matter or thing respecting the ministers thereof.

Saving of
ecclesiastical
jurisdiction.

“XLI. And in order to remove doubts as to the meaning of certain words in this act, be it enacted, that the word ‘justice’ shall be deemed to mean justice of the peace; and that the words ‘person’ and ‘party’ shall be deemed to include any number of persons or parties; and that the words ‘justices of the peace of the county or city’ shall be deemed to include justices of the peace of any division of a county, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate; and that the word ‘parish’ shall be deemed to include any liberty, precinct, township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word ‘rate-payers’ shall include ‘ley-payers,’ and that the meaning of the several words in this act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only.

Meaning of
terms used in
this act.

“XLII. And be it further enacted, that the words ‘church or chapel,’ inasmuch as regards the affixing of notices as by this act directed, shall be deemed to include all places of religious worship according to the forms of the established church; and that in any parish or place not having a parish church or chapel as aforesaid the said notices shall be affixed to some public building within the limits of the said parish or place.

As to affixing
notices.

“XLIII. Provided always, and be it further enacted, that nothing in this act contained shall extend to any parish not being within or being part of any city or town, in which parish there shall not be a greater number than eight hundred persons rated as householders, and having paid the rates for the relief of the poor within the year preceding that in which the provisions of this act may be desired to be put in execution within such parish.

Act not to ex-
tend to parishes
where not
more than 800
rate payers, ex-
cept in cities
or towns.

“XLIV. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without the same being specially pleaded.”

Public act.

XXIV. STAT. 1 & 2 GULIELMI 4, CAP. LXXV. A.D. 1831.

“An Act to repeal in part an Act passed in the Parliament of Ireland in the thirty-second year of the Reign of King George the Third, relating to a portion of the Lands of Ballinaspeg, near the City of Cork, belonging to the See of Cork; and to enable the Bishops of that See to demise the same under certain Restrictions.”

STAT. 1 & 2
GUL. 4, CAP.
LXXV.

XXV. STAT. 2 GULIELMI 4, c. 7. [IRELAND.] A.D. 1832.

“An Act for the Relief of His Majesty’s Subjects in Ireland, being Protestants of the Established Church, and to repeal an Act passed in the Parliament of Ireland in the thirty-third year of the Reign of His Majesty King George the Third, intituled, An Act to remove some Doubts respecting Persons in Office taking the Sacramental Test.”

STAT. 2 GUL.
4, c. 7. [Ir.]

“Whereas an act was passed in the parliament of Ireland in the nineteenth and twentieth years of the reign of his majesty King George the Third, intituled, ‘An Act for the Relief of His Majesty’s faithful Subjects, the Protestant Dissenters of this Kingdom, and to repeal a Clause in the Act of the second of Queen Anne, intituled, “An Act to prevent the further Growth of Popery,” as far as the same relates to the Protestant Dissenters,’ whereby, after reciting a certain clause of an

19 & 20 Geo.
3. [Ir.]

IV. A.D. 1830—1837.

d in the second year of the reign of her
prevent the further Growth of Popery,
persons, being protestants, should and
offices, civil or military, and receive any
y reason of such office or place, notwith-
ved the sacrament of the Lord's supper,
without incurring any of the penalties in
or in respect of his neglect of receiving
n the said parliament of Ireland in the
ajesty King George the Third, intituled,
ing Persons in Office taking the Sacra-
that the said act of the nineteenth and
the Third did not and doth not extend,
rued to have extended, to protestants of
d, but to protestant dissenters only: and
unta, being members of the established
from which protestant dissenters are
mg's most excellent majesty, by and with
sal and temporal, and commons in this
s authority of the same, that the said
of the reign of his majesty King George
y repealed from and after the passing

acted, that the said act of the nineteenth
majesty King George the Third doth and
ed to extend and to have extended to
by law established and to protestant

at all persons being protestants of the
possession of any office, command, place,
ceipt of any pay, salary, fee, or wages in
, by virtue of or under the before-men-
of her majesty Queen Anne, or any other
e heretofore taken or ought hereafter to
pper, or to file a certificate thereof, shall
possession and enjoyment of the said
services, employments, pay, salaries, fees,
air omission or neglect to take or receive
file such certificate thereof, and shall be
charged from all incapacities, disabilities,
dy incurred or which might hereafter be
sion or neglect; and that no election of
son, or under his authority, and not yet
roided by reason of any such omission or
act shall be as good, valid, and effectual
mid sacrament of the Lord's supper and
anner prescribed by the said act of the
neen Anne; anything in the said act, or
proof notwithstanding."

C. 9. [IRELAND.] A.D. 1832.

*Fifty-eighth and fifty-ninth years of the
Third, for establishing Fever Hospitals,
s in Ireland."*

STATUTA GULIELMI IV. A.D. 1830—1837.

XXVII. STAT. 2 GULIELMI 4, c. 40. A.D. 1832.

"An Act to amend the Laws relating to the Business of the Civil Department the Navy, and to make other Regulations for more effectually carrying on Duties of the said Departments."

"XXXII. And be it further enacted, that if any person shall forge or falsify any certificate to be given under the authority of this act, by the commissioners for executing the office of lord high admiral, or any of them, or by the superintendent, of the purchase or sale of any naval or victualling stores, or shall utter or publish any false or altered certificate of any such purchase or sale, knowing the same to be false; or if any person shall take a false oath, or make a false affirmation, or give false evidence before any commissioner or commissioners executing the office of lord high admiral aforesaid, or before any superintendent or inspector of seamen's wills, touching any matter which the said commissioner or any of them, or any superintendent or inspector, are or is authorized to inquire into; every such person being duly convicted of any such offence or offences shall be liable to suffer such punishment, pains, and penalties as persons guilty of wilful and corrupt perjury are by law subject to.

"XXXIII. And be it further enacted, that the petition for probate of wills or letters of administration of the effects of any deceased petty officer or seaman, non-commissioned officer of marines, or marine, or for obtaining a check or certificate in lieu of probate or letters of administration in cases of claims where the deceased's assets shall not exceed thirty-two pounds and twenty pence respectively, shall be addressed to the inspector of seamen's wills, and shall be forwarded to the secretary of the admiralty; and if any person shall subscribe, utter, or publish any false petition or application to the said inspector, knowing the same to be false, in order to obtain or to enable any other person to obtain a check or certificate in lieu of probate or letters of administration as aforesaid, every person so offending shall be deemed guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year."

XXVIII. STAT. 2 GULIELMI 4, c. 41. [IRELAND.] A.D. 1832.

"An Act to facilitate the Recovery of Tithes in certain cases in Ireland, and for Relief of the Clergy of the Established Church."

XXIX. STAT. 2 GULIELMI 4, c. 42. A.D. 1832.

"An Act to authorize, (in Parishes inclosed under any Act of Parliament,) letting of Poor Allotments in small Portions to industrious Cottagers."

"Whereas in parishes inclosed under acts of parliament there are in many cases allotments made for the benefit of the poor, chiefly with a view to fuel, which are now comparatively useless and unproductive; and whereas it would tend much to the welfare and happiness of the poor if those allotments could be let at a fair rent in small portions, to industrious cottagers of good character, while the distribution of fuel might be augmented by appropriating the said rents to the purchase of an additional quantity; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the trustees of the said allotments, together with the churchwardens and overseers of the poor in parish vestry assembled, and they are hereby required, to let portions of any such allotment, not less than one fourth of a statute acre, and not exceeding one such acre, to any one individual, according to their discretion, as a yearly occupation from Michaelmas to Michaelmas, (and at such rent as land of the same quality is usually let for in the said parish,) to such industrious cottagers of good character, being day labourers

STAT. 2 GUL.
4, c. 42.

Land to be
duly cultivated.

Vestry to be
held annually
to receive ap-
plications.

Order of vestry
to authorise
occupation.

Payment of
rent.

If rent is in
arrear, or land
not duly culti-
vated, tenant
may be evicted.

Power to
recover posses-
sion of land
illegally held
over, by sum-
mary process.

Arrears of
rent, how to
be recovered.

journeymen legally settled in the said parish, and dwelling within or near its bounds, as shall apply for the same in the manner hereinafter mentioned.

"II. Provided also, and be it further enacted, that the person hiring the same shall be held bound to cultivate it in such a manner as shall preserve the land in a due state of fertility.

"III. And be it further enacted, that for the purpose of carrying this act into effect a vestry shall be held in the first week in September in every year, of which ten days' notice shall be given in the usual manner, at which vestry the trustees of the said allotments may attend and vote, if they shall so think fit, and at which vestry, or some adjournment thereof, any industrious cottager of good character who may desire to rent such portion of land as aforesaid may apply for the same; and the said vestry are hereby required, taking into consideration the character and circumstances of the applicant, to determine the case, either by rejecting his application, or by making an order that he shall be permitted to occupy such portion of the poor allotment, being not less than one-fourth of a statute acre nor exceeding one such acre, as the said vestry in their discretion shall determine, and upon the terms hereinbefore enacted; and the said order of vestry shall be held to all intents and purposes to be a sufficient title and authority to such applicant to enter into the occupation of such land at the time therein appointed.

"IV. Provided always, and be it further enacted, that the rent shall be reserved and payable to the churchwardens and overseers of the poor, on behalf of the vestry, in one gross sum for the whole year, and shall be paid to one or either of them at the end of the year's occupation.

"V. And be it further enacted, that if the rent of such portion of land shall at any time be four weeks in arrear, or if at the end of any one year of occupation it shall be the opinion of the vestry that the land has not been duly cultivated, so as to fulfil the useful and benevolent purposes of this act, then and in such case the churchwardens and overseers of the poor, or any or either of them, with the consent of the vestry, may serve a notice to quit upon the occupier of such portion of land; whereupon the said occupier shall deliver up possession of the same to the churchwardens and overseers aforesaid, or any or either of them, within one week after the the said notice has been duly served upon him.

"VI. And be it further enacted, that if any person to whom such portion of land as aforesaid shall have been let, for his or her occupation, shall refuse to quit and to deliver up possession thereof when thereto required according to the terms of this act, or if any other person or persons shall unlawfully enter upon or take or hold possession of any such land, it shall be lawful for the churchwardens and overseers of the poor, or any or either of them, to exhibit a complaint against the person so in possession of such land before two of his majesty's justices of the peace, who are hereby authorized and required to issue a summons, under their hands and seals, to the person against whom such complaint shall be made, to appear before them at a time and place appointed therein; and such justices are hereby required and empowered upon the appearance of the defendant before them, or upon proof on oath that such summons has been duly served upon him, or left at his usual place of residence, or if there should have been any difficulty in finding such usual place of residence, then upon proof on oath of such difficulty, and that such summons has been affixed on the door of the parish church of the said parish in which such land is situated, and in any extra-parochial place on some public building or other conspicuous place therein, to proceed to hear and determine the matter of such complaint, and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the land in question to be delivered to the churchwardens and overseers of the poor, or to some of them.

"VII. And be it further enacted, that all arrears of rent for the said portions of land shall be recoverable by the churchwardens and overseers of the poor, or any of them, on behalf of the vestry, by application to two of his majesty's justices of the peace in petty sessions assembled, who shall thereupon summon the party complained against, and after hearing what he has to allege, should they find any

STATUTA GULIELMI IV. A.D. 1830—1837.

rent to be due, they are required to issue a warrant under their hands and seals to levy the same upon the goods and chattels of the person from whom the said rent shall be due and owing.

"VIII. And be it further enacted, that the rent of the said portions of land shall be applied by the vestry in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the said parish.

"IX. And be it further enacted, that if any of the said allotments shall be found to lie at an inconvenient distance from the residences of the cottagers, it shall be lawful for the vestry by an order made to that effect to let such allotment, or any part thereof, for the best rent that can be procured for the same, and to hire in lieu thereof for the purposes of this act land of equal value more favourably situated.

"X. And be it further enacted, that no habitations shall be erected on the portions of land demised under this act, either at the expense of the parish or by the individuals renting the same.

"XI. And whereas by two acts of the first and second years of the reign of his present majesty, intituled, 'An Act to amend an Act of the fifty-ninth year of His Majesty King George the Third, for the Relief and Employment of the Poor,' and the other intituled, 'An Act to enable the Churchwardens and Overseers to inclose Lands belonging to the Crown, for the Benefit of poor Persons residing in the Parish in which such Crown Land is situated,' power is given, under certain restrictions, to inclose any quantity not exceeding fifty acres of waste land and crown land respectively, for the use and benefit of the poor; be it further enacted, that in any parish where such inclosure shall exist or shall hereafter take place, or where any land shall in any other manner be found appropriated for the general benefit of the poor of any parish, then and in such cases the powers and provisions of this act shall be held to apply, in so far as the same may be found applicable."

XXX. STAT. 2 GULIELMI 4, c. 57. A.D. 1832.

"An Act to continue and extend the Provisions of an Act passed in the fifty-ninth year of His Majesty King George the Third, for giving additional Facilities in Applications to Courts of Equity (1), regarding the Management of Estates or Funds belonging to Charities; and for making certain Provisions respecting Estates or Funds belonging to Charities."

"Whereas by an act passed in the fifty-ninth year of the reign of his late majesty King George the Third, it was, amongst other things, enacted, that whenever, upon any examination or investigation taken or had by and before the commissioners appointed or to be appointed under the authority of certain acts of the fifty-eighth and fifty-ninth years of his said late majesty thereinbefore mentioned, any case should arise or happen in which it should appear to the said commissioners that the directions or orders of a court of equity were requisite for the remedying of any neglect, breach of trust, fraud, abuse, or misconduct in the management of any trust created for any charitable purposes as thereinbefore mentioned, or of the estates or funds thereunto belonging, or for the regulating the administration of any such trust, or of the estates or funds thereof, it should and might be lawful for the said commissioners, or any five or more of them, if they should think fit, to certify the particulars of such case in writing under their hands to his majesty's attorney-general, and thereupon it should be lawful for his majesty's attorney-general, if he should so think fit, either by a summary applica-

(1) *Additional Facilities in Applications to Courts of Equity:—In re The Fowey Charities*, (4 Beav. 225,) on the petition of the attorney-general, a reference was made under Stat. 2 Gul. 4, c. 57, to appoint new trustees of a charity, to settle a scheme, and to ascertain the property, and in whom the

legal estate was vested. The registrar in the first instance objected to draw up the order, on the grounds, that such an order could only be obtained on petition, under Stat. 52 Geo. 3, c. 101, but the master of the rolls considered such objection to be unfounded.

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1, or by information, as the case might require, to his majesty's high court of Chancery, or to or in her sitting as a court of equity, stating and setting out the nature of the said petition, and the facts and circumstances thereof, and the names of the persons who were or should have been presented or suit instituted, such as in the said act now in recital mentioned: and the said commissioners expired on the first day of July, and thirty, and many charities still remain to be set on foot: and it was passed in the last session of parliament, intimation was made to continue the Inquiries concerning the said charities for two Years, and from thence to the End of the 4.th whereby his majesty was empowered to issue commissions therein to be named to investigate such as it is expedient that the provisions of the said year of the reign of his said late majesty should be so mentioned; and it is also expedient to facilitate the said charities or to be instituted under the said last-mentioned manner hereinafter mentioned: and whereas it is shown respecting estates or funds belonging to charities that it therefore enacted by the king's most excellent majesty and consent of the lords spiritual and temporal, parliament assembled, and by the authority of the said parliament for the said commissioners appointed or to be appointed by the said act of the last session of parliament, or to be hereafter passed for the like purpose, or any such certificates from time to time to his majesty's commissioners appointed under the authority of the said act, in the fifth year of the reign of his said late majesty hereupon such proceedings shall or may be had and taken by the said recited act of the said fifty-ninth year, in the same manner to all intents and purposes as if the said act had been made, and the said proceedings, were made by this act.

ted, that in all cases of proceedings instituted or to
 attorney-general in pursuance of the said recited act
 d late majesty's reign, or of this act, the production
 e the hand of his majesty's attorney-general, stating
 in question, in writing, have been certified to him
 he time being according to the provisions of the said
 ur of his said late majesty, or of this act, as the case
 ant evidence that such particulars have been duly
 ey-general accordingly, to and for all intents and

acted, that where the person, or all the persons, if
wids, hereditaments, rent charge, or other real pro-
perty for any charity or charitable or public purpose,
for the said court of Chancery or the said court of
of his majesty's attorney-general, or of the persons
city or superintending such public purpose, or of
direct any master or other officer of the said courts
give advertisements to be inserted in the London
the newspapers circulated in the county, city, or
wards, or real property, or the lands or heredita-
ment charge is issuing, shall be situated, giving notice that
times of the person of the last survivor of the per-

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sons in whom any land, hereditaments, rent charge, or other real property may have been vested in trust as aforesaid do within twenty-eight days appear or give notice of his or their title to such master or other officer, and prove his or their pedigree or other title as trustee; and if no person shall appear to give such notice within such twenty-eight days, or the person or persons who may appear or give such notice shall not within thirty-one days after such appearance or notice prove his or their title to the satisfaction of such master or other officer, then and in such case it shall be lawful for the said courts respectively to appoint any new trustees for such charity or charitable or public purpose, in case no trustees for such charity or purpose duly appointed shall then be existing; and such land, hereditaments, rent charge, or other real property may be conveyed to such new trustees when so appointed by the said courts respectively, or to the existing trustees previously duly appointed, as the case may be, by any person whom the said courts respectively may direct for that purpose by virtue of the provisions in this act, without the necessity of any decree.

"IV. And be it further enacted, that whenever it shall appear to the said commissioners to be appointed under the authority of the said act of the last session of parliament, that the property belonging to any charity consists only of one or more annuity or rent charge, annuities or rent charges, not exceeding in the whole the yearly sum of twenty pounds, and that there are no existing trustees or person legally qualified to receive and give an effectual discharge for such annuity or rent charge, annuities or rent charges, it shall and may be lawful for any five of the said commissioners, by writing under their hands and seals, to empower the resident minister and the churchwardens or chapelwardens for the time being of the parish or place interested in such charity, in case only one parish or place is so interested, but if more than one parish or place is so interested, then the resident minister and the churchwardens or chapelwardens of some one of the parishes or places interested, to receive the said annuity or rent charge, annuities or rent charge or any arrears thereof, and to apply the same according to the purposes of the charitable donations or bequests thereof, in the same manner as the trustees of the said charity would have been bound to do; and the power so to be given to such minister and churchwardens or chapelwardens shall remain in force until trustees of the said charity duly appointed shall appear and claim the administration of the funds thereof, or until trustees of the said charity shall be appointed by the court of Chancery or court of Exchequer; and all receipts to be given by such minister and churchwardens or chapelwardens shall be effectual discharges to the persons liable to the payment of such annuities or rent charges for all such sums as in such receipts shall be expressed to have been received in respect thereof; and in case of nonpayment of such annuities or rent charges, or any arrears thereof, it shall and may be lawful for such minister and churchwardens or chapelwardens respectively during the continuance of the power to be given to them by virtue of the provisions of this act, to use and exercise all such powers and remedies for recovery and compelling payment of the said annuities or rent charges, and the arrears thereof, as the trustees of the said charities respectively might or could have done if duly appointed."

XXXI. STAT. 2 GULIELMI 4, c. 61 (1). A.D. 1832.

"An Act to render more effectual an Act passed in the fifty-ninth year of His late Majesty King George the Third, intituled, An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes."

"Whereas an act was passed in the fifty-ninth year of the reign of his late majesty King George the Third, intituled, 'An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes,' whereby it

(1) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 75; c. 49; Stat. 3 & 4 Vict. c. 20, s. 5; Stat. 1 & 2 Vict. c. 107; Stat. 2 & 3 Vict. Stat. 3 & 4 Vict. c. 60.

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, that it should be lawful for the commissioners he therein recited act, with certain consents in the referred to, to unite and consolidate contiguous shial places into a separate and distinct district for make grants or loans towards the building of any strict, and to constitute any such district a cons- 1ch chapelries should be deemed to be benefices, 1 of the bishop and archdeacon within whose dio- 'such chapel should be locally situate; and wheres ch jurisdiction in the case of chapels or districts a exempt or peculiar jurisdictions; be it therefore llent majesty, by and with the advice and consent d, and commons, in this present parliament assem- e same, that every such chapel and district, whe- within any exempt or peculiar jurisdiction, shall f the bishop and archdeacon within the limits of he altar of any such chapel shall be locally situate, as it would be if no part of such chapelry were r jurisdiction; and in every such case all other e said chapel and chapelry shall wholly cease, and be exercised in the said chapelry, save and except nd archdeacon as aforesaid; any law, usage, or tanding."

1 3 GULIELMI 4, CAP. X. A.D. 1832.

collecting the Poor and other Parochial Rates(1).
*Power and Employment of the Poor of the Parish
borough and County of Leicester."*

hop of Lincoln, and the prebendary of the church,
jurisdiction (2) over the church.]

he Poor yet it was held to lie to the churchwardens.
re an act &c., of two united parishes, under Stat. 18
quired a Ann. c. 11, to assemble a meeting, perm-
as often ant to sect. 24, for the purpose of agreeing
for the upon and ascertaining the monies and rates
churches to be assessed for the repair of the church of
eld, that one of those parishes. *Res v. St. Margaret
a church and St. John, Westminster (Churchwardens
wardens qf)*. 4 M. & S. 250.

it, or to (2) *Ecclesiastical jurisdiction*.—Where
e to the an act of parliament directs a body, created
y might by the act, to levy church rates, the court
rel, Lei- of Queen's Bench will compel them, by man-
A. & E. damus, to levy the rate, and will not confine
church- the writ to ordering the body to assemble
estimate for the purpose of determining whether they
at least, will levy the rate or not; notwithstanding
amount that the act may contain a clause reserving all
ry wants ecclesiastical jurisdiction, if it appear, from
wardens the rest of the act, that the temporal court
e proper was intended to have at least concurrent ju-
r have a risdiction.—As in the act for St. Margaret's
and the Leicester, Stat. 2 Gul. 4, cap. x., which gives
erty be- powers of laying the rates, to an annually
has not chosen

authori-
602,) it tress an
t lie to rate oth
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jurisdic- rated, a
Church- first to
essions
ot lie to (The S
ch rate, Wilm

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XXXIII. STAT. 2 & 3 GULIELMI 4, cap. x. A.D. 1832.

STA
GUL

"An Act for separating the Rectory of Easington, in the County and Diocese of Durham, from the Archdeaconry of Durham, and annexing, in lieu thereof, a Prebend or Canonry founded in the Cathedral Church of Durham."

XXXIV. STAT. 2 & 3 GULIELMI 4, cap. xvi. A.D. 1832.

STA
GUL
xvi.

"An Act for empowering the Trustees of the Blue-Coat Charity School in Warrington, in the County of Lancaster, to make Sales, and to grant Building and Mining Leases of certain Parts of the Estates belonging to the said Charity, and for other Purposes therein mentioned."

XXXV. STAT. 2 & 3 GULIELMI 4, cap. xix. A.D. 1832.

STA
GUL
xix.

"An Act to enable the Dean and Chapter of Durham to appropriate Part of the Property of their Church to the Establishment of a University in connexion therewith for the Advancement of Learning."

XXXVI. STAT. 2 & 3 GULIELMI 4, cap. xx. A.D. 1832.

STA
GUL
xx.

"An Act to authorize the Patrons or Patron for the time being of the Vicarage of Aston Juxta, Birmingham, in the County of Warwick, to appropriate and assign any Part of the Tithes and Vicarial Dues belonging to the said Vicarage, or any Rent Charge issuing out of the same, for endowing certain new Churches within the said Vicarage, if converted into District Parishes or Vicarages, and for selling the Advowsons of the same Churches or new Benefices."

XXXVII. STAT. 2 & 3 GULIELMI 4, cap. xxvi. A.D. 1832.

STA
GUL
xxv

"An Act to equalize the Ecclesiastical Burthens of the Parish of Saint Mary, Islington, in the County of Middlesex; for partially altering the Application of the Rents and Profits of the Stone Fields Estate, within the said Parish; for letting the Pews in the Parish Church of Saint Mary, Islington, and the Chapel of Ease thereto; and for other Purposes connected therewith."

XXXVIII. STAT. 2 & 3 GULIELMI 4, c. 63. A.D. 1832.

STA
GUL

"An Act to enable Peers of Scotland to take and subscribe in Ireland the Oaths required for qualifying them to vote in any Election of the Peers of Scotland."

XXXIX. STAT. 2 & 3 GULIELMI 4, c. 67. [IRELAND.] A.D. 1832.

STA
GUL
[Ir.]

"An Act to amend an Act of the seventh and eighth years of the Reign of His late Majesty King George the Fourth, relating to the Union of Parishes in Ireland."

"Whereas by an act passed in the seventh and eighth years of the reign of his late majesty King George the Fourth, intituled, 'An Act to consolidate and amend the Laws in force in Ireland for Unions and Divisions of Parishes, and for uniting or disappropriating Appropriate Parishes or Parts of Parishes, and to make further Provision with respect to the erecting Chapels of Ease and making Perpetual Cares,' it is among other things enacted, that from and after the passing of the said

7 &
c. 4

select vestry to lay a rate, or to do another act, which last request was illegal: it was held, nevertheless, to be a good demand of the rate. *Regina v. St. Margaret, Leicester (The Select Vestrymen of)*, 8 A. & E. 889.

Where a select vestry adjourned from time to time, on pretexts which the churchwardens alleged, upon affidavit, to be, as they believed, colourable, and merely intended to evade laying the rate, requiring details which

could not be furnished for want of funds to pay a surveyor, and fixing an adjournment day, after which a *mandamus* could not have been obtained for some months; the court held the adjournments colourable, and equivalent to a refusal; it appearing, that a previous select vestry had pursued the same course, and the present select vestry not satisfactorily denying the imputed motive. *Ibid.*

or the lord lieutenant or other chief governor or being, with the assent of the major part of his the advice and approbation of the archbishop of the diocese, and with the consent of the respective lords and seals, attested by two or more credible persons, divide all parishes, or to separate any parish or in whatever manner such union may have been on has been made in the said recited act for the in which the patrons may be either infant or whereas, in default of such provision, difficulties parishes, which the lord lieutenant and privy robbery of the archbishops and bishops of the advisable to separate; be it therefore enacted by, by and with the advice and consent of the lords ons, in this present parliament assembled, and by if any patron or joint patron of a benefice shall at act prove to be a minor, lunatic, or idiot, it shall ardians of such patron being a minor, or for the lunatic or idiot, with the approbation in either ancellor of Ireland for the time being, to be ob- that purpose, to give consent, on behalf of such rish, or the separation of any parish or part of a l and ample a manner as such patron being of full one under the said recited act of the seventh and provided always, that when the patron or patrons f any such parish or parishes shall be a married ll be lawful for such married woman or married ignify and declare her or their consent in open be there recorded and enrolled, and such consent alid and binding as if such married woman or covert."

Time of Prescription in certain Cases."

time immemorial,' or 'Time whereof the Memory,' is now by the law of England in many cases the whole period of time from the reign of King title to matters that have been long enjoyed is the commencement of such enjoyment, which is in remission and injustice; for remedy thereof be it lent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, that no claim which may be lawfully made by prescription, or grant, to any right of common or other privilege, or taken and enjoyed from or upon any land of ours or successors, or any land being parcel of the Duchy of Cornwall, or of any ecclesiastical or lay person, or any matters and things as are herein specially mentioned, shall, where such right is lawfully taken and enjoyed by any person claiming

(4) *Rent, and services*. — Rent-service, rent-charge, rent-sock, (Co. Lit. 141 (b), 15 A. rents of socage, (3 Inst. 19,) including chief and quit-rents; and a fee-farm rent. Co. Lit. 143 (b), n. 5. *Bradbury v. Wright*, Doug. 627, n. 1.

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right thereto without *interruption* (1) for the full period of thirty years, be defeated or destroyed by showing only that *such right* (2), profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such right, profit, or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

"II. And be it further enacted, that no claim which may be lawfully made at the common law, by custom, prescription, or grant, to *any way* (3), or *other easement* (4), or to any *watercourse* (5), or the use of any water, to be enjoyed or derived upon, over, or from any land or water of our said lord the king, his heirs or successors, or being parcel of the duchy of Lancaster or the duchy of Cornwall, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but nevertheless *such claim may be defeated* (6) in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

"III. And be it further enacted, that when the access and *use of light* (7) to and for any dwelling house, workshop, or *other building* (8) shall have been *actually enjoyed* (9) therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

"IV. And be it further enacted, that each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the *period next*

(1) *Interruption*:—The "interruption" which defeats a prescriptive right under Stat. 2 & 3 Gul. 4, c. 71, is an adverse obstruction, not a mere discontinuance of user by the claimant himself. In a case under sect. 1, if proof be given of a right enjoyed at the time of action brought, and thirty years before, but disused during any part of the intermediate time, it is always a question for the jury whether, at that time, the right had ceased, or was still substantially enjoyed. *Carr v. Foster*, 3 Q. B. 581.

Vide Stephens on Nisi Prius, tit. WAY, 2758-2773. *Monmouth Canal Company v. Harford*, 1 C. M. & R. 614. *Bright v. Walker*, 4 Tyrw. 502. 1 C. M. & R. 211.

(2) *Such right*:—A licence, favour, or other matter, inconsistent with a claim, or assertion of right, may be proven. *Campbell v. Wilson*, 3 East, 294.

(3) *Any way*:—*Vide* Stephens on Nisi Prius, tit. WAY, 2758-2773; *et etiam*, Co. Lat. 56 (a). *Ballard v. Dyson*, 1 Taunt. 279. *Osborn v. Wise*, 7 C. & P. 761. *Barclough v. Johnson*, 3 N. & P. 233. 2 Jurist, 839.

(4) *Other easement*:—*Vide* Manning v. Wandale, 1 N. & P. 172. 5 A. & E. 758. *Wickham v. Hawker*, 7 M. & W. 63.

(5) *Watercourse*:—*Vide* *Bastard v. Smith*, 2 M. & Rob. 129. 1 N. & P. 242. 5 A. & E. 827.

(6) *Such claim may be defeated*:—An agreed alteration of a line of way, or a temporary non-user under an agreement of the parties, will not defeat a claim of a right of way, (*Payne v. Shelden*, 1 M. & Rob. 382;) nor is a prescriptive right of way to a public path on the banks of a navigable river destroyed by that part, which adjoins the towing path being converted into a floating harbour. *Res v. Tippet*, 3 B. & A. 193.

(7) *Use of light*:—*Vide* Stephens on Nisi Prius, tit. CASE, 1002-1026. 2 Saund. 175 (d. e). *Darwin v. Upton*, cit. 3 T. R. 159. *Cross v. Lewis*, 2 B. & C. 686. 4 D. & R. 234. *Flight v. Thomas*, 11 A. & E. 688. *Garritt v. Sharp*, 3 Ibid. 325. *Blanchard v. Bridges*, 4 Ibid. 191.

(8) *Other building*:—*Vide* *Roberts v. Maecord*, 1 M. & Rob. 230. Stephens on Nisi Prius, tit. CASE, 1002-1026.

(9) *Actually enjoyed*:—*Vide* *Lawrence v. Osce*, 3 Camp. 514. *Moore v. Rawson*, 3 B. & C. 332. 5 D. & R. 234. Stephens on Nisi Prius, tit. CASE, 1002-1026.

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wherein the claim or matter to which such period may be brought into question, and that no act or other interruption, within the meaning of this statute, or shall be submitted to or acquiesced in for one year shall have had or shall have notice (2) thereof, and giving the same to be made (3).

And, that in all actions upon the case and other matters claiming may now by law allege his right generally, of such right from time immemorial, such general allegation shall be sufficient, and if the same shall be denied, all the facts mentioned and provided, which shall be applicable in evidence to sustain or rebut such allegations in actions of trespass (5), and in all other pleadings his act it would have been necessary to allege the same from time immemorial, it shall be sufficient to allege the same from the occupiers of the tenement in respect whereof such of the periods mentioned in this act as may be without claiming in the name or right of the owner; and if the other party shall intend to rely on any title, disability, contract, agreement, or other matter by cause or matter of fact or of law not inconsistent with the same shall be specially alleged and set forth by the party claiming, and shall not be received in evidence in denial of such allegation.

And, that in the several cases mentioned in and the presumption shall be allowed or made in favour of the proof of the exercise or enjoyment of the right or period of time or number of years than for such period as may be applicable to the case and to the nature

of the time during which any person (7) otherwise capable of the matters before mentioned shall have been compos mentis, feme covert, or tenant for life, or which shall have been pending, and which shall have been abated by the death of any party or parties thereto, the expiration of the periods hereinbefore mentioned, except the claim is hereby declared to be absolute and inde-

structible be it further enacted, that when any land or

of user (6) *Nature of the claim*—A licence cannot be presumed, (*Doe d. Foley v. Wilson*, 11 East, 56,) or a right by prescription or grant, however strong the circumstances may tend to support it; (*Res v. Wardrop*, 4 Burr. 2025; *Res v. Dewee*, *Ibid.* 2121. *Bealey v. Shaw*, 6 East, 214;) and if the plaintiff prescribe for pasture, the onus lies on him to prove affirmatively his actual enjoyment of pasture for thirty years; and no presumption for a less period or proof of enjoyment can be admitted; (*Bealey v. Appleby*, 8 A. & E. 161; *Ibid.* 778 (a); 3 N. & P. 257;) but a right to a watercourse is not destroyed by the owner's altering its course. *Hall v. Swift*, 6 Scott, 167. 4 Bing. N. C. 381. *Stephens on Nisi Prius*, c. 2748—2757.

(7) *Any person* :—There is not any saving in favour of persons beyond seas, or in price.

(8) *Resisting any claim*—*Vide Hinchliffe v. Kinnoul* (*Earl of*), 5 Bing. N. C. 19.

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water upon, over, or from which any such way or other convenient watercourse or use of water shall have been or shall be enjoyed or derived hath been or shall be held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be resisted by any person entitled to any reversion (1) expectant on the determination thereof (2).

"IX. And be it further enacted, that this act shall not extend to Scotland or Ireland.

"X. And be it further enacted, that this act shall commence and take effect on the first day of Michaelmas term now next ensuing.

"XI. And be it further enacted, that this act may be amended, altered, or repealed during this present session of parliament."

XII. STAT. 2 & 3 GULIELMI 4, c. 75 (3). A.D. 1832.

"An Act for regulating Schools of Anatomy."

"XIII. Provided always, and be it enacted, that every such body so removed as aforesaid, for the purpose of examination, shall, before such removal, be placed in a decent coffin or shell, and be removed therein; and that the party removing the same, or causing the same to be removed as aforesaid, shall make provision that such body, after undergoing anatomical examination, be decently interred in consecrated ground, or in some public burial ground in use for persons of that religious persuasion to which the person whose body was so removed belonged; and that a certificate of the interment of such body shall be transmitted to the inspector of the district within six weeks after the day on which such body was received as aforesaid."

XLII. STAT. 2 & 3 GULIELMI 4, CAP. LXXIX. A.D. 1832.

"An Act for enlarging the Church of Saint Mary, in the Chapelry of Birkenhead, in the County Palatine of Chester."

XLIII. STAT. 2 & 3 GULIELMI 4, c. 80. A.D. 1832.

"An Act to authorize the identifying of Lands and other Possessions of certain Ecclesiastical and Collegiate Corporations."

"Whereas the archbishops and bishops of the several dioceses, and the deans, and deans and chapters, archdeacons, prebendaries, and canons, and other dignitaries and officers of the several cathedral and collegiate churches and chapels, and the masters or other heads, and fellows and scholars or other societies of the several colleges and halls in the universities of Oxford and Cambridge, and of the colleges of Winchester and Eton, are proprietors of divers manors, messuages, lands, tenements, tithes, and hereditaments, and in many cases the boundaries or quantities and the identity of lands within such manors, and of such messuages, lands, tenements, and hereditaments, and of lands subject to any such tithes, or some part or parts thereof, are unknown or disputed, and it would be a great benefit, as well to such proprietors respectively, as to their lessees, copyhold or customary tenants, sub-lessees, or under-tenants, their, his, or her heirs, executors, administrators, or assigns, if the said manors, messuages, lands, tenements, tithes, and hereditaments were identified, and the boundaries and quantities thereof ascertained and finally settled: be it enacted by the king's most excellent majesty, by and with the advice

(1) Entitled to any reversion:—*Vide* 1 last. 183 (b). *Daniel v. North*, 11 East, 372.

(2) Determination thereof:—The other rights affected by this act may be acquired by enjoyment during the respective periods

mentioned in the first and third sections, even though the parties acquiescing may have had particular estates only, unless the right exercised is founded on some writing. *Mansel on Limitations*, 138.

(3) *Vide* Stat. 4 & 5 Gul. 4, c. 26.

ual and temporal, and commons, in this present
 he authority of the same, that from and after the
 l may be lawful to and for any archbishop, bishop,
 er corporation aggregate or sole hereinbefore men-
 ent of reference or deed of submission with his or
 or customary tenant or tenants, sub-lessee or sub-
 tenants, his, her, or their heirs, executors, admin-
 he owner or owners of any other hereditaments
 th the said manors, messuages, lands, tenements,
 y it shall be agreed that any unknown or disputed
 ch manors, messuages, lands, tenements, tithes, or
 reof, shall be referred to the adjudication of such
 agreed upon and named by the said archbishop,
 r, or other corporation aggregate or sole, and by his
 hold or customary tenant or tenants, sub-lessee or
 der-tenants, his, her, or their heirs, executors, admin-
 owner or owners of any other hereditaments situate
 ree or referees shall be fully authorized to make or
 ape, and admeasurements of the said manors, mes-
 sages, and hereditaments, or any part thereof, and to
 see, and examine them on oath (which oath he or
 administer) touching or concerning any of the mat-
 resaid, or in any way relating thereto; and also to
 urveys, maps, deeds, books, papers, and writings in
 of the parties to the said reference, or of any other
 ing the matters in question; and the said referee or
 siently investigated and considered the same, and all
 d, shall and may make his or their award or awards
 hand and seal or hands and seals, with a map or
 unto annexed, and which said award or awards and
 chment or vellum, and shall award and determine
 the boundaries, quantities, particulars, and situations
 a, lands, tenements, tithes, and hereditaments re-
 foresaid; and the said award or awards and map or
 e parties to any such agreement of reference or deed
 erty or parties whose consent is required by this act,
 ll be written upon the said award or awards, and
 rem, and thereupon the said award or awards and
 afterwards binding upon all parties, and final and
 rein contained or thereby referred to.

l be it further enacted, that in every case in which
 e contained shall be exercised by any bishop, dean,
 er ecclesiastical corporation sole, the deed of submis-
 and also the approbation of the award, shall, in the
 the archbishop of the province testifying his consent;
 the same shall be executed by the dean and chapter
 o; or in the case of an archdeacon, prebendary, or
 sole, the same shall be executed by the archbishop
 ing his consent thereto.

acted, that from and after the passing of this act it
 . for the said lessee or lessees, copyhold or customary
 sub-lessees, under-tenant or under-tenants, and such
 inbefore named, his, her, or their heirs, executors,
 at the time of making any reference authorized by
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named, his, her, or their heirs, executors, administrators, or assigns, who at the time of making any such reference shall be respectively an infant or infants, feme covert or femes covert, or of unsound mind, or beyond the seas, or under any other legal disability, or otherwise disabled to act for themselves, himself, or herself, to sign, seal, and deliver any agreement of reference or deed of submission or approbation of any award or awards and map or maps authorized by this act to be made as fully and effectually to all intents and purposes as if such lessee or lessees, copy hold or customary tenant or tenants, sub-lessee or sub-lessees, under-tenant or under-tenants, and such other owner or owners as hereinbefore named, his, her, or their heirs, executors, administrators, or assigns, had been tenant or tenants in fee-simple, and of full age, sole, of sound mind, or within the realm of England and not under any other legal disability.

“IV. And be it further enacted, that immediately after the execution by the parties of the instrument abewing their approbation of any award to be made by virtue of this act, the agreement of reference or deed of submission, and also the award or awards and map or maps, authorized to be made by this act, and a copy of the minutes of evidence whereupon the same is made, shall be deposited, in the case of any reference by any archbishop or bishop, in the office of their own registrar; and in case of any reference by any dean, dean and chapter, archdeacon, prebendary, canon, and other dignitary and officer of a cathedral or collegial church or chapel, in the office of the registrar of the dean and chapter thereof; and in case of any reference by any masters or other heads, or by any fellows and scholars, or other societies hereinbefore named, in the office of the steward or other proper officer of their said colleges and halls; and every such registrar, steward, or other officer, or some person or persons on his behalf, shall produce the documents and papers so deposited with him, or any of them, at all proper and usual hours of business, to every person interested in the subject matter of such award, or to his or her agent duly authorized, who shall make application to inspect the same or any of them, and shall furnish a copy or copies of the same or any of them to every such person or agent who shall make application for such copy or copies; and every such registrar, steward, or other officer shall in every case be entitled to the sum of five shillings and no more for receiving and preserving the agreement of reference or deed of submission, award or awards, map or maps, and copy of the minutes of evidence as aforesaid; and the sum of one shilling and no more for every production of the same or any of them to be inspected; and the sum of sixpence and no more for every folio containing seventy-two words of every copy and the sum of ten shillings and no more for every copy of a map so made as aforesaid.

“V. And be it further enacted, that the expenses attending every reference which shall be made under the authority of this act, and all the proceedings hereby required relating to the same, shall be paid and borne by the parties thereto in such manner, shares, and proportions as they shall agree; and in case the said parties shall not make any agreement relating to such expenses, then all such expenses, or so much thereof as shall not be provided for by such agreement, shall be paid and borne by the said parties in equal moieties.

“VI. Provided also, and be it further enacted, that this act shall extend only to that part of the United Kingdom called England and Wales.”

XLIV. STAT. 2 & 3 GULIELMI 4, CAP. LXXX. A.D. 1832.

“An Act for establishing as the Parish Church the newly-erected Church in the Parish of Saint Bartholomew, adjoining the City of Chichester.”

XLV. STAT. 2 & 3 GULIELMI 4, C. 85. [IRELAND.] A.D. 1832.

“An Act to make a better Provision for the Superintendence of Charitable Institutions in Ireland, maintained in the whole or in part by Grand Jury Payments; and for the more effectual Audit of the Accounts of the same.”

“Whereas various houses of industry, infirmaries, hospitals, lunatic asylums, dispensaries, and other charitable establishments in Ireland, are supported in the

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sentment; and whereas it is expedient to pre-
 endence and inspection of those establishments,
 of their accounts; be it therefore enacted by the
 and with the advice and consent of the lords spi-
 in this present parliament assembled, and by
 om and after the commencement of this act it
 and jury of any county, county of a city, or
 and except the grand jury of the city of Dublin,
 jury is and are authorized, empowered, and
 amizes or presenting term respectively, with the
 rt or judge, to appoint not less than eight or
 of whom at the least shall be justices of the
 ity, or county of a town wherein such appoint-
 rd of superintendence of each and every char-
 he whole or in part by grand jury presentment
 ity, or county of a town respectively; and that
 grand jury, at any subsequent amizes or pre-
 county of a city, or county of a town, to appoint
 or to remove any member or members of the
 proper, and as the case may require, but so that
 more than twelve members of any such board;
 rd of superintendence, one of whom at the least
 l be in all cases competent to do or perform any
 ration of any duty required to be done and per-
 erintendence in virtue of any powers granted to
 nd thing done or performed by such three mem-
 nce, one of whom at the least shall be a justice
 effectual, to all intents and purposes whatsoever,
 aperintendence.

l, that it shall and may be lawful for such board
 spect each and every such charitable or public
 ne to time as they shall think fit, and to inquire
 ment and discipline thereof, and into the mode
 nd directions for the regulation of such charitable
 ct, and to the accounts of receipts and expendi-
 several officers and attendants, and all such other
 n, and also to examine into the state and repair
 situation of the several patients and inmates, and
 audit and examine the accounts and vouchers of
 and such board of superintendence shall make a
 nt to the grand jury at each and every amizes,
 of income and expenditure, of the salaries paid,
 and the number of patients admitted and dis-
 ts shall be annually printed by each grand jury
 at each amizes.

it further enacted, that nothing in this act con-
 gual powers and authorities of the several direc-
 ittees, or managers, by whatever name they may
 ndence and control of their several charitable

JELMI 4, c. 87. [IRELAND.] A.D. 1832.

*for registering Deeds, Conveyances, and Wills,
 in Ireland."*

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XLVII. STAT. 2 & 3 GULIELMI 4, c. 92(1). A.D. 1832.

"An Act for transferring the Powers of the High Court of Delegates, Ecclesiastical and Maritime Causes, to His Majesty in Council."

"Whereas by an act passed in the twenty-fifth year of the reign of King the Eighth, and intituled, 'The Submission of the Clergy and Restraint of', it is (amongst other things) provided, that for lack of justice at or in any courts of the archbishops of this realm, or in any of the king's dominions, it be lawful to the parties grieved to appeal to the king's majesty in the king of Chancery; and that upon every such appeal a commission should be under the great seal to such persons as should be named by the king's majesty or his heirs or successors, like as in case of appeal from the Admirals court, and definitively determine such appeals, and the causes concerning the same commissioners so by the king's highness, his heirs or successors, to be appointed, should have full power and authority to hear and definitively determine every such appeal, with the causes and all circumstances concerning the same, that such judgment and sentence as the said commissioners should make in decree in and upon any such appeal should be good and effectual, and also that no further appeals should be had or made from the said commissioners for the same; and that all manner of provocations and appeals thereto be had, made, or taken, from the jurisdiction of any abbots, priors, or other and governors of monasteries, abbeys, priories, and other houses and places in such cases as they were wont or might afore the making of the act recited, by reason of grants or liberties of such places exempt, to have immediately any appeal or provocation to the Bishop of Rome otherwise Pope, or to the see of Rome, in all those cases every person and person cause of appeal or provocation should and might take and make their appeals and provocations immediately to the king's majesty of this realm, into the Chancery, in the manner and form as they used afore to do to the see of which appeals and provocations so made should be definitively determined by the authority of the king's commission in such manner and form as was in the act now in recital above mentioned, so that no archbishop or bishop of the said realm should intermit or meddle with any such appeals otherwise or in any other manner than they might have done afore the making of the act now in recital; and in the act now in recital to the contrary thereof notwithstanding; and by an act passed in the eighth year of the reign of Queen Elizabeth, and intituled, 'For the avoiding of tedious Suits in Civil and Marine Causes,' it is provided that every such judgment and sentence definitive as should be given and pronounced in any civil and marine cause, upon appeal lawfully to be made therein to the king's majesty in her highness's court of Chancery, by such commissioners or other persons as should be nominated and appointed by her majesty, her heirs or successors, under the half seal, as it had been theretofore used in such cases, should be final, and that no further appeal should be made from the said judgment or sentence definitive, or from the said commissioners or delegates, for the same; any law, usage, or custom to the contrary notwithstanding; and the persons who from time to time have been appointed commissioners or delegates under the great seal or under the half seal, by virtue of the authority either of the hereinbefore recited acts, have been commonly called, 'The Court of Delegates;' and whereas, notwithstanding the hereinbefore recited acts, the king's majesty for the time being hath out of his royal favour occasionally granted, upon petition to him in council made for that purpose, a commission under the great seal authorizing the commissioners therein named to reverse judgments and decrees of the high court of Delegates so appointed as aforesaid, and whereas it is expedient that the hereinbefore recited act of the eighth year of Queen Elizabeth, and also so much of the hereinbefore recited act of the fifth year of King Henry the Eighth as relates to the appeal to his majesty in Chancery, should be repealed, and that all the powers which by virtue of the

(1) *Vide* Stat. 3 & 4 Gul. 4, c. 41, and Stat. 7 & 8 Vict. c. 64

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been enjoyed by the said high court of Delegates, his majesty in council, and that no such commission hereafter be granted; be it therefore enacted by us, by and with the advice and consent of the lords spiritual, in this present parliament assembled, and by the hereinbefore recited act of the twenty-fifth year of the eighth, so far as relates to any power thereby the king's majesty in his high court of Chancery, we his majesty to grant a commission under the seals therein named to hear and determine such day of February one thousand eight hundred and hereby repealed.

1, that the hereinbefore recited act of the eighth Elizabeth shall, as from the first day of February one thousand eight hundred and thirty-three, be and the same is hereby repealed. It is enacted, that from and after the said first day of February one thousand eight hundred and thirty-three it shall be lawful to and for us, by virtue of either of the said recited acts, his majesty in his high court of Chancery, to appoint any of his heirs or successors, in council, within such act to such rules, orders, and regulations for the due execution, as shall seem meet and necessary, and upon such his heirs and successors, shall from time to time by the king's majesty, his heirs and successors, power to proceed to hear and determine every appeal in virtue of this act, and to make all such judgments, or of such appeal or suit as might heretofore have been made by commissioners appointed by virtue of either of the said acts had not been passed; and that every such judgment, order, and decree shall have the like force and effect in all respects whatsoever have had if made and pronounced by the aforesaid court, that every such judgment, order, and decree shall have the like force and effect in all respects whatsoever as if made and pronounced by the aforesaid court, that every such judgment, order, and decree shall have the like force and effect in all respects whatsoever as if made and pronounced by the aforesaid court, that every such judgment, order, and decree shall have the like force and effect in all respects whatsoever as if made and pronounced by the aforesaid court.

It is enacted, that nothing herein contained shall extend to any appeal now pending, or which before the said first day of February one thousand eight hundred and thirty-three may be pending, to any act of either of the hereinbefore recited acts, or to affect any such commission under the great seal or under the privy seal, and to adjudicate upon any appeal so now pending, on or after the first day of February one thousand eight hundred and thirty-three, and that every judgment or decree of the said high court, made by either of the said recited acts, already made or to be made, or which shall be so pending as if made, shall have the like force and effect in all respects as if this act

c. 3 GULIELMI 4, c. 93 (1). A.D. 1832.

Process upon Contempts in the Courts Ecclesiastical in England and Ireland.

Whereas it has been found to arise by reason of the process in England and Ireland being inoperative and of the respective jurisdictions of such courts, and of the peerage, lords of parliament, and members of

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the house of commons; and in many instances a failure of justice hath thereby ensued: and whereas it is expedient, for remedy thereof, that the process of the said several courts, and the means of enforcing obedience to the same, should be of equal force and have the like operation, as well in that part of the United Kingdom of Great Britain and Ireland called England as in that part of the same United Kingdom called Ireland, and as well against persons having privilege of peerage, lords of parliament, and members of the house of commons, as against all other his majesty's subjects: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all causes which according to the laws of this realm are or may be cognizable in any of the several ecclesiastical courts, as well in that part of the United Kingdom of Great Britain and Ireland called England as in that part of the same United Kingdom called Ireland, when any person or persons, as well those which have or hereafter shall have privilege of peerage, or are or hereafter may be peers of parliament or members of the house of commons, as all others who shall happen to be domiciled or residing either in England or in Ireland, and beyond the limits of the jurisdiction of the court in which such causes have been or shall have been respectively instituted or commenced, or shall be depending, having been duly cited to appear in any such ecclesiastical court, whether in England or in Ireland, or required to comply with any lawful order or decree, as well final as interlocutory, which hath been or shall have been made by any such court respectively, shall neglect or refuse to pay obedience to any such lawful order or decree, or when any such person or persons shall commit a contempt in the face of such court, or any other contempt towards such court, or the process thereof, it shall be lawful for the judge or judges out of whose court the citation or process hath already issued or may hereafter issue, or whose lawful orders or decrees have not or shall not have been obeyed, or before whom such contempt in the face of the court shall be committed, or by whose order or authority such process in respect of or towards which any such contempt shall have been committed has been or shall be awarded or issued or the successor or successors in office of such judge or judges respectively, to pronounce such person or persons contumacious and in contempt, and within ten days after such person or persons shall have been so pronounced to be contumacious and in contempt to signify the same to the lord chancellor, lord keeper or lords commissioners for the custody of the great seal of England for the time being respectively whenever the person or persons who shall have been so pronounced contumacious and in contempt shall be domiciled or residing in England, and within the like period of ten days to signify the same to the lord chancellor, lord keeper or lords commissioners for the custody of the great seal of Ireland for the time being respectively whenever the person or persons who shall have been so pronounced contumacious and in contempt shall be domiciled or residing in Ireland, in the form annexed to an act of parliament made and passed in the fifty-third year of the reign of his late majesty King George the Third, intituled, 'An Act for the better Regulation of Ecclesiastical Courts in England, and for the more easy Recovery of Church Rate and Tithes;' and thereupon, and in case the person so reputed to be in contempt shall not be a peer, lord of parliament, or member of the house of commons, a writ *de contumace capiendo* shall issue from his majesty's said high court of Chancery in England or in Ireland, as the case may happen, to be directed to the same persons to whom writs *de excommunicato capiendo* were by law returnable before the passing of the said act of parliament, and the same shall be returnable in like manner as the writ *de excommunicato capiendo* had been theretofore by law returnable, and shall have the same force and effect as the last-mentioned writ; and all rules and regulations not altered by the said act of the fifty-third year of his said majesty George the Third, and which before the passing of the same act applied to the said writ *de excommunicato capiendo*, and the proceedings following thereupon, and particularly the several provisions contained in a certain act passed in the fifth year of the reign of Queen Elizabeth, intituled, 'An Act for the due Execution of the Writ *De excommunicato capiendo*,' shall extend and be applied to the said writ *de contumace capiendo*.

STAT. 2 & 3
GUL. 4, c. 93.
plied to the writ *de contumace*.
5 Eliz. c. 23.

Upon the appearance or submission of the party, the judge may order him to be absolved or discharged.

Where persons possessed of estates, &c. in England neglect to pay money ordered by the said courts, the judges may pronounce such persons contumacious, and certify the same to the lord chancellor, who shall cause process of sequestration to issue against the estate of the party in England.

mace capiendo, and the proceedings following thereupon, as if the same were herein particularly repeated and enacted; and the proper officers of the said two several high courts of Chancery in England and Ireland, as the case may happen to be, are hereby authorized and required to issue such writ *de contumace capiendo* accordingly; and all sheriffs, gaolers, and other officers in England and in Ireland, as the case may happen to be, are hereby required and authorized to execute the same, by taking and detaining the body of the person or persons against whom the said writ shall be so directed to be executed; and upon the due appearance of the party or parties so cited and not having obeyed as aforesaid, or the due submission of the party or parties so having committed a contempt in the face of the court or otherwise, as hereinbefore is mentioned, the judge or judges of such ecclesiastical court, whether in England or in Ireland, as the case may be, shall pronounce such party or parties absolved from the contumacy and contempt aforesaid, and shall forthwith make an order upon the sheriff, gaoler, or other officer in whose custody he, she, or they shall be, in the form to the said act of the fifty-third year of the reign of his said majesty George the Third annexed, for discharging such party or parties out of custody; and such sheriff, gaoler, and other officer shall, on the said order being shewn to him, so soon as such party or parties shall have discharged the costs lawfully incurred by reason of such custody and contempt, forthwith discharge him, her, or them.

“II. And be it further enacted, that in all such cases as are hereinbefore mentioned, and which are or may be cognizable in any or either of the several herein before-mentioned courts, when any person or persons, as well such person or persons as have or shall hereafter have privilege of peerage, or are or shall hereafter be lords of parliament or members of the house of commons, as others who shall happen to be domiciled or residing either in England or in Ireland, have been or shall have been ordered or required, by the lawful order or decree, final or interlocutory, of any such court respectively, to pay any sum or sums of money, and when any such person or persons, after having been duly monished, shall refuse or neglect to comply with such monition, and to pay the sum or sums of money therein ordered to be paid by him or them, within the time and in the manner is any such order or decree mentioned or expressed, or a peer or lord of parliament or member of the house of commons shall refuse or withhold obedience, or shall in any way neglect to perform or shall not perform any decree or order, final or interlocutory, of such courts as aforesaid, it shall be lawful for the judge or judges who shall have made such order or decree, or his or their successor or successors in office, to pronounce the person or persons so neglecting or refusing to comply with such order or decree contumacious and in contempt, and within ten days after such person or persons shall have been so pronounced contumacious and in contempt to cause a copy of such order or decree, under the seal of the court wherein the same shall have been made, or under the hand or hands of such judge or judges, or one of them, to be exemplified, and certified to the lord chancellor, lord keeper or lords commissioners for the custody of the great seal of England for the time being respectively, whenever the person or persons who shall have been so pronounced contumacious shall be domiciled or residing, or shall be seized or possessed of or entitled to any real or personal estate, goods, chattels, or effects, situate, lying, or being in England; and the said lord chancellor, lord keeper or lords commissioners for the custody of the great seal of England, shall forthwith cause such copy of such order or decree, when it shall be presented to them respectively, so exemplified, to be enrolled in the rolls of the high court of Chancery in England, and shall thereupon cause process of sequestration to issue against the real and personal estate, goods, chattels, and effects, in England, of the party or parties against whom such order or decree shall have been made, in order to enforce obedience to and performance of the same, in the same manner and form, and with the like power and effect, as if the cause wherein such order or decree shall have been made had been originally cognizable by and instituted in the said court of Chancery in England, and as if all and every the process of the said court of Chancery in England ordinarily issuing in causes there pending antecedent to process of seque-

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tration had been duly issued and returned in the last-mentioned court; and it shall and may be lawful for the said lord chancellor, lord keeper or lords commissioner of the great seal in England, to make such order and orders in respect of or consequent upon such sequestration, or in respect of the real or personal estate, goods, chattels, or effects sequestered by virtue thereof, as he or they shall from time to time think fit, or for payment of all or any of the monies levied or received by virtue thereof into the bank of England, with the privity of the accountant-general of the said court of Chancery in England, to the credit and for the benefit of the party or parties who shall have obtained such order or decree, if the same was for payment of money, or if not, to the credit of the high court of Chancery; and the governor and company of the bank of England are hereby authorized and required to receive and hold all such monies, subject to the orders of the said court of Chancery: provided always, that no such monies shall be charged with or subject to poundage when the same shall be paid out by order of the said court.

“III. And be it further enacted, that in all such causes as are hereinbefore mentioned, and which are or may be cognizable in any of either of the several herein before-mentioned courts, when any person or persons, as well such person or persons as have or shall hereafter have privilege of peerage, or are or shall hereafter be lords of parliament or members of the house of commons, as others, who shall happen to be domiciled or residing either in England or in Ireland, hath or have been or shall have been ordered or required by the lawful order or decree, final or interlocutory, of any such court respectively, to pay any sum or sums of money, or to do any other act or thing, and when any such person or persons, after having been duly personally served with a copy or copies of such order or decree, shall refuse or neglect to comply therewith, or to pay the sum or sums of money therein ordered to be paid by him or them, or to do the act or thing required by such order to be done, within the time and in the manner in any such order or decree mentioned or expressed, it shall be lawful for the judge or judges who shall have made such order or decree, or his or their successor or successors in office, to pronounce the person or persons so neglecting or refusing to comply with such order or decree contumacious and in contempt, and within ten days after such person or persons shall have been so pronounced contumacious and in contempt to cause a copy of such order or decree, under the seal of the court wherein the same shall have been made, or under the hand or hands of such judge or judges, or one of them, to be exemplified, and certified to the lord chancellor, lord keeper or lords commissioner for the custody of the great seal of Ireland for the time being respectively, whenever the person or persons who shall have been so pronounced contumacious and in contempt shall be domiciled or residing, or shall be seised or possessed of or entitled to any real or personal estate, goods, chattels, or effects, situate, lying, or being in Ireland, and within the like period of ten days and after such last-mentioned person or persons shall have been pronounced contumacious and in contempt to cause a copy of such order or decree to be exemplified, and certified in manner herein before mentioned to the barons of his majesty's court of Exchequer in that part of the United Kingdom called Ireland, whenever the person or persons who shall have been so pronounced contumacious and in contempt shall be domiciled or residing or shall be seised or possessed of or entitled to any real or personal estate, goods, chattels, or effects, situate, lying, or being in Ireland; and the said lord chancellor, lord keeper or lords commissioners for the custody of the great seal of Ireland shall forthwith cause such copy of such order or decree, when it shall be presented to them respectively, so exemplified, to be enrolled in the rolls of the high court of Chancery in Ireland, and shall thereupon cause process of sequestration to issue against the real and personal estate, goods, chattels, and effects, in Ireland, of the party or parties against whom such order or decree shall have been made, in order to enforce obedience to and performance of the same, in the same manner and form and with the like power and effect, as if the cause wherein such order or decree shall have been made had been originally cognizable by and instituted in the said court of Chancery in Ireland, and as if all and every the process of the said court of Chancery in Ireland ordinarily issuing in causes there pending antecedent to

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occur in which legal exemption cannot be made out by legal evidence, particularly where the non-payment has originated in the existence of customary payment in lieu of tithes, so small as to have been neglected and forgotten. Here justice requires that the exemption should be absolute.

"Supposing that the owner who claims the exemption is in a condition to prove, by strict legal evidence, that his land anciently belonged to a religious house, and may lawfully be discharged from the payment of tithes, he succeeds, after much harassing litigation, and the costs awarded to him are a very insufficient indemnity for the expense he has necessarily incurred.

"We see no objection to enacting, that, where there has been non-payment of tithes as of right, for a certain number of years, and during a certain number of incumbencies, such non-payment alone shall be sufficient to establish the exemption.

"2. *Moduses.* The attempts to set aside parochial and farm moduses cause much more vexation and general mischief. Where such moduses exist, the land is supposed to be subject to tithes; but instead of their being paid in kind and to the full extent, small payments are made, such as 1*d.* for a calf, 1*d.* for a garden, 1*d.* for the agistment of each barren cow, 1*d.* for the milk of a cow, 1*d.* for a colt, 2*d.* per acre for hay, 6*d.* for farm A. in lieu of tithe hay, 3*d.* for farm B. in lieu of agistment tithe, 1*s.* for farm C. in lieu of all tithes whatsoever. These moduses are supposed to have arisen from agreements of immemorial antiquity between the tithe owner and the tithe payer, for their mutual benefit; such agreements have anciently been permitted by the law.

"Where these customs exist, they ought to be respected as much as the right to tithes in kind where there is no modus, or as the right to the soil itself.

"Yet the rules laid down by courts of justice on this subject render many cases of modus open to question, and have often caused moduses which had subsisted without question for centuries, to be set aside. The most formidable objection to a modus is rickness. To be valid, a modus must be deemed to have subsisted from the reign of Richard I., as the period of legal memory; and if the payment be considered greater than the tithe of the articles covered by the modus was then worth, it is set aside; notwithstanding the uncertainty of such speculations, and the possibility that the owner of

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frequently numerous, and aid en: Whenever the incumbent succeeds aside a long established modus, t strong feeling that injustice is don accepted the living when the modus and the advowson and all the la parish have been probably repeated the basis of the modus; so that, w set aside, one party loses what he h. and had long enjoyed, and another he had not bought and never ex enjoy.

"A modus was recently set asi had certainly subsisted ever since of Edward 2, by the discovery of a which showed that it originated in t Other cases almost equally strong. recently decided in the same way. *ton (Lord) v. Pugh*, 1 Younge, 125 v. *Anstie*, 3 Y. & J. 548; *Short v. & W.* 464; *Norton v. Hammond*, 94; *Fisher v. Graves (Lord)*, 1 M⁴ 362; *Dennison v. Elaley*, Ibid. 1.

"We think that, with respect to and exemptions, a reasonable period enjoyment may be safely assumed, a terion of the rights of the clergy and

"3. *Composition bill.* This rem apply equally to the third case, tl composition. This differs from mo cipally in the time of its commenor is an agreement for a commutation that might have been made with th of the incumbent, patron, and ord any time prior to the thirteenth of 1 It is not liable to the objection of r

"By the rule, however, now esta composition real is not to be presu any length of usage consistent with must be established by proof or po dence of the existence at some time which must at least be as old as the of Elizabeth, and may be several older.

"This doctrine, no less than tl requires positive proof of the grou emption from payment of tithes, against the general maxim of the what has long existed shall, in peaceable enjoyment, be presumed had a legal origin. We believe that which requires positive evidence of establish a composition real, operate cases against the truth of the transa

"4. *Glebe lands.* Disputes ex though rarely, arise as to the cla church to the soil itself. Supposir have belonged to the church in the Elizabeth, it cannot since have been aliened without an act of parliame there ought to be a period of adver ment, which should outweigh any e prior title.

"It would likewise be proper some regulation respecting land g parson irregularly for tithes, and la larly exchanged for glebe land v tithes or the glebe land have been claimed; for instances occur in a parson recovers the tithes and al land given in lieu of them, or wha vers the glebe land and retains t received by his predecessor in excham

decimandi (1), or exemption from or discharge by the king's most excellent majesty, by his orders spiritual and temporal, and commons, and by the authority of the same, that all *modus decimandi*, or of or to any exemption or discharge, position real or otherwise, shall, in cases where it shall be hereafter demanded by our said lord the Duke of Cornwall, or by any lay person or any body corporate of many, whether the same be deemed good and valid in law upon evidence of *modus decimandi*, the payment or render of tithes, or exemption or discharge showing the enjoyment of tithes, money, or other matter in years next before the time of such demand, *decimandi*, the actual payment or render of tithes, or exemption or discharge, the render of tithes, or other matter in lieu thereof, shall be shown to have been made in each thirty years, or it shall be proved that the same was made or enjoyment had by some consent or agreement made for that purpose by deed or writing; and it shall be extended to the full period of sixty years, and in such cases the claim shall be deemed to be proved that such payment or render of tithes, or exemption or discharge, was made or enjoyment had by some consent or agreement expressly made in writing; and where the render of tithes is made by a parson, bishop, dean, prebendary, parson, or other person, whether spiritual or temporal, shall be valid and indefeasible upon evidence of the same made or enjoyment had, as is hereinbefore provided of the claim, for and during the whole

"We propose a period of sixty years, and two incumbencies, with three years of a third incumbency, as to exemptions from tithes, and as to *moduses*, compositions real, and glebe lands. A succession of incumbencies is a necessary ingredient in the proposition, on account of the risk of a particular incumbent being careless or poor, or of there being collusion between the incumbent and the patron, who has land in the parish; but any risk from the character of the individual incumbent, or from collusion between the incumbent and patron for more than two incumbencies in succession, cannot be allowed for without too great a sacrifice of the objects to be attained; and it seems not unreasonable to presume, that, within the period we propose, there may be an incumbent able and willing to assert the rights, the protection of which is left in his hands." Third Report of Commissioners on the Law of Real Property, 60-62.

(1) *Modus decimandi*:—Vide *Dryfield (Clerk) v. Orrell*, 6 Price, 324. 3 E. & J. 834. *Levesque de Winchester's case*, 2 Co. 44. *Baudin v. Bushel*, 1 Keb. 602. *Hall v. Malby*, 6 Price, 255. 3 E. & J. 928. *Perry v. Soam*, Cro. Eliz. 139.

(2) *Discharge of tithes*:—Non-payment of tithes will not raise, as against a lay proprietor, a presumption of a grant of tithes to the landowner. *Bayley v. Drew*, 1 A. & E. 449. Vide *Fellous v. Clay*, 4 Q. B. 313.

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time that two persons in succession shall have held the office or benefice in re whereof such render of tithes in kind shall be claimed, and for not less than years after the appointment and institution or induction of a third person the provided always, that if the whole time of the holding of such two persons sh less than sixty years, then it shall be necessary to show such payment or r of modus made or enjoyment had, (as the case may be,) not only during the v of such time, but also during such further number of years, either before or such time, or partly before and partly after, as shall with such time be suffi to make up the full period of sixty years, and also for and during the fu period of three years after the appointment and institution or induction of a person to the same office or benefice, unless it shall be proved that such payme render of modus was made or enjoyment had by some consent or agree expressly made or given for that purpose by deed or writing.

"II. And be it further enacted, that every composition for tithes which been made or confirmed by the decree of any court of equity in England in a to which the ordinary, patron, and incumbent were parties, and which hat not since been set aside, abandoned, or departed from, shall be and the sa hereby confirmed and made valid in law; and that no modus, *exemption* (1 discharge shall be deemed to be within the provisions of this act, unless modus, exemption, or discharge shall be proved to have existed and been upon at the time of or within one year next before the passing of this act.

"III. Provided always, that this act shall not be prejudicial or available for any plaintiff or defendant in any suit or action relative to any of the m before mentioned, now commenced, or which may be hereafter commenced, d the present session of parliament, or within one year from the end thereof.

"IV. Provided also, and be it further enacted, that this act shall not exte be applicable to any case where the tithes of any lands, tenements, or heri ments shall have been demised by deed for any term of life or number of yea where any composition for tithes shall have been made by deed or writing, b person or body corporate entitled to such tithes, with the owner or occupier t land, for any such term or number of years, and such demise or composition be subsisting at the time of the passing of this act, and where any *action or s* shall be instituted for the recovery or enforcing the payment of tithes in within three years next after the expiration, surrender, or other determinati such demise or composition.

"V. Provided also, and be it further enacted, that where any lands or ments shall have been or shall be held or occupied by any rector, vicar, or

(1) *Exemption*.—The time limited by Stat. 2 & 3 Gul. 4, c. 100, applies only to the proof of non-payment of tithes, and the legal origin of exemption must, therefore, be proved in the same manner as was required before the passing of that statute. *Salkeld v. Johnston*, 6 Jurist, 210. *Vide Addenda*.

(2) *Action or suit*.—Where a bill for tithes was filed against occupiers of lands within the time prescribed by Stat. 2 & 3 Gul.

sequently, and act, amended, ds a party: it the amended l that the suit ist the owner ' the statute. C. 421.

rist, 991,) it , 1833, a bill ristical rec- certain lands, s amended by 1 other lands, it no evidence excepting the

case of the last mentioned defendants; the operation of Stat. 2 & 3 Gul. 4, c. a. 3, it was held, upon appeal to the l of Lords, reversing the decision of the below, that the bill should be dismis gainst such defendants, with costs.

A modus of 4d. per acre for ancient p in the occupation of out-residents is and an issue was directed to try the v of such modus when pleaded for lands v at the commencement of legal memory pasture lands, but have since been plo up, and subsequently laid down in po *Ibid*.

Where a composition for tithes, ma the year 1711, and duly confirmed b court of Chancery in 1715, was set as a decree of the court of Exchequer in e in a suit commenced within the time E by Stat. 2 & 3 Gul. 4, c. 100, s. 3: i held, that the rector might bring an . of debt on Stat. 2 & 3 Edw. 6, for m ting out the tithes, before the *determin* of an appeal to the House of Lords upon decree of the court of Exchequer. *The Mattingley*, 5 M. & W. 302.

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if, or by any lessee of any such rector, vicar, or compounder for tithes with any such rector, tenant of any such rector, vicar, or other person, under, whereby the right to the tithes of such land or may be during any time in the occupation of the rent thereof, the whole of every such time the computation of the several periods of time

time during which any person otherwise capable of the matters before mentioned shall have been or in possession, feme covert, or lay tenant for life, or shall have been pending, and which shall have been abated by the death of any party or parties, the computation of the periods hereinbefore mentioned, the right or claim is hereby declared to be abated,

that in all actions and suits to be commenced, shall be sufficient to allege that the matter or thing actually exercised and enjoyed for such of the periods as may be applicable to the case; and if the other provisions, proviso, exception, incapacity, disability, or herein mentioned, or any other matter of fact or simple fact of the exercise and enjoyment of the matter specially alleged and set forth in answer to the petition, and shall not be received in evidence on any matter claimed.

acted, that in the several cases mentioned in and in the petition shall be allowed or made in favour of the exercise or enjoyment of the right or matter for such period or number of years than for such period or may be applicable to the case and to the nature of

further enacted, that this act shall not extend to

VICTORIA IV. CAP. CIII. A.D. 1832.

Of the North and South Charitable Infirmeries of London abolishing in lieu of such Infirmeries one general

VICTORIA IV. CAP. CX. A.D. 1832.

General Cemetery for the Interment of the Dead in the Parishes of the Metropolis."

VICTORIA IV. c. 115(1). A.D. 1832.

Of the Charitable Donations and Bequests of His Majesty's Subjects professing the Roman Catholic Religion."

the first year of the reign of King William and for exempting His Majesty's Protestant Subjects

to the schools were entitled to the legacies Lord Chancellor Brougham observing, "He was of opinion that the act was retrospective, and that, as the trustees of the school were not litigant parties in the suit, which was a mere suit for the administration of the testator's estate, the case did not fall within the exception in the third section of the act." *Bradshaw v. Tuckey*, 2 M. & K. 221

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dissenting from the Church of England from the Penalties of certain Laws,' and by certain subsequent statutes, the schools and places for religious worship(1), educa-
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(1) *Religious worship*.—It appeared in *West v. Shuttleworth*, (2 M. & K. 684,) that a testatrix directed several sums to be paid to certain Roman catholic priests and chapels, desiring that they might be paid as soon as possible after her decease, that she might have the benefit of their prayers and masses; and she gave the residue of her property to trustees, upon trust, to pay 10*l.* each to the ministers of certain specified Roman catholic chapels, for the benefit of their prayers for the repose of her soul and that of her deceased husband, and to appropriate the remainder in such way as they might judge best calculated to promote the knowledge of the catholic Christian religion among the poor and ignorant inhabitants of Swale Dale and Wenston Dale: it was held, that the gifts to priests and chapels were void, and that the next of kin was entitled to the benefit of the failure, but that the gift of the residue was valid within Stat. 2 & 3 Gul. 4, c. 115. Sir Charles Peppys observing, "The testatrix in this case, after giving several legacies, some of which were for charitable purposes, as to the residue of her estate and effects, bequeathed the same to Sir Henry Lawson and Simon Scroop, and she appointed John Carr, John Shuttleworth, and John Furniss, her executors. There is then a paper entitled, 'Omitted in my will, chapels and priests. To the chapel of St. George's Fields, London road, 10*l.*; to St. Patrick's chapel, Sutton street, 10*l.*; to Litchfield chapel, 10*l.*' Several small legacies are then enumerated to several clergymen by name, and then comes this note: 'Whatever I have left to priests and chapels, it is my wish and desire the sums may be paid as soon as possible, that I may have the benefit of their prayers and masses.' There is then a letter signed by the testatrix, and addressed to Sir John Lawson and Simon Scroop, which has been proved as testamentary, as follows: 'Gentlemen, I have herewith sent a duplicate of my will, whereby you will perceive that I have taken the liberty of bequeathing the residue of my property to you, in confidence that you will appropriate the same in the manner most consonant to my wishes, which are as follows: that the sum of 10*l.* each be given to the ministers of the Roman catholic chapels of Greenwich, St. George's in the Fields, Sutton street, Soho square, and York, for the benefit of their prayers for the repose of my soul, and that of my deceased husband, George Townsend, and that the remainder be

such way as you may
promote the know-
ledge of Christian religion
amongst the poor and
ignorant inhabitants of
Wenston Dale, in the

objected to upon two
grounds: the first was
that the legacies to the
priests and chapels were
void, and therefore the
residue, being bequeathed
to the residue, be-
came express purpose of
the catholic religion.

"I shall first consider the objection to the gift of the residue. The Stat. 2 & 3 Gul. 4, c. 115, puts persons professing the Roman catholic religion upon the same footing with respect to their schools, places for religious worship, education, and charitable purposes, as protestant dissenters; and the case of *Bradshaw v. Tasker*, (2 M. & K. 221,) decided that the act was retrospective, and that the third section did not exclude the legacies in question in the cause from the operation of the act, because the suit was only for the administration of the estate. In the present case, the bill filed by the next of kin claimed the property, as inapplicable, under the Statute of Mortmain, to any charities, and not because it was given to promote the catholic religion, or to give instruction to those who profess it; and the letter which raises the question as to the residue was not proved until the 15th of January, 1834, so that it cannot be said that the property in question was in litigation, discussion, or dispute, upon the point now contended for, at the time the act passed in 1832.

"This act makes it unnecessary to consider what was the state of the law, before it passed, with respect to such dispositions of property in favour of Roman catholics. It is only necessary to inquire what is now the state of the law with respect to similar dispositions of property in favour of protestant dissenters. The trust is to appropriate the residue in such way as the trustees shall judge best calculated to promote the knowledge of the catholic Christian religion among the poor and ignorant inhabitants of certain places named. In the case of *Bradshaw v. Tasker*, (Ibid.) the gift was in favour of certain catholic schools, and to be applied towards carrying on the good designs of the said schools. Now, can it be said that to promote the carrying on the good designs of catholic schools differs in principle from promoting the knowledge of the catholic Christian religion amongst the poor and ignorant? In *Attorney-General v. Pearson*, (3 Meriv. 409,) Lord Eldon says, 'that the court will administer a fund given to maintain a society of protestant dissenters promoting no doctrine contrary to law, although such as may be at variance with the doctrine of the established church.' In *Attorney-General v. Hickman*, (2 Eq. Abr. 193,) a legacy was established, which was given for encouraging such nonconforming preachers to preach God's word in places where the people are not able to allow them a sufficient and suitable maintenance, and for encouraging the bringing up some to the work of the ministry, who are designed to labour in God's vineyard among the dissenters, leaving the particular mode to the trustees. *Waller v. Childs*, (Ambl. 524,) and the cases which continually occur of funds left to support the chapels and schools of dissenters, proceed upon the same principle, and leave no doubt in my mind of the validity in law of the gift of the residue.

"The gifts to priests and chapels remain

STAT. 2 & 3
GUL. 4, c. 115.
1700, c. 3.

Roman catho-
lics to be sub-
ject to the
same laws as
protestant
dissenters,
with respect to
schools and
places of
worship.
Roman catholic

tion, and charitable purposes of protestant dissenters, are exempted from the operation of certain penal and disabling laws to which they were subject previously to the passing of the said recited act of the first year of the reign of King William and Queen Mary; and whereas by certain acts of the parliament of Scotland, and particularly by an act passed in the year one thousand seven hundred, intituled, 'An Act for preventing the Growth of Popery,' various penalties and disabilities were imposed upon persons professing the Roman catholic religion in Scotland; and whereas, notwithstanding the provisions of various acts passed for the relief of his majesty's Roman catholic subjects from disabling laws, doubts have been entertained whether it be lawful for his majesty's subjects professing the Roman catholic religion in Scotland to acquire and hold in real estate the property necessary for religious worship, education, and charitable purposes; and whereas it is expedient to remove all doubts respecting the right of his majesty's subjects professing the Roman catholic religion in England and Wales to acquire and hold property necessary for religious worship, education, and charitable purposes; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act his majesty's subjects professing the Roman catholic religion, in respect to their schools, places for religious worship, education, and charitable purposes, in Great Britain, and the property held therewith, and the persons employed in or about the same, shall in respect thereof be subject to the same laws as the protestant dissenters are subject to in England in respect to their schools and places for religious worship, education, and charitable purposes, and not further or otherwise.

"II. Provided always, and be it further enacted, that in all cases in which

to be considered, and these are not affected by Stat. 2 & 3 Gul. 4, c. 115, which applies only to schools, places for religious worship, education, and charitable purposes. Taking the first gift to priests and chapels in connection with the letter, there can be no doubt that the sums given to the priests and chapels were not intended for the benefit of the priests personally, or for the support of the chapels for general purposes, but that they were given, as expressed in the letter, for the benefit of their prayers for the repose of the testatrix's soul and that of her deceased husband; and the question is, whether such legacies can be supported. It is truly observed by Sir William Grant, in *Cary v. Abbot*, (7 Ves. 490,) that there was no statute, making superstitious uses void generally, and that the statute of Edward the Sixth related only to superstitious uses of a particular description then existing; and it is to be observed, that that statute does not declare any such gift to be unlawful, but avoids certain superstitious gifts previously created. The legacies in question, therefore, are not within the terms of the statute of Edward the Sixth, but that statute has been considered as establishing the illegality of certain gifts, and, amongst others, the giving legacies to priests to pray for the soul of the donor has, in many cases collected in Duke, (p. 466,) been decided to be within the superstitious uses intended to be suppressed by that statute. I am therefore of opinion that these legacies to priests and chapels are void.

"What then is to become of the amount of such legacies? The statute of Edward the Sixth gives to the king such property devoted to superstitious uses as that act affects; but the legacies in question are not within the terms of the act, but are void on account of

the general illegality of the object they were intended to answer. It has been decided, that where legacies are given to charities, which charities cannot take effect, the object being considered as superstitious, then the duty of appropriating the amount to other charitable purposes devolves upon the crown, as in *Cary v. Abbot*, (7 Ves. 490;) but in that case and the cases there cited, the object of the gift was clearly charity. In the present case, according to the construction I have put upon these legacies, there was nothing of charity in their object; the intention was not to benefit the priests, or to support the chapels, but to secure a supposed benefit to the testatrix herself. Upon what ground, then, can the crown claim? Not by virtue of Stat. 1 Edw. 6, for the case is not within that act; and not upon the ground of the money given being devoted to charity, the mode of applying which devolves upon the crown. Doubts have been entertained, how far it was correct to give to the crown, for the purpose of being applied to charity, funds given for charitable purposes which are illegal, as in the case of *Cordyn v. French*, (4 Ibid. 418,) and in *De Garcia v. Lawson*, in the note to that case; but in all such cases charity was the object of the gift; and how can the claim of the crown attach to gifts void because superstitious, but of which charity was no part of the object? These gifts are void because illegal; and as they therefore cannot take effect, and as the crown cannot claim either under Stat. 1 Edw. 6, or upon the authorities which give to the crown the right to direct the application of charitable legacies, which cannot be carried into effect according to the directions of the donor, I am of opinion, that the next of kin are entitled."

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schoolmasters or other persons employed in such schools or other places are, as a legal qualification for such employments, now required by law to take the oath of supremacy, or the oath or declaration against transubstantiation and the invocation of saints and sacrifice of the mass, or to receive the sacrament of our Lord's supper, or, in Scotland, to subscribe the formula annexed to the foresaid act for preventing the growth of popery, and such schoolmaster, or other master, professing himself a Roman catholic, shall, in lieu of the qualification aforesaid for holding such employment, take the oath contained in the statute passed in the tenth year of his late majesty, intituled, 'An Act for the Relief of His Majesty's Roman Catholic Subjects,' and at the times and in manner in that act mentioned.

"III. Provided always, and be it further enacted, that nothing in this act contained shall affect any suit actually pending or commenced, or any property now in litigation, discussion, or dispute, in any of his majesty's courts of law or equity in Great Britain.

"IV. Provided always, and be it further enacted, that nothing in this act contained shall be taken to repeal or in any way alter any provision of an act passed in the tenth year of the reign of his late majesty King George the Fourth, intituled, 'An Act for the Relief of His Majesty's Roman Catholic Subjects,' respecting the suppression or prohibition of the religious orders or societies of the church of Rome bound by monastic or religious vows.

"V. Provided always, and be it further enacted, that all property to be acquired or held for such purposes of religious worship, education, and charitable purposes, in England and Wales, shall be subject to the provisions of an act passed in the ninth year of the reign of King George the Second, intituled, 'An Act to restrain the Disposition of Lands whereby the same may become unalienable,' and to the same laws as the protestant dissenters are subject to in England in respect of the acquiring or holding of such property; provided always, that nothing in this act contained shall be taken to extend the provisions of the said last-recited act to that part of Great Britain called Scotland."

LIII. STAT. 2 & 3 GULIELMI 4, c. 119(1). [IRELAND.] A.D. 1832.

"An Act to amend three Acts passed respectively in the fourth, fifth, and in the seventh and eighth years of the Reign of His late Majesty King George the Fourth, providing for the establishing of Compositions for Tithes in Ireland, and to make such Compositions permanent."

LIV. STAT. 2 & 3 GULIELMI 4, c. 127(2). A.D. 1832.

"An Act for appointing additional Commissioners to put in execution the Acts for granting an Aid to His Majesty by a Land Tax, and continuing the Duties on Personal Estates, Offices, and Pensions."

LV. STAT. 3 & 4 GULIELMI 4, c. 9. A.D. 1833.

"An Act for incorporating the Members of a Society, commonly called 'The Seaman's Hospital Society,' and their Successors, as therein is mentioned and provided; and for the better enabling and empowering them to carry on the Charitable and Useful Designs of the same Society."

LVI. STAT. 3 & 4 GULIELMI 4, c. 19. A.D. 1833.

"An Act for the more effectual Administration of Justice in the Office of a Justice of the Peace in the several Police Offices established in the Metropolis, and for the more effectual Prevention of Depredations on the River Thames and its Vicinity for three years."

"II. And be it further enacted, that one or more of the said justices so appointed shall diligently attend at each of the said police offices every day from ten

(1) Vide Stat. 3 & 4 Gul. 4, c. 37, s. 1. tial property. 4 Barn's E. L. by Phillimore, 743.

(2) This statute does not affect ecclesiastical property.

1 GULIELMI IV. A.D. 1830—1837.

g until eight of the clock in the evening, and at such shall be found necessary, and directed by one of his riers of state, and that two of the said justices shall in er at each of the said offices from twelve of the clock at ernoon : provided always, that no such attendance shall istmas Day, Good Friday, or any day appointed for a ng, unless in cases of urgent necessity, or when it shall pal secretary of state.

great inconvenience has arisen from the driving of stage iving of cattle, sheep, pigs, and other animals in the e metropolis during the hours of divine service, and it is should be made for preventing such interruption and e enacted, that on the application of the minister or urch, chapel, or other place of public worship, to the ity of London, if the same shall be situated in the city of reof, or to any two of the justices of the said public office wo of the justices appointed to attend at any of the said e in the vicinity of such church or chapel, or place of e shall be situated within the limits and parishes afore- the court of aldermen, or for such two justices, as the s or orders for regulating the route and conduct of per- tage carriage, or who shall drive any cattle, sheep, pigs, ch parish or place during the hours of divine service, on Good Friday, or any other day appointed for a public o annex reasonable penalties for the breach of such rules rty shillings, with costs, if ordered, for any such offence, repugnant to the laws of the realm, and from time to e same if necessary, and every breach of any such rule a separate offence ; and any person who shall offend rder shall on conviction thereof before any justice of the i penalty as shall be adjudged, and in default of payment justice at the time of conviction shall appoint, shall be r any term not exceeding one month ; and any person ainst any such rule or order may be immediately appre- ant, by any constable who shall see such offence com- before a justice of the peace, to be dealt with as . ; and any justice of the peace, on complaint made to hath been committed within his jurisdiction, may issue ension of any such offender ; provided always, that when all have been made by the court of aldermen of the city justices as hereinbefore is mentioned, the same shall be church, chapel, or place of public worship to which the the most conspicuous places leading to and contiguous s the said court of aldermen or the said justices shall

3 & 4 GULIELMI 4, CAP. XX. A.D. 1833.

the Parish Church of Stretton-upon-Dunsmore, in the and Diocese of Lichfield and Coventry, and building a ereof."

3 & 4 GULIELMI 4, cap. xxiii. A.D. 1833.

stees of the Blue Coat Charity School at Storkton, in the sell and dispose of certain Lands and Hereditaments barity, and to purchase and acquire other Lands in her leversion of the Lands held by them for Lives."

STATUTA GULIELMI IV. A.D. 1830—1837.

LIX. STAT. 3 & 4 GULIELMI 4, c. 27(1). A.D. 1833.

"An Act for the Limitation of Actions and Suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto."

"Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present assembled, and by the authority of the same, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the word 'land' shall extend to manors(2), messuages, and all other corporeal hereditaments(3) whatsoever, and also to tithes (other than tithes

(1) The following has been extracted from the First Report of Commissioners on the Law of Real Property [presented May 11th, 1829]:

"The various Statutes of Limitation which have been hitherto passed in this country, (with the exception of an enactment in Stat. 33 Geo. 3, c. 127, s. 5, confining suits for recovering the value of tithes to a period of six years,) apply only to legal remedies, and, therefore, have no direct operation on equitable estates or interests. But according to the maxim, that 'equity follows the law,' courts of equity, in analogy to the Statutes of Limitation, have laid down rules by which they have refused relief, where, if the estate of the claimant were legal instead of equitable, lapse of time would be a bar to a legal remedy. They have disregarded the periods of sixty, fifty, and thirty years, allowed for bringing writs of right and writs of entry, and (as it is now generally understood,) have adopted, as the limit of their relief, the period of twenty years given by Stat. 21 Jac. 1, c. 16, for making an entry on lands, or bringing an ejectment, adhering likewise to the statutable provisions respecting disabilities, but excepting certain cases affected by fraud or trust.

"The question arises, whether the direct operation of the Statutes of Limitation should still be confined to legal remedies, or whether there should not be express legislative enactments upon this subject, applicable to equitable estates and interests. As adverted to above, the legislature has already begun to apply limitation to suits in equity, and we conceive that this system may now be advantageously acted upon. When the ancient Statutes of Limitation passed, equitable jurisdiction was of small account; but a very large proportion of the real property of the country is now subject to that jurisdiction, and there seems no sufficient reason why the regulation of such property should continue to be left to the variable discretion of a judge. A case very recently occurred, where an estate subject to a mortgage in fee, being in settlement, with an ultimate limitation to the right heirs of a particular person, a stranger, on the expiration of the previous estate, entered, claiming to be entitled under the limitation; and he and his son, upon his death, continued in quiet possession, paying interest upon the mortgage, for twenty years. After a difference of opinion between judges of great emi-

nence, it was held, that the devisee of the person really entitled under the limitation was barred by lapse of time. This decision, although generally approved of, has been censured by some, and the doctrine founded upon it may be qualified in subsequent cases. Hence, without a positive law to refer to, some uncertainty and uneasiness must prevail, and practising lawyers sometimes find it impossible to give a confident opinion upon titles submitted to them." First Report of Commissioners on the Law of Real Property, p. 48.

"Where a mortgagee has been twenty years in possession, without any payment, or promise, or acknowledgment, to show that the relation of mortgagor and mortgagee continues, the right to redeem is gone; but evidence of any acknowledgment in writing, or by parol, to the mortgagor or to a stranger, or any memorandum or account found among the papers of the mortgagee, admitting or evidencing that he holds in that character, interrupts the bar. For this reason, mortgage titles are insecure, and, for a very long period, almost wholly unmarketable. When the price of land is depressed, and the mortgaged premises are not worth the mortgage money, they are abandoned by the mortgagor. From some local or general cause, or from actual improvements by the mortgagee, the value, after many years, is increased. A bill to redeem may then be supported by some expression the mortgagee is sworn to have used in conversation, or some private note, which he is compellable to divulge, written by him, within twenty years. In analogy to the salutary statute lately passed, (9 Geo. 4, c. 14,) respecting acknowledgments and promises to revive debts barred by the Statute of Limitations in personal actions, and to render adults liable for debts contracted during infancy, we propose that it should be enacted, that where the mortgagee is in possession, the bar in equity shall not be affected by any promise, statement, or acknowledgment, unless it were in writing, and made by the mortgagee, or those claiming under the mortgagee, to the mortgagor, or those claiming under the mortgagor." Ibid. p. 50.

(2) *Shall extend to manors*.—Vide *Doe d. Beck v. Heskin*, 6 A. & E. 495. *Parrott v. Palmer*, 3 M. & K. 362.

(3) *Corporeal hereditaments*.—Vide *Co. Lit.* 4, 6 (a). *Winchester's (Le Marquis de) case*, 3 Co. 2. Touchst. by Atherley, 91.

& 4. *belonging to a spiritual* (1) *or eleemosynary* (2) *corporation sole* (3), and also to any
c. 27. share, estate, or interest in them or any of them, whether the same shall be a *freehold or chattel interest* (4), and whether freehold or *copyhold* (5), or held according to any other tenure (6); and the word '*rent*' shall extend to all *heriots* (7), and to all *services* (8) and *suits* (9) for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land (except moduses or compositions belonging to a spiritual or eleemosynary corporation sole); and the person through whom another person is said to claim (10) shall mean any person by, through, or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed as *heir* (11), *issue in tail* (12), *tenant by the courtesy of England* (13), *tenant in dower*, *successor* (14), *special* (15) *or general occupant* (16), executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise, and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as *lord by escheat* (17); and the word '*person*' shall extend to a body politic, corporate, or collegiate (18), and to a class of creditors or other persons, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

"II. And be it further enacted, that after the thirty-first day of December, one thousand eight hundred and thirty-three, no person shall make an entry or distress, or bring an action to recover any land (19) or rent but within twenty years next after the time at which the right to make such entry (20) or distress, or to bring

(1) *Tithes belonging to a spiritual*:—Vide Co. Lit. 150 (a). 1 Kyd on Corporations, 22.

(2) *Or eleemosynary*:—Vide 1 Bell's Law Dict. tit. COMMUNITY. *Sutton's Hospital* (Le case de), 10 Co. 31, 35. *Philips v. Bury*, Skin. 484. 1 Ld. Raym. 6. *Res v. Cambridge* (Vice-chancellor of), 3 Burr. 1652, 1656.

(3) *Corporation sole*:—Vide Co. Lit. 43. *Sutton's Hospital* (Le case de), 10 Co. 29 (a). *Wood's Inst.* 109.

(4) *Freehold or chattel interest*:—An interest for a definite space of time. 1 Preston on Estates, 203. *Corbet's* (Sir Andrew) case, 4 Co. 81 (b).

(5) *Copyhold*:—Vide *Res v. Hesham* (Lord of the manor of), 5 A. & E. 509. 1 N. & P. 53. *Doe d. North v. Webber*, 5 Scott, 189. 3 Bing. N. C. 922.

(6) *Any other tenure*:—Vide 1 Cruise's Digest, 2 & 3.

(7) '*Rent*' shall extend to all *heriots*:—Vide Co. Lit. 14 (b). Stat. 4 Geo. 2, c. 28, s. 5; as to a rent-charge, vide *Cupit v. Jackson*, M'Clel. 495; and as to a pecuniary payment in lieu of a heriot, vide *Groome v. Guise*, 4 Bing. N. C. 148. 5 Scott, 453.

(8) *Services*:—Vide *Tomkins v. Crocker*, 2 Salk. 604. Carth. 520. *Lanyon v. Carns*, 2 Saund. 168. *Coke's Copyholder*, c. 24.

(9) *Suits*:—An annuity under a will is within the section. *James v. Salter*, 4 Scott, 168. 3 Bing. N. C. 544. 5 Dowl. P. C. 496.

(10) *Through whom another person is said to claim*:—Where, on the death of a father intestate seized of lands in fee, his second son enters without title, such entry is deemed to be for the use of the eldest son, and the Statute of Limitations does not run against

son being his possession. *Dowdell v. Byrne*, Batty (Irish), 373. *Doe d. Durose v. Jones*, 4 T. R. 300. *Doe d. George v. Jackson*, 6 East, 80.

(11) *As heir*:—Vide *Cumden v. Clerk*, Hob. 31.

(12) *Issue in tail*:—Vide *Woodwright v. Wright*, 10 Mod. 370. Str. 25.

(13) *Tenant by the courtesy of England*:—Vide *Paine's case*, 8 Co. 34 (b). *Dyer*, 25, pl. 159.

(14) *Successor*:—Vide Co. Lit. 94 (b).

(15) *Special*:—If an estate pur autre vie be limited to A., his heirs, executors, administrators, or assigns, and be not devised, it descends to the heir as special occupant. *Atkinson v. Baker*, 4 T. R. 229.

(16) *Or general occupant*:—Vide *Doe d. Foster v. Scott*, 7 D. & R. 190. 4 B. & C. 706.

(17) *Lord by escheat*:—Vide *Burgess v. Wheate*, 1 Eden, 177. *Henchman v. Attorney-General*, 2 S. & S. 496. Stat. 4 & 5 Gul. 4, c. 23.

(18) *Corporate, or collegiate*:—Vide *Phillips v. Bury*, 2 T. R. 346.

(19) *Recover any land*:—Vide *Doe d. Jones v. Williams*, 5 A. & E. 291. This includes "common" inclosed for twenty years, and after which time the right of entry is gone. *Hawke v. Bacon*, 2 Taunt. 139. *Creach v. Wilnot*, Ibid. 160, n.

(20) *The right to make such entry*:—The claimant must have a right of possession, as well as a right of property. *Taylor v. Horde*, 1 Burr. 119. *Doe d. Cook v. Duncovers*, 7 East, 299. *Doe v. Rolfe*, 3 N. & P. 648. *Doe d. Harris v. Sumner*, 5 A. & E. 664. *Cas v. King*, 4 Scott, 553. A right to a watercourse is not destroyed by the owner's altering the course of the stream; and the owner may establish his claim notwithstanding an interruption within twenty years of

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such action shall have first accrued (1) to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same (2).

"III. And be it further enacted, that in the construction of this act (3) the right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned; (that is to say,) when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession (4) or in receipt of the profits (5) of such land, or in receipt of such rent (6), and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt (7), then such right shall be deemed to have first accrued at the time of such disposition or discontinuance of possession, or at

his action brought to enforce the right. *Hall v. Swift*, 4 Bing. N. C. 381.

(1) *Shall have first accrued*.—This section includes a wrongful holding over of possession, after the expiration of a title under which the adverse party lawfully entered. *Doe v. Gregory*, 4 N. & M. 308.

(2) *Bringing the same*.—Where a lessor permits his lessee, during the continuance of the lease, to pay no rent for twenty years, the lessor is not therefore barred by Stat. 3 & 4 Gul. 4, c. 27, s. 2, from recovering the premises in ejectment. The case falls within the latter branch of the third section, which, in the case of an estate or interest in reversion, provides, that the right of action shall be deemed to have first accrued, when it became an estate or interest in possession. The lessor, therefore, may recover in ejectment at any time within twenty years after the determination of the lease. *Doe d. Davy v. Osenham*, 7 M. & W. 131.

Where in 1788 estates were settled by marriage settlement, to the use of the wife for life, with remainders to her issue in tail, with remainder to the settler (whose heiress at law she was) in fee; and in 1818, by deeds to which the husband and wife and their only son, R. G., were parties, and by a recovery suffered in pursuance thereof, the estates were limited to the use of the husband for life, remainder to the wife for life, remainder to R. G., the son, for life, remainder to his issue in tail, remainder to I. F. his sister for life, with other remainders over; and the husband died in 1819, the wife in 1822, and R. G. in 1828: it was held, that inasmuch as the estate of I. F. was carved out of the estate tail of R. G. she had the same period for bringing an ejectment in respect of any of the estates comprised in any of the above deeds, as he would have had, if he had continued alive, viz. twenty years from the year 1822, when his remainder came into possession. *Doe d. Carson v. Edmonds*, 6 Ibid. 295.

(3) *In the construction of this act*.—By Stat. 3 & 4 Gul. 4, c. 27, s. 3, the doctrine of non-adverse possession is done away with, except in the cases provided for by sect. 15, and an ejectment must be brought within twenty years after the original right of entry of the plaintiff, or of the party under whom he claims accrued, whatever be the nature of

the defendant's possession. *Nepson (Bart.) v. Knight*, 2 Ibid. 894.

(4) *Have been in possession*.—The general possession of a lord of a manor will not suffice. *Challen (Lord) v. Johnson*, Str. 1142. *Doe d. Davy v. Osenham*, 7 M. & W. 131.

In *Doe d. Thompson v. Thompson*, (6 A. & E. 721,) it was holden, under Stat. 3 & 4 Gul. 4, c. 27, s. 2, that no title accrues to a party who was tenant at will, and held without interruption for twenty years, after the expiration of the first year, but who had quitted possession before the act passed; and as against the original landlord, and those claiming under him, such party is without title, independently of sect. 15. Nor can he, by virtue of the first mentioned clauses, recover in ejectment, even against a stranger.

Where B. S. was in possession of certain lands under a lease for thirty-one years, made in the year 1753, and continued in possession till 1811; no rent having been paid, or any act done by B. S. acknowledging a tenancy after the expiration of the lease, in 1784: it was held, that after the expiration of the lease, the possession of B. S. was that of a tenant at sufferance, and that there was no adverse possession by B. S. against the lessor in the lease, or those claiming under him. *Howard v. Sherwood*, 1 Alcock & Napier (Irish), 217. It also appeared, that after the death of B. S. in 1811, the defendants entered into possession of the lands, and continued in possession without any act of acknowledgment of a tenancy, till the bringing of the ejectment, which was within twenty years from the death of B. S.: and it was held, that this possession was no bar under the Statute of Limitations. Ibid.

Semble, that the judge at the trial might have left it to the jury to have presumed an ouster. Ibid.

(5) *Profits*.—*Vide* 1 Inst. 4(b). 4 Cruise's Digest, 284.

(6) *Receipt of such rent*.—The payment of tithes is an acknowledgment of the lessor's title. *Roe d. Pellatt v. Ferrars (Clerk)*, 2 B. & P. 542.

(7) *Discontinued such possession or receipt*.—*Vide* 1 Saund. (n), 319(n). It may be observed, that although the rent be not received for six years, yet the right remains, for the remedy is only lost.

if rent were or was so received (1); and rent shall claim the estate or interest continued in such possession or receipt in the time of his death (2), and shall have or interest who shall have been in such land shall be deemed to have first accrued at the time when such person claiming such land or rent shall claim possession granted, appointed, or otherwise (3) to him, or some person through whom he claims, of the same estate or interest in the land, or in the receipt of the rent, and no person shall be deemed to have first accrued at the time at which the rent first accrued at the time at which the rent first accrued through whom he claims, became entitled to such instrument; and when the rent first accrued at the time at which the rent first accrued an estate or interest in reversion (4) or remainder, and no person shall have obtained possession of such land or the receipt of such rent, the rent shall be deemed to have first accrued at the time when such right shall be deemed to have first accrued, or when such interest became an estate or interest in such land or rent, or the person through whom he claims, by reason of any forfeiture (5) or other event, shall be deemed to have first accrued when such person's possession was broken (6).

right to make an entry or distress or to
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condition had happened.

like an entry or distress or to bring an action shall be deemed to have first accrued, in respect of the time at which the same shall have first accrued, by the determination of any estate or interest therein, or have been held, or the profits thereof or the proceeds of the person claiming such land, shall, at any time previously to the

bar against all the world. The twenty years form the regular bar, and the savings are the exception, and the forty years run only in the case of disabilities, in even which cannot more than forty years are allowed. But the twenty years run only from the time when the right first accrued, and that is the case of a remainder, for example, is not until it falls into possession, which event, in the common case of an estate for life with a remainder over, may not happen within forty years of its creation." 2 Sugden's V. & P. 353.

(7) *Make an entry*.—If an estate commences by livery, it cannot be determined before entry. (*Browning v. Boston*, Flord 135.) and an actual ejectment must be made before bringing an ejectment for a forfeiture of a freehold lease. Co. Lit. 218. *Chalmers's (Sir Hugh) case*, 2 Co. 53 (n). *Doe v. Myn.*, 4 Tyrw. 625. *Vide Stephens on Nisi Prius*, tit. EJECTMENT, 1374-1497.

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creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or in receipt of such rent.

"VI. And be it further enacted, that for the purposes of this act an executor claiming the estate or interest of the deceased person of whose estate he shall be appointed administrator shall be deemed to claim as if there had been an interval of time (1) between the death of such deceased person and the grant of letters of administration (2).

"VII. And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will (4), the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued, either at the determination of such tenancy (5), or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined; provided always, that no mortgagor (6) or cestui que trust (7) shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee.

"VIII. And be it further enacted, that when any person shall be in possession or in receipt of the profits of any land (8), or in receipt of any rent, whether from year to year (9) or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or to bring an action to recover such land

(1) *Interval of time*.—It seems, that the payment by one executor, will not take the case out of the Statute of Limitations as against a co-executor. *Scholey v. Walton*, 12 M. & W. 510.

(2) *Grant of the letters of administration*.—Vide Stephens on Nisi Prius, tit. EXECUTORS AND ADMINISTRATORS, 1825—1915.

(3) *As tenant*.—Vide *Doe d. Bennett v. Turner*, 7 M. & W. 226.

(4) *At will*.—The occupation of an under-tenant, who is in possession at the determination of the original lease, and is permitted to hold over, is

quasi of a tenant during the bare disagreement of possession being (b); *Butler v. Wilkes* v. —, mere fact of occupation of rent, does not raise *Simkin v. Ash*. M. & R. 261.

tenancy.—A lease, with livery of seisin, creates a determinable tenancy, though the tenant on the livery was not of such determination, 2 C. M. & R. 261. tenant, or his remainder as his own. n, 1 N. & P. 215.

into possession and, in 1827, A. out B.'s consent, stone therefrom: y amounted to a at will; and that

B. thenceforth became tenant at will, until, by agreement express or implied, a new tenancy was created between them: and, therefore, that unless the new tenancy were found by the ejectment brought by A. in 1839, late, inasmuch as by Stat. 3 & 4 (c. 27), s. 7, his right of action first accrued at the expiration of one year after the commencement of the original tenancy i. e. in the year 1818. *Doe d. B. Turner*, 7 M. & W. 226.

(6) *No mortgagor*.—The mortgagee, if the mortgage is forfeited, has not interest in the estate, as to the mortgagor (*Doe d. Roby v. Maisey*, 3 M. & R. B. & C. 767,) and may be ejected on any demand of possession. *Thunders v. Chalmers*, 3 East, 449. *Chalmers v. Clinton* (Lord), 2 Meriv. J. & W. 138.

(7) *Or cestui que trust*.—Vide *St. William v. Wheeler*, 1 Vent. 130.

The proviso as to cestui que trust is contained in Stat. 3 & 4 Gul. 4, c. 27, and applies only to cases of declared and not to the case of a person claiming under an agreement to purchase. *Stanway v. Rock*, 1 C. & Marsh.

(8) *Profits of any land*.—Vide *Davy v. Oxenham*, 7 M. & W. 133.

(9) *As tenant from year to year*.—may exist unless surrendered or determined by a regular notice to quit for any period; (*Birch v. Wright*, 1 T. R. 3 v. *Porter*, 3 T. R. 13; *Bolton v. Tomlin*, 5 A. & E. 856; 1 N. & P. case of attornment, (*Doe d. Chalmers v. Boulter*, 6 A. & E. 175; 1 N. & where the only evidence of a tenancy was payment of rent, the party paying is at liberty to explain the payment. shew on whose behalf it was received. *Harvey v. Francis*, 2 M. & Rob. 5

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at the determination of the first of such time when any rent payable in respect of which shall last happen).

it when any person shall be in possession, or in receipt of any rent, by virtue of counting to the yearly sum of twenty shillings and the rent reserved by such lease shall lawfully claiming to be entitled to such expectant on the determination of such rent reserved by such lease shall afterwards entitled thereto, the right of the subject to such lease, or of the person entitled to such lease, or of the person entitled to such lease, or of the person entitled to such lease, shall be deemed to have first accrued at the time when such lease was first so received by the person entitled to such lease; and no such right shall be deemed to have accrued to the person entitled to such lease to the person rightfully

no person shall be deemed to have been in possession of this act merely by reason of having

no continual or other claim upon or over the land, or of bringing an entry or distress, or of bringing an

it when any one or more of several persons (5), joint tenants (6), or tenants in common, receipt of the entirety, or more than his

possession of the whole. In 1800, the tenant for life died, A. having died before. The heir at law of A. filed a bill in Chancery, in respect of the land, against C. In 1833, while the proceedings were going on, the said heir at law died, having devised to J. all his lands, &c., whether in his own possession or that of others, as far as he lawfully could, specifying those which he was seeking to recover from C. In 1836, the devisee's heir at law brought ejectment against C. for A.'s third part: it was held, that, under sects. 2 & 12 of Stat. 3 & 4 Gul. 4, c. 27, the defendant's possession could not be held to have been ever that of the other tenants in common; for that sect. 12 made the possessions of tenants in common separate from the commencement of the tenancy in common, and not merely from the time of the act passing. That therefore sect. 2 would have barred the lessor of the plaintiff, but that his right was saved by sect. 15, the ejectment having been brought within five years after the passing of the act, and the possession of C. not being adverse to the other tenants in common within the meaning of that section. But that the devise of 1835, (though made before sect. 3 of Stat. 7 Gul. 4 & 1 Vict. c. 26, came into operation,) defeated the claim of the lessor of the plaintiff as heir at law to the devise; for that the devisee's right was more than such a mere right of entry as was then not devisable, he having never been dispossessed, and having a right which enabled him to devise, both before and since Stat. 3 & 4 Gul. 4, c. 27, ss. 2, 12, 15. *Culley v. Doe & Thyerston*, 11 A. & E. 1008.

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or their undivided share or shares of such land or of the profits thereof, or such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the land or rent, such possession or receipt shall not be deemed to have been possession (1) or receipt of or by such last-mentioned person or persons or any of them (2).

"XIII. And be it further enacted, that when a younger brother or other relation of the person entitled as heir to the possession or receipt of the profits of land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir.

"XIV. Provided always, and be it further enacted, that when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing (3), signed by the person in possession or receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed, according to the meaning of this act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last-mentioned person, or any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent shall be deemed to have accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

"XV. Provided also, and be it further enacted, that when no such acknowledgment as aforesaid shall have been given before the passing of this act, the possession or receipt of the profits of the land, or the receipt of the rent, shall not at the time of the passing of this act have been adverse to the person or title of the person claiming to be entitled thereto, then such person, or person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an

(1) *Possession*.—Where, in 1788, estates were settled, by marriage settlement, to the use of the wife for life, with remainders to her issue in tail, with remainder to the settlor (whose heir-at-law she was) in fee; and, in 1818, by deeds in which the husband and wife, and their only son, R. G., were parties, and by a recovery suffered in pursuance thereof, the estates were limited to the use of the husband for life, remainder to the wife for life, remainder to R. G., the son, for life, remainder to his issue in tail, remainder to J. F., his sister, for life, with other remainders over; and the husband died in 1819, the wife in 1822, and R. G. in 1828: it was held, that, inasmuch as the estate of J. F. was carved out of the estate in tail of R. G., she had the same period for bringing an ejectment in respect of any of the estates comprised in the above deeds, as he would

term of twenty-one years." The husband subsequently went off, and no rent was or lease executed: it was held, that this act was not an acknowledgment of title within the statute. *Doe d. Carson v. Mordaunt*, 6 M. & W. 295.

(3) *Acknowledgment*. . . . *his agent in writing*.—Whether a writing amounts to an acknowledgment of title within Stat. 3 Gul. 4, c. 27, s. 14, is a question for the judge, and not for the jury, to decide.

Where, on the death of a father intestate of lands in fee, his second son entered without title, such entry is deemed to be the use of the eldest son, and the Statute of Limitations does not run against such second son, the possession of the second son being his possession. *Dowdall v. Byrne*, 1 (Irish), 373. *Doe d. Duvour v. Jones*, 8 M. & W. 300. *Doe d. George v. Jesson*, 6 East

Where in an affidavit by the respondent to a petition for a receiver on a judgment denied, that the sum claimed by the petitioner was due, but said "that the sum due on foot of the judgment, &c. 474l. 8s. besides costs, which this deponent is advised he was not liable to:" it was held that he was thereby precluded from insisting on the Statute of Limitations as a bar to the full amount of that sum, because the affidavit was a sufficient acknowledgment in writing, within Stat. 3 & 4 Gul. 4, c. 27. *Tristram v. Harris*, 1 Longfield & Town (Irish), 186.

and alive, viz. 1822, when his sister died. *Doe d. Stephens* on 374-1497. If land being given title to it to him, it wrote as if it were conveyed to him. I should estimate, yet under the act, up my mind made of payment for a

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d or interest at any time within five years next *after the*

ys, and be it further enacted, that if at the time at which
make an entry or distress, or bring an action to recover
ve first accrued as aforesaid, such person shall have been
ties *hereinafter mentioned* (2), (that is to say,) infancy,
(3), unsoundness of mind, or absence beyond seas, then
claiming through him, may, notwithstanding the period
fore limited shall have expired, make an entry or distress
ver such land or rent at any time within ten years next
he person to whom such right shall first have accrued as
l(4) to be under any such disability, or shall have died,
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vertheless, and be it further enacted, that no entry, dis-
made or brought by any person who, at the time at which
y or distress, or to bring an action to recover any land or
rued, shall be under any of the disabilities hereinbefore
son claiming through him (5), but within forty years next
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lways, and be it further enacted, that when any person
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f any other person.

rther enacted, that no part of the United Kingdom of
nd, nor the islands of Man, Guernsey, Jersey, Alderney,
l adjacent to any of them, (being part of the domi-
hall be deemed to be beyond seas within the meaning of

her enacted, that when the right of any person to make
ring an action to recover any land or rent to which he
r an estate or interest in possession shall have been barred
the period hereinbefore limited, which shall be applicable
rson shall at any time during the said period have been
ite, interest, right, or possibility, in reversion, remainder,
ame land or rent, no entry, distress, or action shall be
person, or any person claiming through him, to recover

this act:—Where
sey v. Edwards,
ng in occupation
o B. who claimed
ame of B. taking
e attornment, B.
e receives rent, or
ere with the land,
times sold, with
anor court, with-
ng: it was held,
A. continued in
nty years of the
barred at the end

of that time from an ejectment.

(2) *Hereinafter mentioned*:—Imprison-
ment is not mentioned.

(3) *Lenacy*:—Vide *Culley v. Doe d. Top-
lerson*, 11 A. & E. 1808.

(4) *Shall have ceased*:—Vide *Kings v.
Palmer*, 2 Wils. 130.

(5) *Any person claiming through him*—
Vide *Doe d. Corbryn v. Brampton*, 3 A. & E. 66.

(6) *Person under disability*:—A title is
given, notwithstanding a succession of dis-
abilities.

(7) *Shall not have expired*. Vide *Clu-
lard v. Hare*, 2 R. & M. 775.

STATUTA GULIELMI IV. A.D. 1830—1837.

such land or rent, in respect of such other estate, interest, right, or possession unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest, or right which shall have been limited or taken after or in defeasance of such estate or interest in possession.

“XXI. And be it further enacted, that when the right of a tenant in any land or rent to make an entry or distress, or to bring an action to recover the same shall have been barred by reason of the same not having been so brought within the period hereinbefore limited, which shall be applicable in such case, no such entry, distress, or action, shall be made or brought by any person claiming any estate, interest, or right, which such tenant in tail might have been barred (1).

“XXII. And be it further enacted, that when a tenant in tail of any land or rent, entitled to recover the same, shall have died before the expiration of the period hereinbefore limited, which shall be applicable in such case, for making an entry or distress, or bringing an action to recover such land or rent, no person claiming any estate, interest, or right, which such tenant in tail might have been barred shall make an entry or distress, or bring an action to recover such land or rent but within the period during which, if such tenant in tail had continued to live, he might have made such entry or distress, or brought such action.

“XXIII. And be it further enacted, that when a tenant in tail of any land or rent shall have made an assurance thereof (2) which shall not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person shall by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, be in possession or receipt of the profits of such land, or of the receipt of such rent, and the same person, or any other person whatsoever, than some person entitled to such possession or receipt in respect of an estate tail, shall continue in such possession or receipt for the period of twenty years (3) next after the commencement of the time at which such assurance, if it had then been exacted from such tenant in tail or the person who would have been entitled to his estate tail, such assurance had not been executed, would, without the consent of any person, have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right, which such tenant in tail might have been barred (4).

(1) *Might lawfully have been barred*:—An adverse possession against the tenant in tail, will now run, at the same time, against the issue in tail and those in remainder, even though the issue, and those in remainder, cannot have a right of entry, while the tenant in tail lives, and his estate subsists.

(2) *Made an assurance thereof*:—The assurance referred to is the one made by the tenant in tail. The operation of the clause, therefore, is not strictly to make time a bar, but to make time give a full operation to the assurance executed by the tenant in tail.

(3) *Period of twenty years*:—This clause extends the inference formerly arising upon a long possession, adverse to a tenant in tail, and to make such a possession for twenty years, coupled with the power of the tenant in tail to bar those in remainder, equivalent to a perfect assurance. In *Doe d. Smith v. Pigg*, (3 B. & Ad. 742; 1 N. & M. 385,) Lord Tenterden observed, “The father might have conveyed by fine and recovery, and so have barred the lessor of the plaintiff; he might also have conveyed by lease and release, which would have made a good title

against himself only, and would not have barred his son, the next tenant in tail; but the long possession by the defendant may be referable to such a state of things.”

(4) *Defeatance of such estate tail*:—The clause is framed with reference to the plan of assurance by the substitution coveries Act, to which it plainly refers. There is no objection in point of law to the earlier statute operating on a later effect of the clause therefore is, that the tenant in tail executes a deed enrolling the later act, which for want of the assent of the protector operates only to create a base fee, under which possession is of the title will become good against the remainder at the end of twenty years the period when the tenant in tail, issue, could, without the consent of any person, have barred the remainder under the substitution for Reversion but this operation will not be effectual. Assurance already executed would not be executed without consent, have operated to bar the estates in remainder. It will be necessary, therefore, in all such cases, to

IV. A.D. 1830-1837.

, that after the said thirty-first day of and thirty-three, no person claiming any if (1) to recover the same but within the visions hereinbefore contained he might at an action to recover the same respective estate, interest, or right, in or to the 2).

further enacted, that when any land or any *express trust* (4), the *right of the co-*
through him, to bring a suit against the
him, to recover such land or rent, shall be
the meaning of this act, at and not before
have been conveyed to a purchaser for a
deemed to have accrued only as against
through him (8).

ist in every case of *concoaled* (7) *frund* (8)
n equity for the recovery of any land or
whom he claims, may have been deprived
first accrued at and not before the time
nable diligences (9) might have been first
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in equity for the recovery of such lands
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of time,
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(Irish),
Chinton,
(7) O
(Lord),
v. *Gord*
Dicmie, 2
(8) R
2 Co. 9
Keable v
(Earl) v
Howard
(9) R
v. *Giles*,
(10) S
says v. L
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Thomas,
(12) S
Vide T

STATUTA GULIELMI IV. A.D. 1830—1837.

"XXVII. Provided always, and be it further enacted, that nothing in this act contained shall be deemed to interfere with any rule or jurisdiction of court of equity in refusing relief on the ground of acquiescence (1) or otherwise (2) to any person whose right to bring a suit may not be barred by virtue of this act (3).

"XXVIII. And be it further enacted, that when a mortgagee (4) shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent, comprised in his mortgage, the mortgager, or any person claiming through him (5) shall not bring a suit to redeem (6) the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt unless in the meantime an acknowledgment of the title of the mortgager (7) or of his right of redemption shall have been given to the mortgager, or some person claiming his estate (8), or to the agent of such mortgager or person, in writing signed by the mortgagee or the person claiming through him (9); and in such case no suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given; and when there shall be more than one mortgager, or more than one person claiming through the mortgager or mortgagers, such acknowledgment, if given by any of such mortgagers or persons, or his or their agent, shall be as effectual as the same had been given to all such mortgagers or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under, him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defiance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgager or mortgagers a right to redeem the mortgage as against

McQueen v. Parquhar, 11 Ves. 478. *Hamilton v. Royce*, 2 Sch. & Lef. (Irish), 315. *Foster v. Chickerell*, 9 Bligh, 333. *Miles v. Langley*, 2 Russ. & M. 626. *Kennedy v. Green*, 3 M. & K. 699.

(1) *Acquiescence*.—This does not however arise in acts of which the party is ignorant at the time, that he has a right to acquire or dispute. *Chalmondeley v. Clinton*, 2 Meriv. 362. *Randall v. Errington*, 10 Ves. 427. *Morse v. Royal*, 12 Ibid. 355. A cestui que trust being of full age, and not under an incapacity, is, if he openly acquiesces in any objectionable conduct of a trustee for a considerable time, deemed to have acquiesced therein. *Trafford v. Boshm*, 3 Atk. 444. *Brice v. Stokes*, 11 Ves. 319. *Walker v. Symonds*, 3 Swanst. 64. *Ryder v. Richerton*, Ibid. 83, n.

Underwood v. Ascence for a title is a bar. In cases of *holders*, 2 S. or to a will *r v. Sanger*. The same principle is a usual question governing (126;) but it is a side issue of means. 106. *Maz-*

re the cestui conveyance.

Walker v. Symonds, 3 Swanst. 64. *Pickering v. Stamford* (Lord), 2 Ves. 585.

(3) *By virtue of this act*.—"The act does not interfere with any rule or jurisdiction of courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by the act." 2 Sugden V. & P. 361.

(4) *Mortgagee*.—Vide *Jones v. Smith*, Ves. 378.

(5) *Any person claiming through him*.—The remainder-man, where the whole interest is in mortgage, is included. *Harris v. Hollins*, 1 S. & S. 471.

(6) *Shall not bring a suit to redeem*.—If a decree for redeeming be obtained, must be prosecuted within twenty years, the right will be barred. *St. John (Lord) v. Turner*, 2 Vern. 418.

Under a devise of all the testator's real and personal estate, "after payment of all just debts and funeral expenses," land mortgaged in fee to the testator do not pass. *Doe d. Royleance v. Lightfoot*, 8 M. & W. 553.

(7) *Acknowledgment of the title of the mortgager*.—Vide *Swanton v. Raven*, 3 A. 106. *Stockley v. Stockley*, 1 V. & B. 31.

(8) *Claiming his estate*.—Whether heir, devisee, or assignee.

(9) *Person claiming through him*.—his assignee; (*Matthews v. Walwyn*, 4 V. 118;) a mere agent is not sufficient. *Brown v. Martin*, 1 Coop. C. C. 189.

ULIELMI IV. A.D. 1230—1237.

o any other undivided or divided part of the money
 ich of the mortgagees or persons aforesaid as shall
 nt shall be entitled to a divided part of the land or
 , or some estate or interest therein, and not to say
 ged money, the mortgager or mortgagees shall be
 vided part of the land or rent on payment, with
 lgage money which shall bear the same proportion
 money as the value of such divided part of the land
 of the whole of the land or rent comprised in the

and be it further enacted, that it shall be lawful for
 ebendary, parson, vicar, *master of hospital*(2), or other
 poration *sole*(4), to make an entry or distress or to
 ver any land or rent within such period as hereina-
 e time at which the right of such corporation sole,
 such entry or distress or bring such action or suit
 is to say,) the period during which two persons in
 fice(5) or *benefice*(6) in respect whereof such land
 six years after a third person shall have been ap-
 such two incumbencies and such term of six years
 the full period of sixty years; and if such time
 t to the full period of sixty years, then during such
 tion to such six years as will, with the time of the
 d such six years, make up the full period of sixty
 -first day of December one thousand eight hundred
 distress, action, or suit shall be made or brought at
 tion of such period.

enacted, that after the said thirty-first day of
 undred and thirty-three no person shall bring any
 on or any suit to enforce a right to present to or
 other ecclesiastical benefice, as the patron thereof,
 riod as hereinafter is mentioned; (that is to say,) *clerks*
 in succession shall have held the same, all of
 sion thereof *adversely*(8) to the right of presenta-
 some person through whom he claims, if the times
 ther shall amount to the full period of sixty years;
 encies shall not together amount to the full period
 spiration of such further time as with the times of
 p the full period of sixty years.

and be it further enacted, that *when on the avoid-
 ve obtained possession of an ecclesiastical benefice
 tion or gift*(10) of the patron thereof, a clerk shall be
his majesty(11) or the *ordinary*(12) by reason of a
 clerk shall be deemed to have obtained possession

the mort- by:—Where the parties do not claim under
Prius, tit. the same title, the title of one is not con-
 trary with that of the other; and the party

Sutton's claiming has, in contemplation of law, been
 deprived of his right, and it has not been
 d on Cor- acknowledged by the other party. *Mansel
 on Limitation*, 163.

Fulwood's (9) *When on the avoidance*:—Vide *Wun-
 son's case*, 3 Dyer, 347 (a).

Lit. 44(a). (10) *Presentation or gift*:—Vide *Co. Lit.
 344 (a).*

Woodland, (11) *Collated thereto by his majesty*:—
Vide Rex v. Canterbury (Archbishop of),
Cro. Car. 354.

v. Lincoln (12) *Or the ordinary*:—The bishop in his
 diocese. *Wrighton v. Browne*, 3 Lev. 211

h on Real (13) *By reason of a lapse*:—Where an an-
 ' adverse-

adversely to the right of presentation or gift of such patron as aforesaid; but when a clerk shall have been presented by his majesty upon the avoidance of a benefice in consequence of the incumbent thereof *having been made a bishop* (1), the *incumbency of such clerk* (2) shall, for the purposes of this act, be deemed a continuation of the incumbency of the clerk so made bishop.

"XXXII. And be it further enacted, that in the construction of this act every person claiming a right to present to or bestow any ecclesiastical benefice, as patron thereof, by virtue of any estate, interest, or right (3) which the owner of an estate tail in the *advowson* (4) *might have barred* (5), shall be deemed to be a person claiming through the person entitled to such estate tail, and the right to bring any quare impedit, action, or suit shall be limited accordingly.

"XXXIII. Provided always, and be it further enacted, that after the said thirty-first day of December one thousand eight hundred and thirty-three, no person shall bring any quare impedit or other action or any suit to enforce a right to present to or bestow any ecclesiastical benefice, as the patron thereof, after the expiration of one hundred years from the time at which a clerk shall have obtained possession (6) of such benefice adversely to the right of presentation or gift of such person, or of some person through whom he claims, or of some person entitled to some preceding estate or interest (7), or undivided share (8) or alternate right of presentation (9) or gift, held or derived under the same title, unless a clerk shall subsequently have obtained possession of such benefice on the presentation or gift of the person so claiming, or of some person through whom he claims, or of some other persons entitled in respect of an estate, share, or right held or derived under the same title.

"XXXIV. And be it further enacted, that at the determination of the period limited by this act to any person for making an entry or distress, or bringing any writ of quare impedit or other action or suit, the right and title of such person to the land, rent, or advowson for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period *shall be extinguished* (10).

"XXXV. And be it further enacted, that the receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him, (but subject to the lease,) be deemed to be the receipt of the profits of the land for the purposes of this act (11).

"XXXVI. And be it further enacted, that no writ of right patent (12), writ of right quia dominus remittit curiam, writ of right in capite, writ of right in London, writ of right close, writ of right de rationabili parte, writ of right of advowson,

STAT. 3 & 4
GUL. 4, c. 27.

after pro-
motions to
bishops.

When person
claiming an
advowson in
remainder, &c.
after an estate
tail, shall be
barred.

No advowson
to be recovered
after 100
years.

At the end of
the period of
limitation the
right of the
party out of
possession to be
extinguished.

Receipt of rent
to be deemed
receipt of
profits.

Real and
mixed actions
abolished after

omission by the patron to present a clerk, the ordinary may (*jura devoluto*) present. *Catesby's case*, 6 Co. 61 (b).

(1) *Having been made a bishop*:—This right in the queen can only be exercised during the lifetime of the party so promoted. *Arnagh (Archbishop of) v. Attorney-General*, 3 Bro. P. C. 418.

(2) *The incumbency of such clerk*:—*Vide* Stat. 13 & 14 Car. 2, c. 4.

(3) *Or right*:—*Vide* Stat. 3 & 4 Gul. 4, c. 74, s. 15. *In re Wood*, 3 M. & C. 266.

(4) *Advowson*:—*Vide* 1 Inst. 322 (b). *Le case de Fines*, 3 Co. 85 (a).

(5) *Might have barred*:—*Vide* Stat. 3 & 4 Gul. 4, c. 74, s. 40. *Mouth (Bishop of) v. Winchester (Marguis of)*, 3 Scott, 561. 3 Bing. N. C. 183.

(6) *Obtained possession*:—*Vide Green's case*, 6 Co. 29.

(7) *Interest*:—*Vide* 1 Inst. 322 (b).

(8) *Or undivided share*:—As of joint tenants, (*Wilson v. Kirkshaw*, 7 Bro. P. C. 296,) or tenants in common. 2 Rol. Abr. *Presentment* (K), 372.

(9) *Or alternate right of presentation*:—

As in coparceners. Stat. Westm. 2, c. 5. Bro. Abr. *Quare impedit*, pl. 118. 2 Rol. Abr. *Presentment* (I), 346. *Barker v. London (Bishop of)*, 1 Black. Hen. 412.

(10) *Shall be extinguished*:—This means "wholly destroyed," and operates thus:—If A. have possession of land for twenty years uninterruptedly; and then B. gains possession, upon which A. brings an action of ejectment; even though he be the claimant, yet his former possession for twenty years will be a good title for him to recover under, because all right in the adverse party has been tolled thereby. *Stacker v. Berny*, 2 Ld. Raym. 741, et vide *Rea v. Carpenter*, 6 A. & E. 794.

(11) *Receipt of the profits of the land for the purposes of this act*:—*Vide Doe d. Davy v. Oxenham*, 7 M. & W. 132.

(12) *Writ of right patent*:—Where this writ will still lie, as in the cases provided for in sect. 38, the demandant must in his count allege, and by his evidence prove, a seisin in his ancestor within sixty years. *Dumedy v. Hughes (Bart.)*, 3 Bing. N. C. 439. 4 Scott, 209.

A. GULIELMI IV. A.D. 1830—1837.

mer, writ de rationabilibus divisis, writ of right of ward, et servitilia, writ of cessavit, writ of escheat, writ of quo antinum, writ de cessando quietum de theolonio, writ of meane, writ of quod permittat, writ of formedon in de- in reverter, writ of assize of novel disseisin, nuisance, utrum, or mort d'ancestor, writ of entry sur disseisin, in the per and cui, or in the post, writ of entry sur intru- alienation dum fuit non compos mentis, dum fuit infra ona, ad communem legem, in casu proviso, in conditio in vita, cui ante divortium, or sur cui ante divortium, int, writ of entry quare ejecit infra terminum, or ad ter- causa matrimonii prelocuti, writ of aiel, benciel, tremiel, writ of waste, writ of partition, writ of disceit, writ of f covenant real, writ of warrantia chartæ, writ of cura æ servitia, and no other action real or mixed, (except a r writ of dower unde nihil habet, or a quare impedit, or int in the nature of any such writ or action, (except(2) dower,) shall be brought after the thirty-first day of ight hundred and thirty-four.

always, and be it further enacted, that when, on the said nber one thousand eight hundred and thirty-four, any e a right of entry to any land shall be entitled to main- ction as aforesaid in respect of such land, such writ or any time before the first day of June one thousand eight a case the same might have been brought if this act had standing the period of twenty years hereinbefore limited

d also, and be it further enacted, that when, on the said usand eight hundred and thirty-five, any person whose l shall have been taken away by any descent cast(3), dis- sity(6), might maintain any such writ or action(6) as h land, such writ or action may be brought after the mid usand eight hundred and thirty-five, but only within the by virtue of the provisions of this act an entry might ame land by the person bringing such writ or action d been so taken away.

t further enacted, that no descent, cast, discontinuance, happen or be made after the said thirty-first day of ight hundred and thirty-three shall toll or defeat any r the recovery of land.

er enacted, that after the said thirty-first day of Decem- undred and thirty-three no action or suit or other pro- to recover any sum of money secured by any mortgage(8), urtherwise charged upon or payable out of any land or rent,

struction:—Vide (6) Writ or action:—Vide Co. Lk. N. C. 748. 4 393.

will in equity is ent, to correct ll be allowed, if ve elapsed since rned. Plunkett ist, 376. Vide Paramour

(7) Only within the period:—Vide Elmh v. Thoroughgood, 1 Ld. Raym. 283. Kew v. Heyward, Ibid. 432. 12 Mod. 571. (8) Any mortgage:—Vide Mark v. Mark. 10 Mod. 424; et vide Stephens on Nisi Prius. 2935, and Stat. 7 Gul. 4 & 1 Vict. c. 29. Ibid.

(9) Jud. been revived period of 1 Gul. 4, c. the judges that of the Statute of Mary Porting.

STATUTA GULIELMI IV. A.D. 1830-1837.

at law or in equity(1), or any legacy(2), but within twenty years next(3) after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the mean time some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment(4) of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent(5), to the person entitled

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scire facias on a judgment, a replication, "that the judgment had been revived by judgment in *scire facias* within the period of limitation prescribed by the statute," was held good on general demurrer. *Farran v. Bereford*, 1 Smythe (Irish), 297.

The court will not allow a *scire facias* to issue to revive a judgment more than twenty years old against the heir and terre tenants of the cognisor, where a former *scire facias* had issued against the heir and terre tenants within the twenty years, but no interest had been paid, or acknowledgment given, within that time. (*Palmer v. Algeo*, 1 Jebb & Symes (Irish), 501.) because the statute has not provided for the case of a "proceeding having been taken." Ibid. 506, n.

The court will not allow a *scire facias* to revive a judgment more than twenty years old to issue against the original cognisor, upon a written acknowledgment having been given after twenty years. *Brady v. Fitzgibbon*, Ibid. 503.

The Statute of Limitations does not begin to run against a judgment entered on a *post obit* bond, until the death occurs upon which the bond is payable. *Barber v. Shore*, Ibid. 610. Stat. 1 & 2 Vict. c. 110, s. 19.

In *Vineent v. Willington*, (1 Longfield & Townsend (Irish), 456,) it appeared, that a judgment was obtained on a joint bond and warrant of attorney against A. and B. in 1815; B. had joined in these as a security for A. On the 16th of March, 1820, A. wrote to V.'s agent, "You have inclosed 150*l.* to my credit on account of V.'s interest, and in the account book by V.'s agent (since dead) appeared an entry by the agent, of the 17th of March, 1820, charging himself with a bill for 50*l.* drawn by A. and 100*l.* cash from A." In 1822, V.'s attorney applied by letter to B., calling for payment of the amount of the above debt; and B. on that occasion wrote to V.'s attorney, acknowledging the receipt of his letter, "applying for the payment of his, B.'s and A.'s joint bond;" and soon after B.'s agent sent a letter to V.'s attorney, inclosing a proposal of terms upon which the matters should be arranged by A., and said, "this being done, it is hoped the judgment against B. will be satisfied." The bill was filed in 1839: it was held, that this was sufficient payment and acknowledgment to take the case out of Stat. 3 & 4 Gul. 4, c. 27. *Quere*, Does that statute repeal Stat. 8 Geo. 1, c. 4 (Ir)?

(1) *In equity*.—In a case of adverse possession, profits which a party so in possession might have realized but for his wilful default, are only allowed as against mortgagees in possession, and trustees guilty of a breach of trust. *Hoswell v. Hoswell*, 1 Jurist, 492. 2 M. & C. 478.

(2) *Or any legacy*.—This does not extend to a suit to make an executor account for a sum of money bequeathed to him by his testator, upon certain trusts, which has been severed by the executor from the testator's personal estate, and the interest of which has for a time been applied towards the trusts of the will. *Phillipo v. Munnings*, 2 M. & C. 309.

Where a fund has ceased to bear the character of a legacy, and has assumed the character of a trust fund, although it is still vested in the executor or his representative, a bill filed for the fund will be considered as a suit for the administration of the fund, and not as a bill for a legacy, and therefore it will not fall within this provision of the act. 2 Sugden's V. & P. 363.

(3) *Within twenty years next*.—It was held by nine judges against one, that the twenty years fixed by Stat. 3 & 4 Gul. 4, c. 27, s. 40, as to the period within which proceedings on a judgment should be taken, begin to run from the date of the last judgment of revival, and not from the entry of the original judgment. Where to a *scire facias* (by the executors of the consignee against a terre tenant of the lands of the cognisor) upon a judgment of 1810; the defendant pleaded sect. 40 of Stat. 3 & 4 Gul. 4, c. 27; and the plaintiffs replied a judgment of revival in 1817, by themselves, against the cognisor, within twenty years: it was decided to be no departure. *Farran v. Ottiswell*, 2 Jebb & Symes (Irish), 97.

(4) *Some acknowledgment*.—A reference being made to a master in Chancery, in certain suits in which the cognisor of a judgment was a defendant, to take an account of all debts, charges, and incumbrances affecting certain freehold lands of the cognisor; the master reported, that a certain sum was due to the administrator of the cognisor (who did not appear to have been a party to the Chancery suits) on foot and by virtue of the said judgment, and that the same was a charge upon the said freehold lands of the cognisor: it was held, that the master's report was not a document within the meaning of the words "acknowledgment in writing" in Stat. 3 & 4 Gul. 4, c. 27, s. 40; and that the master in Chancery is not an agent of the parties interested in a report, made by him in a cause in that court, or in the judgment which is the subject-matter of his report, within the meaning of the same enactment. *Hill v. Stowell*, Ibid. 389.

(5) *Or his agent*.—In *St. John (Lord) v. Boughton*, (9 Sim. 219,) where an estate was devised to a trustee in trust to sell and pay the testator's debt, and subject thereto, in trust for A.: it was held, that as the debts were charged upon or payable out of land, they were within the Stat. 3 & 4 Gul. 4, c.

STAT. 3 & 4
GUL. 4, c. 27.

ment in writing
in the mean-
time.

No arrears of
dower to be
recovered for
more than six
years.

No arrears of
rent or interest
to be recovered
for more than
six years.

thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the *last of such payments or acknowledgments if more than one, was given* (1).

"XLI. And be it further enacted, that after the said thirty-first day of December one thousand eight hundred and thirty-three no arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

"XLII. And be it further enacted, that after the said thirty-first day of December one thousand eight hundred and thirty-three no arrears of rent (2) or of interest (3) in respect of any sum of money charged upon (4) or payable out of any land (5), or rent (6), or in respect of any legacy (7), or any damages (8), in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent (9); provided nevertheless, that where any prior mortgage or other incumbrancer (10) shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time (11) that such prior mortgage or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years (12).

27; but that an acknowledgment of the debts in writing, signed by the trustee or his agent, was sufficient to preserve the creditor's right of suit for twenty years after the giving the acknowledgment.

(1) *Last of such payments or acknowledgments if more than one, was given*.—A plea relying upon Stat. 3 & 4 Gul. 4, c. 27, s. 40, should both state the commencement of the period of the limitation, and negative the cases of exception in that section. To a *scire facies* to revive a judgment brought by the assignee of the assignees of J. P., a bankrupt, the defendant pleaded, "that after the rendition of the judgment, and the accruing of a present right to the said J. P. to receive the said debt and damages by virtue thereof, to wit, on &c., and within twenty years before and next preceding the suing forth of the *scire facies*, the defendant did not, nor did any agent of the defendant on his part, pay any part of the said debt and damages, or any interest thereupon, or give any acknowledgment in writing of the right thereto, signed in that behalf by the defendant, or by any person as such agent as aforesaid, to the said J. P., or other person entitled thereto, or to the agent of such person so entitled as last aforesaid, according to the form of the statute," &c., which was holden to be bad on special demurrer. *Forster v. McKone*, 1 Jebb & Symes (Irish), 341.

(2) *No arrears of rent*.—It seems, that this does not apply to rent by deed or indenture. *Vide* 3 & 4 Gul. 4, c. 42, s. 3. *Paddon v. Bartlett*, 3 A. & E. 884.

(3) *Or of interest*.—*Vide* *Miltown v. French*, 11 Bligh, 2.

(4) *Charged upon*.—*Vide* *Graves v. Graves*,

8 Sim. 43. *Mirehouse v. Scisfe*, 2 M. & C. 695.

(5) *Payable out of any land*.—*Vide* *Woolley v. Watling*, 7 C. & P. 610. *Jones v. Reynolds*, 4 A. & E. 805.

(6) *Or rent*.—*Vide* *Mound's case*, 7 Co. 28 (b). *Goodman v. Peacher*, Jones (Sir T.), 1.

(7) *Any legacy*.—*Vide* 1 Saund. 279 (e). 2 Dyer, 151, pl. 5. *Bever v. Jones*, 2 Ld. Raym. 937. Since Stat. 3 & 4 Gul. 4, c. 27, a distress or action for an annuity accruing by will, must be resorted to within twenty years from the death of the testator. *Jones v. Satter*, 3 Bing. N. C. 544.

(8) *Any damages*.—*Vide* 2 Saund. 171 (b). *Holroy v. Edisson*, 10 Mod. 274.

(9) *Or his agent*.—A judgment collateral to secure an annuity granted by deed in within Stat. 3 & 4 Gul. 4, c. 27, s. 42, and not more than six years' arrears of the annuity are recoverable thereon.

The mere issuing of a *scire facies* is not bringing an action or suit within the meaning of the latter part of the same section, so as to take the case out of the operation of the statute. *Foley v. Dumas*, 1 Smythe (Irish), 78.

(10) *Or other incumbrancer*.—As tenant in the nature of *elegit*, Stat. 1 & 2 Vict. c. 110, ss. 11, 13—19.

(11) *Become due during the whole time*.—The service of a citation constitutes "pendency of suit." *Ray v. Sherwood*, 1 Curt. 173.

(12) *Exceeded the said term of six years*.—A defendant who does not by pleading claim the benefit of Stat. 3 & 4 Gul. 4, c. 27, s. 42, cannot rely upon it in the office in bar of the account. *Walsh v. Walsh*, 1

STATUTA GULIELMI IV. A.D. 1830—1837.

"XLIII. And be it further enacted, that after the said thirty-first December one thousand eight hundred and thirty-three no person claim tithes, legacy, or other property for the recovery of which he might bring an action or suit at law or in equity, shall bring a suit or other proceeding in any court to recover the same but within the period during which he might bring an action or suit at law or in equity.

"XLIV. Provided always, and be it further enacted, that this act shall extend to Scotland; and shall not, so far as it relates to any right to permit the bestowal of any church, vicarage, or other ecclesiastical benefice, extend to Ireland.

"XLV. And be it further enacted, that this act may be amended, altered, or repealed during this present session of parliament."

LX. STAT. 3 & 4 GULIELMI 4, cap. xxix. A.D. 1833.

"An Act to enable the Lord Bishop of Limerick to sell and dispose of George's Chapel, in the City of Limerick, and the Land on which the same is built (heretofore part of the Estate of the Earl of Limerick), and to assign the Proceeds of such Sale in the Erection of a new Chapel."

LXI. STAT. 3 & 4 GULIELMI 4, c. 30(1). A.D. 1833.

"An Act to exempt from Poor and Church Rates all Churches, Chapel and other Places of Religious Worship."

"Whereas it is expedient that churches, chapels, and other places appropriated to public religious worship should be exempt from the payment of church rates (2), be it therefore enacted by the king's most excellent Majesty in Council, that the said churches, chapels, and other places shall be exempt from the payment of church rates."

Jones & Carey (Irish), 52.

Where to a *scire facias* on a judgment a defendant had pleaded several pleas, under which he could avail himself of the Statute of Limitations, 8 Geo. 1, c. 4, the court refused, (there being no affidavits of merits, and it being admitted, that the judgment had not been paid,) to allow him to add a plea under Stat. 3 & 4 Gul. 4, c. 27, upon any terms, although the proceedings were in a state in which pleas to the merits would have been allowed to be added on terms. *Donsville v. Lane*, 1 Crawford & Dix (Irish), 182. *Semble*, that Stat. 3 & 4 Gul. 4, c. 27, must be pleaded specially.

(1) *Vide* Stat. 53 Geo. 3, c. 127 (*ante* 1050); and Stat. 58 Geo. 3, c. 45 (*ante* 1107). *Vide* Stephens on Clerical Law, tit. CHURCH RATES.

(2) *Exempt from the payment of . . . church rates*:—In *Voley v. Burder*, (12 A. & E. 360; *vide etiam* *Brantree Church-rate case*, by Johnson,) Chief Justice Tindal observed, "This case, which has been brought before us by writ of error from the court of Queen's Bench, involves two questions of considerable importance; first, whether the churchwardens of a parish, after a rate for the necessary repairs of the parish church has been proposed by them to the parishioners at a vestry meeting duly convened for that purpose, and has been refused by a majority of the parishioners there assembled, can, of their own sole authority, at a subsequent time, by themselves, and not at any parish meeting, impose a valid rate on the parishioners; and the second question is, whether, if a rate be so made, and proceedings be taken by the churchwardens in the ecclesiastical court to enforce its payment, a court of common law can issue a

writ of prohibition to the spiritual court to stay such proceedings? And we are of opinion, on these questions, that the rate, made under the circumstance the manner before stated, is illegal and that a prohibition to the spiritual court may be well and properly issued.

"In order to open the grounds of our answer to the first of the questions, it will be necessary to explain first place, the nature of the legal obligation by which the inhabitants of every parish are compellable to repair, and keep in repair the fabric of the parish church; and, in place, the mode prescribed by law for giving such obligation into effect: from consideration of which points it will be seen, and by necessary inference, that the church rate now under discussion is legal and valid rate, or the contrary.

"And we are all of opinion that the obligation by which the parishioners, the actual residents within, or the owners of lands and tenements in, every parish are bound to repair the body of the parish church whenever necessary, and to provide for the performance of divine service therein, is an obligation imposed on the common law of the land. This obligation is not grounded on the general ecclesiastical law is manifest; this, that, by the authority of all the general canon law, the repairs of the whole of the parish church, both the chancel, fall upon the owners of the tithes, except that in some countries, part falls upon the parishioners; [Von Esen, *Jus Eccl. Universum*, par. 2, sec. 2, tit. 1 vol. 2, p. 635, ed. Loeser; *De*

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from and after the first day of October, one thousand eight hundred three, no person or persons shall be rated or shall be liable to be pay to any church or poor rates or cesses, for or in respect of any chi

assembled at a meeting, for repairing their church, must have been a power that existed from time immemorial. No one, however, disputes the validity of a rate so imposed, and certainly no question has been raised upon its validity before us; all concurring in opinion, that such a rate is good, and that the payment of each man's proportion thereof might be enforced by a suit in the ecclesiastical court. As little difference of opinion arises as to the validity of a rate imposed by the churchwardens alone, where a meeting of the parishioners has been duly convened in vestry for the purpose of making such rate, but where none of the parishioners have thought fit to attend and express an opinion, for in this state of circumstances the churchwardens, who may be assumed to be parishioners themselves, do in effect constitute the majority, or, more properly speaking, the whole of the parishioners who are assembled in vestry; and, therefore, upon the principle above laid down, they must have authority to bind the absent parishioners. But the rate is in question, upon the validity of which our judgment is demanded, varies in most important particulars from both the preceding cases; and the question to be resolved with respect to that rate is, whether, after a meeting has been duly convened, and certain of the parishioners have attended, and the majority of those who so attended have refused to make any rate for the necessary repairs of the parish church, the churchwardens have authority, by themselves, and not at the meeting at which the refusal took place, but at a subsequent time, to make a rate that shall be binding on the parish. Such a power, if it could be shown to exist by custom in any particular parish, might indeed seem, in its own nature, not to be unreasonable; as it would amount to no more than a mode of carrying into complete effect, through the means of a public officer, the performance of that duty which is cast upon the parishioners by the general law of the land, after they had themselves refused or neglected to take upon them

the law, in meet- it, if any necessity of the law. all those and de- there is, e of the the only s below, rard any power is : general as which : all that t of that le to the ee which ct, there ity cited

in support of the affirmative of and that is the dictum of the case in 1 Vent. 367, (January, 'that the churchwardens (if the summoned and refused to meet rate) might make one alone, for of the church, if needful; because repairs were neglected, the cl were to be cited, and not the ; That this is an *obiter dictum* only, and not a resolution, or ju the point, is evident from this was granted to show cause why should not go in that case; and certain, whether the prohibition. And it is this dictum which gives the several passages inserted in text writers to which reference is made, Watson's Clergyman's I Institutes, Bacon's Abridgment, abridgments referred to at the various repetitions, derived from sources, cannot raise the authority position itself higher than that originally possessed. And, with case in Ventris, which is, at be short and unsatisfactory, it is inconsistent with the statement that the rate made by the church made at the very meeting at which the majority refused their assent; a which might give rise to a very confusion, and on which an objection afterwards be made. It is also marked that Sir Simon Dogge, in Counselor, mentions it only as a rate opinion that, if the parish the churchwardens may make a rate the parishioners,' he says, 'who together at such meeting, refuse to join in making such assessment to meet, I conceive the churchwardens having just cause for such assessment proceed alone;' and in the third work in 1681 is added, for it 'but some are of opinion that wardens cannot proceed alone compel the parishioners to do it tical censure, *Idem quere*;' through very strong inference that he placed reliance on the soundness of his opinion. The authority of *Aykfe*, 10 Geo. 2, p. 455, is directly opposed without referring particularly to common law authorities, which were brought in review before us, it is only to say, that the weight of the case appears to us to be strongly in favor of the plaintiff below. With respect to *Gaudern v. Selby*, (1 Cart. Brevintree church-rate case, by 109;) decided before Sir William an appeal to the court of Arches in 1799, and which has been much relied on by the counsel for the churchwardens, the observation that arises in that case was made by the churchwardens at the same vestry and

be duly certified for the performance of such religious worship according to the provision of any act or acts now in force: provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of

STAT. 3 & 4
GUL. 4, c. 30.
gious worship.
Proviso re-
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ther, where, in a case of spiritual cognizance, a collateral question arises which is not properly of spiritual cognizance; in which case the courts of common law oblige them to omit such evidence as the common law would allow; (*Bresdon v. Gill*, 1 Ld. Raym. 219—222;) as when, for example, a lease is offered to be proved in an ecclesiastical court, and is rejected because by their law two witnesses are required; or, for the same reason, where the fact in dispute is the payment of a legacy. Another, where the spiritual court takes upon itself the construction of statute law, and decides contrary to the construction which is put upon the statute by the temporal courts. And, lastly, another class of exceptions, which seems to apply itself more closely to the case before us; namely, that the spiritual courts being always bound to declare the common law, when it becomes necessary to declare it, in the same manner as the common law courts would do; when, as in the present instance, the very groundwork and foundation of the proceedings of the spiritual court is the holding of a supposed church rate to be a valid rate, which, upon the construction of a court of common law, is held to be no rate at all; in such case, in order to prevent the conflict which would arise from a decision taking place one way in the spiritual court, and the opposite way in the courts of common law, the prohibition is allowed to go. (Lord C. J. *Eyre's* judgment in *Home v. Camden*, 2 Hen. Black. 333; and the judgment of Lord *Ellenborough*, in *Gould v. Gepper*, 5 East, 370.) The spiritual court has not only undoubted, but even exclusive, jurisdiction to inquire into, and to decide upon, the necessity of the repair of the fabric of the parish church; and, in the exercise of such jurisdiction, that court may, perhaps, be able to compel the churchwardens to raise the money by a rate, or may punish the parishioners who wilfully refuse either to join in such rate or pay their respective proportions when regularly and legally assessed upon them; yet they cannot proceed to enforce the payment of that which, although called a rate upon the libel, shews that a burthen has been imposed on the parishioners by persons who, under the circumstances which attended the making of it, had no authority to impose it upon the principle of the common law.

"As to the decided cases, it appears that prohibitions have been granted where the ecclesiastical court is proceeding to compel a person to contribute to the repair of a parish church as an inhabitant, whose land in the parish is on lease; (*Jeffrey's case*, 5 Co. 67 (b);) or where a person is charged in the parish where he inhabits in respect of land out of it; (17 Vin. Abr. *Prohibition* (H), pl. 4;) or where a man who takes a standing in the market in one parish, but dwells in another, is sued for repairs of the church of the former parish; (2 Rol. Abr. *Prohibition* (H), pl. 5;) or where one is rated in respect

of land for ornaments; (*Ibid.* (K), pl. 1;) or where the rate is on some of the inhabitants only; (*Ibid.* pl. 10;) or where the suit is to enforce an ancient rate, made some time before, and which had been made originally by commissioners of the ecclesiastical court; (*Blank v. Newcombe*, 12 Mod. 327;) or where the bishop's commissioners made a rate, and the suit was to enforce it; (*Rogers v. Davenant*, 1 Mod. 194; 2 *Ibid.* 8;) or where the rate was made by the churchwardens without calling together the parishioners; or for a parish rate for making and repairing a parish organ. *Anonymous*, 12 *Ibid.* 416. In all these and many other cases, the prohibition was allowed to issue, although no one doubts but that the whole subject matter of church rates, and the enforcing of them, is within the jurisdiction of the spiritual court. In all these cases, too, the same argument would have applied which has been urged in the present case before us, *viz.*, that the objection is a proper matter of appeal, and not of prohibition; for that it is not to be assumed, that the ecclesiastical court will do wrong. What real distinction, indeed, can be made between a rate that is held to be void on the ground of its being imposed by the bishop's commissioners, and a rate that is imposed by the mere authority of the churchwardens?

"One argument has been urged in the course of the discussion before us, to which we think it right to advert. It has been said, that to allow the enforcement of church rates to be a matter of sole and exclusive jurisdiction of the spiritual court, and at the same time to allow the prohibition to issue, is, in effect, to take away all power of compelling the parishioners to repair the parish church. But it is obvious that the effect of our judgment in this case is no more than to declare the opinion of the court, that the churchwardens have, in this instance, pursued a course not warranted by law; and, consequently, all the powers with which the spiritual court is invested by law to compel the reparation of the church, are left untouched. If that court is empowered, (as is stated by Lyndwood, p. 53, *voc. Subpana*, and other ecclesiastical writers,) to compel the churchwardens to repair the church by spiritual censures; to call upon them to assemble the parishioners together by due notice, to make a sufficient rate; to punish such of the parishioners as refuse to perform their duty in joining in the rate of excommunication, that is, since the statute of 53 Geo. 3, c. 127, by imprisonment, and, under the same penalty, to compel each parishioner to pay his proportion of the church rate: the same power will still remain with the spiritual court, notwithstanding the decision of this case. The extent and nature of those powers not being now before us, it would be at once unnecessary and improper to give any opinion upon them. It is sufficient to say, that all that we decide by this judgment is, that the rate as it appears upon the face of the libel, is illegal, as being made

"II. Provided always, and be it enacted, that no person or persons shall be liable to any such rates or cesses because the said churches, district churches,

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GUL. 4, c. 39.
Persons not
liable to rates

the merits. But, in point of fact, were the irregularities in *Gaudern v. Selby*, (1 Curt. 394,) such as the party appellant could take notice of? I very much doubt if they were such irregularities; I have found a case in which it was held, that irregularities of such a nature were not sufficient to vitiate proceedings in an appellate court; it is a case in 1713, (*Townsend v. Lewitt & Page*, Arches, 4th session, Hil. Term, note of Dr. Andrew.) A citation issued in the name of John Rogers, as the commissary of the Archdeacon of Leicester, and also in the name of George Newell, official to the archdeacon; it called on Mary Townsend to answer to Lewitt and Page, the churchwardens of All Saints' Leicester, in a cause of subtraction of church rate. Articles were exhibited against her in the name of the commissary and official. Some of the acts were sped before the commissary only; in others, he had acted for Newell as official. Sentence was given by Newell, the official; he signed the sentence as surrogate to the commissary; the party cited was condemned in the rate and expenses; the cause was brought to the Arches by appeal; it was objected that the proceedings were a nullity; in other words, the manner in which the cause had been conducted in the court below was so irregular, that the party ought to be dismissed, without the court proceeding into the merits of the case; the arguments were of considerable length, and it was insisted, that the same person could not sit as judge in two distinct capacities. Cases were cited on each side, one, *Deakin v. Newell*, from the same judges, which it was said was dismissed on the same account; on the other side, *Biddle v. Parsons*, determined in the Arches, on appeal from the same judges, and no objection made to their acting jointly. Reference was made to an award of the Bishop of Lincoln, between the official and commissary—and this shows how impossible it is for this court to decide on such cases without knowing all the circumstances of them—it turned out that there was an arrangement, that these two persons should sit *simul et conjunctim*. An award of the same nature was made by Archbishop Whigitt. The answer to the objection was, that it should have been made before issue joined, 'exceptio fori declinatoria est, et ante litem contestatam opponi debet (Parmentier);' the result of the proceedings was this, that the objection not being taken when it ought to have been, the judge decided, that he must proceed to hear the case on the merits, and the result was, the party was dismissed with his costs. In *Gaudern v. Selby*, there are a variety of seeming irregularities, but if an opportunity had been given for explanation, they might have been explained; at all events they ought to have been objected to before issue was joined on the appeal, but no objection was taken by counsel on behalf of the appellant. It has been attempted to explain this, by saying, that owing to the press of business in the

Admiralty court, in 1798, Lord Stowell had just become the judge of the Admiralty, and that he had signed the appellant's case. But who were the counsel for the appellant? Dr. Arnold and Dr. Sewell; neither of these persons was likely to neglect the interests of their client, they would have seen any objection of the kind, and would have advised their client accordingly; no objection was taken to the proceedings, and the cause proceeded to a hearing. If this judgment of Sir W. Wynne had not met with the approbation of a large majority of the profession; if it had been thought that the case was not rightly decided, and that the rate was invalid, would not the party have been advised to appeal? Under these circumstances, surely Sir W. Wynne must have decided the case on the merits. Be the irregularities what they may, they do not detract one iota from the judgment; Sir W. Wynne must be taken to have decided, that the rate was a good, valid, and legal rate, capable of being enforced in the ecclesiastical court. Sir W. Wynne was the last judge who would have made a law; he invariably took the greatest care to satisfy himself as to what the law was, but when he had once done so, he never hesitated to pronounce what the law was. I look upon his decision as a direct, positive, and absolute decision on the present point, as a precedent binding on this court, and which neither I, nor any judge of this court, am at liberty to depart from. Whether the judgment in the courts of Queen's Bench has shaken the authority of the case, is a question I am not at liberty to enter into; if I was satisfied, that the judgment was not founded on authority, and a just apprehension of the law, I might then refuse to be bound by it; but not thinking so, I have no objection to shelter myself under the authority of Sir W. Wynne, and to express my opinion that, what he has pronounced to be law, is law. That judgment in no way militates against the decision of the Queen's Bench, the point before that court, was not the point decided in *Gaudern v. Selby*. Did the court of Exchequer chamber repudiate this case as an authority? Undoubtedly they have not so expressed themselves; it was no precedent for the case before that court. Have not the judges of the court of Error said, that 'there is a wide and substantial difference between the cases,—between the case then before them, and a case which might possibly occur,—in fact, this very case. What is the meaning of the term, 'wide and substantial difference?' Must it not mean such a difference as will tend to a different result in the decision of the two cases? So far then from repudiating that case, if compelled to do so, I should rather say they adopted it; otherwise, I think they would not have thrown out the observation, that it was a point deserving of great consideration, on which they reserved to themselves the power of forming an opinion whenever it should occur. Can I suppose those judges would have gone out

LXII. STAT. 3 & 4 GULIELMI 4, CAP. XXX. A.D. 1833.

"An Act for making the Hamlets of Newbold and Armscott a separate Parish from the Parish of Tredington, in the County and Diocese of Worcester; and for building a Church and providing a Churchyard and Parsonage House at Newbold."

STAT. 3 & 4
GUL. 4, CAP.
XXX.

LXIII. STAT. 3 & 4 GULIELMI 4, C. 31. A.D. 1833.

"An Act to enable the Election of Officers of Corporations and other Public Companies, now required to be held on the Lord's Day, to be held on the Saturday next preceding, or on the Monday next ensuing."

STAT. 3 & 4
GUL. 4, C. 31.

"Whereas the profanation of the Lord's day is greatly increased by reason of certain meetings which are usually or occasionally held thereon, and whereas it is the duty of the legislature to remove as much as possible impediments to the due observance of the Lord's day; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that every meeting or adjourned meeting of any vestry or corporation, whether ecclesiastical or civil, or of any public company, for the nomination, election, appointment, swearing in, or admission of any officer or officers, or for the transaction of any other secular affair of such vestry, corporation, or company, and every other meeting of a public and secular nature, which, according to any act of parliament, or according to any charter, grant, constitution, deed, testament, law, prescription, or usage whatsoever, is or shall be required to be held on any Lord's day, or on any day which shall happen to be on a Lord's day, shall be held on the Saturday next preceding or on the Monday next ensuing, at the like hour, with like form and effect, as if the same had been held on such Lord's day; and every matter transacted at any such meeting or adjourned meeting held upon any Lord's day shall be absolutely void and of none effect, to all intents and purposes whatsoever: provided always, that when no such nomination, election, appointment, swearing in, or admission, shall have taken place on such Saturday, every person whose term of office would, according to any such act, charter, grant, constitution, deed, testament, law, prescription, or usage, have expired on any such Lord's day, shall continue in office, and exercise and enjoy all the powers and privileges annexed or relating to such office, until and on such Monday next ensuing, in the same manner as if such Monday had been the customary day of nomination, election, appointment, swearing in, or admission.

Elections of officers of corporations and other public companies now required to be held on a Sunday shall be held on the Saturday preceding or the Monday following.

If election does not take place on the Saturday, the person holding the office to continue so to do until the Monday.

"II. And be it further enacted, that whenever the nomination, election, appointment, swearing in, or admission of any such officer or officers as before mentioned shall not take place on such Saturday or Monday, or shall become void, the case shall be and is hereby declared to be within the provisions of an act made and passed in the eleventh year of his late majesty King George the First, intituled, 'An Act for preventing the Inconveniences arising for Want of Elections of Mayors

Elections not made on such Saturday or Monday, shall be taken to be within the provisions of 11 Geo. 1, c. 4.

and sheweth, shewing that the two townships contributed in equal portions, the court discharged the rate with costs.

Insufficiency of assessment. At a vestry meeting called, by notice signed by the churchwardens, for the purpose of making a church rate for the repair of the church, a resolution was moved and seconded, "That this vestry, considering church rates at all times bad in principle, and particularly unjust in practice, and quite uncalled for at the present time, resolve to adjourn all further consideration of the subject for which it has been called, till this day twelvemonths," which resolution was carried: it was held, that one of the churchwardens, in having voted in favour of the resolution, and against the rate proposed (of two-pence in the

pound), was not guilty of any ecclesiastical offence,—it not being averred, that in consequence of the refusal of the rate, the church was still out of repair. *Cooper v. Wickham*, 2 Curt. 303.

Costs. In *Chesterton & Hutchins v. Farlar*, (Ibid. 77,) although a party had successfully resisted payment of a church rate, he was not dismissed, with his full costs, because he had put matters in plea which caused unnecessary expense.

Where a church rate was made to raise 400*l.*, a part of which, amounting to 250*l.*, was intended to pay debts incurred in the previous year by reason of the parishioners having refused a rate, it was pronounced against with costs. *Ellis & Gough v. Griffin*, Ibid. 673.

GULIELMI IV. A.D. 1830—1837.

Boroughs or Corporations being made upon the Days
e for that Purpose, and directing in what Manner
ards made,' as fully and effectually as if such officer
named in the said act."

GULIELMI 4, c. 37. [IRELAND.] A.D. 1833.

*and the Laws relating to the Temporalities of the
Church in Ireland(1)."*

to make provision for the abolition of first-fruits in
f an annual tax in lieu thereof; and it is also expe-
ents by vestries should be abolished in certain cases.
ishops in Ireland may be conveniently diminished,
of the bishoprics, as well as the said annual tax,
ding, and repairing of churches and other such like
the augmentation of small livings, and to such other
e advancement of religion, and the efficiency, perma-
ed church of England and Ireland: and whereas the

Following list enacted since A. D. 1800, relating to the
sal statutes church in Ireland:

providing of churches and ministers, and the providing	43 Geo. 3, c. 108.	E. & I.
.....	51 Geo. 3, c. 115.	
ing for the building and re- i, chapels, and glebe houses, use of glebe lands, glebe riations	48 Geo. 3, c. 65.	I.
.....	49 Geo. 3, c. 103.	
.....	3 & 4 Gul. 4, c. 37.	
how provisions made by ...	4 & 5 Gul. 4, c. 90.	I.
.....	6 & 7 Gul. 4, c. 99.	
. 2 (Irish act), for encou- ment of	6 & 7 Gul. 4, c. 31.	I.
.....	4 Geo. 4, c. 86.	I.
.....	5 Geo. 4, c. 8.	
.....	7 Geo. 4, c. 72.	
her provisions made by	3 & 4 Gul. 4, c. 37.	I.
.....	4 & 5 Gul. 4, c. 90.	
.....	6 & 7 Gul. 4, c. 99.	
ocese of Elphin, repealing relates to the parishes of	10 Geo. 4, c. 58.	I.
recovery of	54 Geo. 3, c. 68.	I.
.....	4 Geo. 4, c. 86.	
and other provisions made by	7 Geo. 4, c. 72.	
.....	3 & 4 Gul. 4, c. 37.	I.
trustees and commissioners laws for collecting	4 Geo. 4, c. 86.	
.....	6 Geo. 4, c. 130.	
her provisions made by	7 Geo. 4, c. 72.	I.
.....	3 & 4 Gul. 4, c. 37.	
he law as to church rates, as same	6 Geo. 4, c. 130.	
.....	7 Geo. 4, c. 72.	I.
her provisions made by	3 & 4 Gul. 4, c. 37.	
ing the laws which regulate ation of church rates and the election of churchwar- manance of parish clerks	7 Geo. 4, c. 72.	
and other provisions made by	3 & 4 Gul. 4, c. 37.	I.
respecting	53 Geo. 3, c. 66.	I.
.....	4 Geo. 4, c. 86.	
yards, empowering rectors glebe land for	54 Geo. 3, c. 117.	I.
ing the laws relating to	3 & 4 Gul. 4, c. 37.	I.
.....	4 & 5 Gul. 4, c. 90.	
.....	6 & 7 Gul. 4, c. 99.	
.....	3 & 4 Vict. c. 101.	
.....	6 & 7 Vict. c. 37.	

tenure by which church lands are held in Ireland is inconvenient, and it is expedient to alter the same in such manner as may tend to the ease and security of the church, and the advantage of the persons holding thereunder: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the commencement of this act the several acts or parts of acts hereafter mentioned shall be repealed; (that is to say,) an act made in the parliament of Ireland in the twenty-eighth year of the reign of King Henry the Eighth, intituled, 'An Act for First-fruits;' an act made in the parliament of Ireland in the twenty-eighth year of the reign of King Henry the Eighth, intituled, 'An Act for the Twentieth Part;' so much of an act made in the parliament of Ireland in the second year of the reign of Queen Elizabeth, intituled, 'An Act for the Restitution of the First-fruits and Twentieth Part, and Rents reserved *nomine* Ten or Twenty, and of Parsonages Improprite, to the Imperial Crown of this Realm,' as relates to or concerns first-fruits and twentieth parts, or the payment thereof; an act made in the parliament of Ireland in the second year of the reign of King George the First, intituled, 'An Act for confirming the several Grants made by Her late Majesty of the First-fruits and Twentieth Parts payable out of the Ecclesiastical Benefices in this Kingdom, and also for giving the Archbishops, Bishops, and other Ecclesiastical Persons some Years' Time for the Payment of First-fruits;' so much of an act made in the parliament of Ireland in the eighth year of the reign of King George the First, intituled, 'An Act for the better enabling of the Clergy having Cure of Souls to reside upon their respective Benefices, and for the Encouragement of Protestant Schools within this Kingdom of Ireland,' as relates to or concerns the payment of any sum of money by the trustees of first-fruits therein mentioned; an act made in the parliament of Ireland in the tenth year of the reign of King George the First, intituled, 'An Act for amending an Act, intituled, "An Act for confirming the several Grants made by Her late Majesty out of the First-fruits and Twentieth Parts payable out of the Ecclesiastical Benefices in this Kingdom, and also for giving the Archbishops and other Ecclesiastical Persons Four Years' Time for the Payment of First-fruits," and for incorporating the Trustees and Commissioners of the said First-fruits;' an act made in the parliament of Ireland in the twenty-ninth year of the reign of King George the Second, intituled, 'An Act for amending and making more effectual the several Laws relating to the First-fruits payable out of the Ecclesiastical Benefices in this Kingdom, and for the better Regulation and Management of the Charitable Bequests of Doctor Hugh Boulter, late Lord Archbishop of Armagh, for augmenting the Maintenance of Poor Clergy in this Kingdom;' an act made in the parliament of Ireland in the twenty-ninth year of the reign of King George the Third, intituled, 'An Act for the better enforcing the Payment of the First-fruits chargeable on the Clergy of this Kingdom;' also an act made in the parliament of the United Kingdom, in the forty-sixth year of the reign of his late majesty King George the Third, intituled, 'An Act for amending an Act passed in Ireland in the twenty-ninth year of King George the Second, intituled, "An Act for amending and making more effectual the several Laws relating to First-fruits payable out of Ecclesiastical Benefices in this Kingdom, and for the better Regulation and Management of the Charitable Bequest of Doctor Hugh Boulter, late Lord Archbishop of Armagh, for augmenting the Maintenance of Poor Clergy in this Kingdom," so far only as relates to the said Charitable Bequest;' an act made in the parliament of the United Kingdom in the forty-third year of the reign of King George the Third, intituled, 'An Act to enable the Commissioners of First-fruits in Ireland to lend certain Sums of Money (Interest free) to Incumbents of Benefices there, for the purpose of enabling them to erect or purchase Glebe Houses and Offices convenient for their Residence, and to purchase Glebe Lands fit and convenient for the Erection of such Houses and Offices; and to make Provision for the Repayment of all Loans so to be made by the said Commissioners;' an act made in the parliament of the United Kingdom in the forty-eighth year of the reign of King George the Third,

STAT. 3
GUL. 4,
[18.]

Acts or
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pealed;
28 Hen.
c. 8;
28 Hen.
c. 14;
2 Eliz. 1

2 Geo. 1

8 Geo.
c. 12, s.

10 Geo.

29 Geo.

29 Geo.

46 Geo.

43 Geo.
c. 106;

48 Geo.

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STATUTA GULIELMI IV. A.D. 1830—1837.

"III. And be it further enacted, that the said four bishops and the said three other commissioners shall be at all times removable by his majesty in council by warrant under the sign manual; and that whenever by death, resignation, removal, or otherwise, any such bishop or person shall cease to be a commissioner under this act, then and in every such case it shall and may be lawful for his majesty, by warrant as aforesaid, to appoint one other bishop or person in the place and stead of any such bishop, or in place and stead of either of such two persons appointed by his majesty, so ceasing to be such commissioners respectively; and in case of the death, resignation, or removal of said commissioner appointed by the lord primate and the archbishop of Dublin, it shall and may be lawful for the said lord primate and archbishop of Dublin for the time being to appoint another proper and discreet person in the place and stead of the person so dying, resigning, or being removed as aforesaid; and any such bishop or person so to be appointed shall accordingly be and become to all intents and purposes one of the commissioners for the purposes of this act.

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"IV. And be it further enacted, that it shall and may be lawful for the lord lieutenant or other chief governor or governors to order and appoint such salary as he or they shall deem fit to be paid to the said three persons (not being bishops) to be appointed such commissioners as aforesaid, regard being had to the nature and extent of the duties to be performed, and to the responsibility which may attach to such persons respectively.

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"V. And be it further enacted, that it shall and may be lawful for the said commissioners to appoint, during pleasure, such secretary and treasurer, and such other subordinate officer or officers, as they in their discretion shall think necessary for the execution of the several duties and trusts hereby reposed in them; and the said commissioners shall, out of the several funds hereby vested in and made payable to them, pay such salaries as shall, pursuant to the provision hereinbefore contained, be appointed to be paid to the said three commissioners, and also such other salaries to the said secretary, treasurer, and other subordinate officer or officers as the said commissioners, by and with the approbation and consent of the lord lieutenant or other chief governor or governors, testified in writing under his or their hand or hands, shall from time to time think fit and allow; and the said commissioners shall also out of the said funds defray all such incidental charges and expenses as shall become necessary in the execution of the several powers and trusts by this act, or by any act hereafter to be passed, reposed in them.

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"VI. And be it further enacted, that all acts, matters, and things, (save as hereinafter excepted,) which the said commissioners are by any of the provisions of this act authorized or required to do and perform, shall and may be done and performed by any three of such commissioners: provided always, that such three commissioners be for such purpose assembled at a meeting, whereof due notice shall have been given to all the said commissioners.

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"VII. Provided always, and be it hereby enacted, that no proceeding which requires to be ratified and confirmed by the common seal of the corporation shall be finally concluded nor the said seal affixed to any deed or instrument, save at a meeting whereof notice shall have been in like manner given, and whereat one at least of the said episcopal commissioners shall be personally present: provided always, that in case any episcopal commissioner, being the only episcopal commissioner present, should object to the ratification and confirmation of any such proceeding as aforesaid, or to the affixing of such seal to any deed or instrument as aforesaid, such ratification or affixing of the seal shall not take place till a subsequent meeting of the commissioners, of which due notice shall have been given.

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"VIII. And be it further enacted, that at each meeting of the said commissioners, the commissioner first in rank and precedence there present shall preside as chairman, and in case of the equality in rank and precedence of all the commissioners so present, then the senior commissioner in the order of appointment shall so preside; and the chairman at all such meetings shall not only vote as

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first-fruits issuing out of ecclesiastical benefices payable by the clergy in Ireland, by whatsoever name the same are called, and by whatsoever right or title the same did or now may belong to the crown, or to the said trustees and commissioners, or any other person or persons: provided always, that nothing herein contained shall extend or be construed to extend to exonerate, acquit, or discharge, any persons, their heirs, executors, or administrators, from paying and satisfying all and every the arrears of first-fruits due or payable by them or any of them, or which may hereafter become due and payable by virtue of any writing obligatory, in force at or before the passing of this act, but that such arrears shall and may be recovered as hereafter provided.

"XIV. And be it further enacted, that the said ecclesiastical commissioners shall make or cause to be made, and from time to time as they shall think necessary, amend or cause to be amended, a valuation, in which valuation allowance shall be made for the deduction hereinafter mentioned, of all and every the revenues, rents, farms, tithes, composition for tithes, estates, demesnes, glebe and other lands, offerings, emoluments, and all other profits, spiritual or temporal, appertaining or belonging, or that shall hereafter appertain or belong, to any archbishopric, bishopric, archdeaconry, deanery, prebend, cathedral church, collegiate church, spiritual corporations, aggregate or sole, parsonage not inappropriate, vicarage, benefice, chantry, free or other chapel, perpetual curacy, or any other benefice or office, or promotion spiritual, of what name, nature, quality, or description soever they be, within that part of the United Kingdom called Ireland, and shall have, take, levy, and receive therefrom and thereout, from and after the times when the same shall severally become void next after the passing of this act, and for ever thereafter, a yearly tax, rate, or assessment, computed and imposed upon such valuation, according to the several rates and scales specified and contained in the schedule (A) to this act annexed.

"XV. And be it enacted, that the said yearly tax shall be paid half-yearly in equal moieties to the said ecclesiastical commissioners on each first day of July and first day of January, the first payment on account of such annual tax to be made from and out of each dignity, benefice, office, or promotion spiritual on the first day of July or first day of January, as may happen, next after the first day of May or the first day of November, as may happen, next after the consecration, installation, induction, collation, investing, placing, election, or appointment of the persons succeeding thereto: provided always, that such person shall only be charged or chargeable in such first payment with a proportion of such tax, according to the term during which he shall have enjoyed or been entitled to the profits of such dignity, benefice, office, or promotion spiritual; and provided further, that if any such dignity, benefice, office, or promotion spiritual shall remain void for any time after such days hereinbefore appointed for the payment of the said annual tax, the person succeeding thereto shall be charged and chargeable with all arrears thereof accruing due from and after the last avoidance thereof.

"XVI. And be it enacted, that each and every dignity, benefice, or office, or promotion spiritual, shall be separately and distinctly rated, each in the proper diocese to which it may belong, wheresoever the possessions or profits to them respectively belonging shall happen to be locally situate; and that in the case of any estate, tithes, funds, or other emoluments whatsoever distributable among the members of any corporation aggregate, under or by virtue of any law, statute, by-law, or usage whatsoever, the said tax, rate, or assessment shall be imposed severally upon the separate share or income of each such member respectively, and that each such share or income shall be and become respectively charged therewith from and after the time when the member of such corporation now enjoying or entitled to such share or income shall die, or become disqualified, or in any manner cease to be a member of such corporation, and for ever thereafter.

"XVII. Provided, and be it enacted, that no economy estate or fund appropriated to the purpose of repairing any cathedral or church, or other such like purpose, shall be liable to the said annual tax, rate, or assessment, save only so far as respects the surplus thereof, (if any,) which may be distributable among the dean and chap-

STAT. 3
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STATUTA GULIELMI IV. A.D. 1830—1837.

account and estimate of the said several matters and things in the said commission so directed to be inquired of by them as aforesaid, and which return the said persons in such commission named are hereby required to make; and the said persons to be therein named as aforesaid, or any two of them, shall likewise have power to examine witnesses upon oath touching or concerning any of the matters or things so to be inquired of by them as aforesaid; provided always, that the said ecclesiastical commissioners under this act may at their discretion direct and order the costs and expenses of issuing said commission, and of all the proceedings thereunder, or any part thereof, to be paid and borne, in such shares or proportions as the said commissioners shall think fit, by such archbishop, bishop, archdeacon, dean, prebendary, parson, vicar, or other spiritual person aforesaid, of and into the revenues, rents, issues, and profits of whom such commission shall be issued to inquire and examine as aforesaid; and which costs and expenses, when so ordered to be paid as aforesaid, shall and may be recovered in the manner hereafter directed and mentioned with respect to the said annual tax; provided always, that no such archbishop, dignitary, or spiritual person shall be required to pay the costs or expenses of any such commission, or any part thereof, unless the valuation of the revenues, issues, and profits to him belonging shall exceed the amount thereof as stated in the last previous return thereof by him made in the proportion of ten pounds per centum.

"XX. Provided, and be it enacted, that in and from the valuation to be made for the purpose of imposing the said rate, tax, or assessment, the said commissioners shall from time to time deduct and allow all rents, synodals, proxies, and other charges, including salaries or stipends for perpetual curates or licensed assistant curates of any benefice the incumbent whereof shall be resident in any such benefice, which any such spiritual person or persons as aforesaid, chargeable with the said annual tax, is or are bound to pay or allow in respect of his or their archbishopric, bishopric, archdeaconry, deanery, prebend, benefice, or other promotion spiritual as aforesaid; and in case there shall be no see house or glebe house or place of residence thereon or thereto respectively belonging, then that the said ecclesiastical commissioners shall deduct and allow such sum as shall appear to be the annual rent or value of the house or place of residence occupied by each such spiritual person, or such lesser sum as the said ecclesiastical commissioners shall in their discretion think fit; and in case any such spiritual person so chargeable as aforesaid shall have expended or laid out in building or improving any house, office, or place of residence as aforesaid, or shall have paid or secured, or shall be chargeable with to his or their predecessors respectively, or his or their respective executors, administrators, or assigns, any sum or sums of money on account of money laid out or expended theretofore on any such buildings or improvements, then in every such case the said ecclesiastical commissioners shall from time to time, in and from such valuation, deduct and allow, on account thereof, in the following manner and according to the following rate; (that is to say,) the annual sum or allowance of ten pounds in the hundred for all and every the sum or sums so expended or laid out in such building or improvement, or paid or secured to be paid, or with which such person as aforesaid shall be chargeable to his predecessor, or his executors, administrators, or assigns, as the case may be, on account of money so theretofore laid out or expended on such building or improvement as aforesaid, and which shall not be by law recoverable by such person, his executors,

from or against his successor; and the annual sum or in every hundred for all and every the sum or sums so aid or secured to be paid, or wherewith any such person predecessors, or his executors, administrators, or assigns, money so theretofore laid out or expended as aforesaid, which shall be by law recoverable by such person, his or assigns, from or against his successors.

ye, and be it further enacted, that the said ecclesiastical rom or in such valuation, deduct or allow for any sum or t or expended, or paid or secured to be paid, or where-

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be chargeable as aforesaid, unless
and mentioned in the certificate
governors of Ireland, or of the
spectively, as the case may be, in
by virtue of any statute now or
any archbishop, bishop, or other
cessor the sums above mentioned,

the said tax, rate, or assessment, or
it, shall be in arrear and unpaid
have been demanded by or on the
and may be lawful for such court
of Chancery or Exchequer in
of in that behalf; and such court
and upon the production of a certi-
ficate, of such tax being in arrear
with or without reference to any
process of sequestration, (after
in answer to such application, by
that purpose,) to issue out of and
on behalf of such commissioners,
power to enter into the possession
profits of all and every the lands,
any such body or person in his
all and every the tithes, modons,
and all other ecclesiastical emolu-
ments the same respectively, or such
sums fully sufficient for the purpose,
until they shall have been fully
paid thereof which shall be then
due, remain or become due and
payable from the time when every such
sum is due, and all costs and charges and
expenses of sequestration as aforesaid; and
proceed against all persons dis-
obedient hindering or preventing the
same connected with and consequent
thereon in other cases in which seques-
tration pursuant to the orders of the

are enacted, that any sequestration
may be preferred, and the said com-
missioners may receive the sum and sums to be receiv-
ed to any other person or persons
in judgment, execution, or other
wise person or persons; anything
to the contrary hereof notwith-

standing, enacted, that if any archbishop,
bishop, or the payment of said yearly tax
shall be delayed, prevented, removed or not
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residue of such tax accruing due on such gale day; and provided further, that in any case in which it shall be made to appear to the satisfaction of the said commissioners that any spiritual person chargeable with the said tax shall not have received the profits of the dignity, benefice, perpetual curacy or office, or promotion spiritual, in respect whereof he may be so chargeable, then and in such case it shall be lawful for the said commissioners to extend the time for the payment of such tax until such profits shall be received, or in case such spiritual person shall die, or be removed, or promoted from his dignity, benefice, perpetual curacy, or office, or promotion spiritual as aforesaid, without being entitled to receive any of such profits, then and in such case to charge and recover the same of and from his successor therein whenever such successor shall have received the said profits; anything hereinbefore contained to the contrary notwithstanding.

“XXV. And be it further enacted, that the proportion of said annual tax due on the death of any archbishop, bishop, or other person as aforesaid, shall be deemed and taken to be and shall rank as a judgment debt of such deceased archbishop, bishop, or person as aforesaid, and be paid as such, as if a judgment had been duly acknowledged by or entered against him during his lifetime by the said commissioners for the amount of said tax which shall be so due as aforesaid, and immediately after all other *bonâ fide* judgments, crown bonds, and recognizances entered up against, acknowledged, or executed by him during his lifetime.

“XXVI. And be it further enacted, that the said commissioners under this act shall be deemed and taken to be, in every ecclesiastical court in the United Kingdom, judgment creditors of any archbishop, bishop, or other such person as aforesaid chargeable with any arrears of said annual tax; and in case the executors, or next of kin, or residuary legatees of such archbishop, bishop, or other person as aforesaid shall refuse or neglect to take out probate or letters of administration to him, the said commissioners shall be entitled to have administration of his goods and chattels, rights and credits, granted or committed unto their nominee or nominees in such manner and form, but subject to the same regulations as far as may be, as and under which administrations are usually granted to creditors of other deceased persons, notwithstanding that no affidavit or other evidence shall be made or given in or to such ecclesiastical court of any debt being actually due to such commissioners: provided always, that a certificate under the corporation seal of the said commissioners shall be produced to such ecclesiastical court, alleging that a debt on account of arrears of said annual tax is due to such commissioners, and that they require such administration to be granted to the person to be therein named.

“XXVII. And be it further enacted, that the several archbishops and bishops of Ireland shall, from and after the passing of this act, on the first day of November and first day of May in every year, or at farthest within fourteen days after, make returns to the said commissioners of all, how many, and what archdeacons, deans, provosts, masters, wardens, prebendaries, rectors, parsons, vicars, perpetual curates, incumbents, or other spiritual persons, by whatever name called, known, or described, have been installed, admitted, instituted, collated, or inducted (and of and on whose gift, grant, or presentation such installation, admission, institution, or induction has taken place,) into dignities, benefices, curacies, chapelries, offices, or promotions spiritual, by whatever name called, known, or described, as aforesaid, and by what names and surnames they were so installed, admitted, instituted, collated, or inducted, and each of them were singly and separately called and known by, together with the day and year of the installation, admission, institution, collation, or induction of each of them, and in what county and counties within their respective diocese or dioceses and jurisdictions such archdeaconries, deaneries, prebends, rectories, parsonages, vicarages, curacies, chapelries, or other dignities, benefices, or offices, or promotions spiritual, by whatever name called, known, or described, be and are situated, to the dates of the said respective returns.

“XXVIII. And be it further enacted, that all and every the powers and authorities, provisions, regulations, forfeitures, clauses, matters, and things in this act contained, in relation to bishops in their dioceses, shall extend and be construed to

STAT. 3 & 4
GUL. 4, c. 37.
[1a.]

If incumbent receive no profits of his preferment, the payment of tax to be delayed or charged on his successor.

Arrears of tax due on death of such person to rank as a judgment debt.

Nominee of commissioners to be entitled to administration.

Archbishops and bishops to return promotions, &c.

Provision for cases where archbishops are also bishops, &c.

bishoprics named in the first column of the schedule (B) to this act annexed shall, when and as the same may severally become void, be thenceforth united to and held together with the bishopric or archbishopric mentioned in conjunction therewith respectively in the second column of the said schedule (B); and that the archbishops or bishops of the archbishoprics or bishoprics in such second column named shall, at such times respectively as before mentioned, be and become, by virtue of this act, and without further grant, installation, or ceremony whatsoever, bishops respectively of the said bishoprics named in such first column in conjunction therewith, and shall have and exercise all and every the ecclesiastical patronages and jurisdictions in appointing, collating, and presenting to all and every the dignities, rectories, vicarages, curacies, chapelries, or other offices or promotions, and all other jurisdictions whatsoever, by whatever name called, known, or described, lawfully had, used, exercised, and enjoyed by the respective bishops of the said bishoprics in the first column of the said schedule (B) named, as also the right of nominating and appointing to all and every the offices of chancellor, vicar-general, official, principal registrar, and all other ecclesiastical offices of or belonging or appertaining to such last-mentioned bishoprics respectively; and his most excellent majesty, his heirs and successors, shall at all times thereafter grant each such bishopric in the first column of the said schedule (B) named, together with the bishopric or archbishopric to which it may have been united in manner aforesaid, to be held by one and the same person.

“XXXIII. Provided always, and be it further enacted, that if any bishopric mentioned in the second column of the said schedule (B) shall become void before the union of such bishopric with the bishopric mentioned in the first column of the said schedule, then the bishop of the bishopric mentioned in the first column shall become, by virtue of this act, and without further grant, installation, or ceremony whatever, bishop of the bishopric in such second column named in conjunction therewith, and shall have and exercise all powers and authorities of the bishop of such united bishoprics; provided always, that nothing herein contained shall authorize or empower any bishop of a bishopric mentioned in the first column of the said schedule as hereafter to be united to the dioceses of Armagh or of Dublin, to become, by virtue of this act, Archbishop of Armagh or of Dublin.

“XXXIV. Provided also, and be it further enacted, that it shall and may be lawful for the Archbishop of Armagh and Archbishop of Dublin, and they are hereby required, to select from and out of the benefices belonging to each of the bishoprics in the first column of the said schedule (B) mentioned, and now in the gift or collation of the respective bishops thereof, one benefice not exceeding the annual value of one thousand pounds, and to return a list of the several benefices so selected, under their episcopal seals, to the said lord lieutenant or other chief governor or governors of Ireland, and his majesty's privy council there, for their approval, and when approved by the said lord lieutenant or other chief governor or governors and council, such list shall be registered in the rolls office of his majesty's court of Chancery in Ireland, together with such approval; and upon each and every avoidance of the said benefices so selected happening from time to time after the said bishoprics to which the same may respectively belong shall have become united to any other bishoprics by virtue of this act, it shall and may be lawful for the said Archbishop of Armagh and Archbishop of Dublin to nominate and present to each such benefice one of the fellows or ex-fellows of the college of the Holy and Undivided Trinity, near Dublin, being in holy orders; provided always, that in case the said two archbishops shall not be able to agree in such nomination and appointment, or shall decide upon the person to be appointed to the said vacant benefice, the first turn therein to be exercised by the Archbishop of Armagh, and if on the vacancy of any of the said benefices so selected as aforesaid, the said archbishop shall not present thereto some such fellow or ex-fellow within such period as any patron ought to present to a benefice in his gift or presentation, then and in such case the right of presentation or collation to such benefice shall, for that turn, devolve to the bishop of the diocese, and be in all respects subject to the ordinary law of lapse; provided always, that until the said bishoprics shall have become

STAT. 3 & 4
GUL. 4, c. 37.
[18.]

the bishoprics
named in the
second column,
&c.

If bishopric in
second column
of schedule (B)
becomes void
before union of
such bishopric
in first column,
then such
bishop to be
bishop of such
bishopric.

Archbishops of
Armagh and
Dublin em-
powered to
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of Trinity
college to a
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tioned.

Proviso in case
of disagree-
ment of the
archbishops.

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STAT. 3 & 4
GUL. 4, c. 37.
[12.]

elected, to
vacate his
fellowship.

Commissioners
to make good
deficiencies
happening to
bishops by the
union of
bishoprics.

Temporalities
of bishoprics
in first column
of the said
schedule (B)
vested in the
commissioners
under this act.

Arrears of
rent, &c. since
death of Bishop
of Waterford
to be recovered
by commis-
sioners.

Commissioners
to pay sums
charged on
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united to any other bishoprics under the provisions of this act, nothing herein contained shall alter or affect the right of presentation or collation to any of the benefices so selected as aforesaid, as at present enjoyed or possessed; and provided further, that any fellow of the said college who shall accept any such benefice shall vacate his fellowship at such time and in such manner as according to any statute, bye law, or usage of the said college, fellowships are vacated upon the acceptance of any living in the gift or disposal of the said college.

“XXXV. Provided also, and be it further enacted, that the said ecclesiastical commissioners under this act shall, from and out of the revenues of each bishopric in the first column mentioned, when and as the same shall become vested in them, make good to the bishop thereof becoming, by virtue of the provision hereinbefore contained, bishop of the bishopric mentioned in conjunction therewith in the second column of the said schedule, the sum or sums of money, (if any,) whereby the revenues of such bishopric in such second column mentioned shall fall short of the revenues of such bishopric in such first column mentioned.

“XXXVI. Provided nevertheless, and be it enacted, that all and singular the lands, tenements, and hereditaments respectively belonging or in anywise appertaining to the bishoprics in the first column of the said schedule (B) named, together with all and singular the tithes, rents, and emoluments whatsoever, to such bishoprics respectively appertaining or belonging, shall, in the case of the said bishopric of Waterford, from and after the passing of this act, and in the case of the other bishoprics in the said schedule (B) mentioned, shall, from and after the times when such bishoprics shall become respectively void or united to any other bishopric as aforesaid, be and the same are hereby transferred to and vested in the said ecclesiastical commissioners and their successors for ever, subject however to all leases, rents, charges, and incumbrances, now or at the time of such transfer legally affecting the same, save and except the annual tax, rate, or assessment by this act authorized to be imposed and levied; and that all the rents, revenues, issues, profits, and other emoluments in any manner arising or accruing to the said commissioners and their successors, from or out of any of the said bishoprics shall be received and applied by such commissioners and their successors to, for, and upon the several trusts, uses, and purposes in this act mentioned, and subject to and under the like rules and regulations as are herein declared and expressed of and concerning the said annual tax vested in and made payable to the said commissioners and their successors.

“XXXVII. And be it further enacted, that all arrears of rent and other temporal profits and emoluments which have accrued due for or in respect of the see of Waterford since the said bishopric of Waterford has become void, shall by virtue of this act, and without any writ of restitution or other process whatever, be in like manner transferred to and vested in the said commissioners, to, for, and upon the like trusts, uses, and purposes, and subject to the like rules and regulations as aforesaid; and that the said commissioners shall and they are hereby authorized and empowered, either by action of covenant or debt, or by action on the case, as for use and occupation, to sue for and recover all and every the arrears of rent due, or which shall have accrued or become due since the death of the said late Bishop of Waterford; and that it shall and may be lawful for the said commissioners, and they are hereby authorized and empowered, to distrain for such arrears and every part thereof, and shall and may avow generally for the same.

“XXXVIII. And provided also, and be it further enacted, that the said commissioners shall, and they are hereby required and directed to pay and satisfy the executors or administrators or assigns of Doctor Richard Bourke, late Bishop of Waterford, by such instalments, to be made in such manner and at such periods from and after the passing of this act, as any successor to such bishopric then appointed would have been bound or liable if any such successor had been appointed on or before the first day of January, one thousand eight hundred and thirty-four, all and every such sum and sums of money which, pursuant to any law or statute in force in Ireland at the passing of this act, could or might have been recovered by

such executor or administrator from or against the successor of the said late Bishop of Waterford, in case this act had not been passed; and provided further, that the said commissioners shall by such instalments, to be made in such manner and at such periods from and after such respective vacancies of the other bishoprics, save and except the bishoprics of Ossory and of Cork and Ross, named in the first column of the schedule (B) to this act annexed as aforesaid, or from and after the annexation thereof to any other bishopric under provisions hereinbefore contained, as any successors thereto would have been respectively bound or liable if such successors had been appointed, pay to and satisfy the person or persons, or his or their respective executors, administrators, or assigns, as the case may be, by whose promotion or death such vacancy shall have occurred or been occasioned, or who shall become the bishop of any united bishoprics, all and every such sum and sums of money as by force of any law or statute, or usage, has or have heretofore been charged upon the said other bishoprics upon the same becoming void respectively, and which would have been payable to and recoverable by such persons respectively, or their respective executors, administrators, or assigns, from or against their respective successors in such bishoprics, in case this act had not been made.

“XXXIX. And be it further enacted, that in the case of the said bishopric of Waterford, it shall and may be lawful for the said commissioners from and after the passing of this act, and in the case of the other bishoprics named in the first column of the schedule (B) to this act annexed, save and except the bishoprics of Ossory and of Cork and Ross, it shall and may be lawful for such commissioners at and after such times as the said bishoprics shall become respectively vacant, or united to any other bishopric or archbishopric as aforesaid, and such commissioners are hereby empowered, by and with the consent of the lord lieutenant or other chief governor or governors in Ireland, to be testified in writing under his or their hand or hands, to demise for any term of lives or years, or lives and years, with a covenant to make void the said demise in case of assigning or subletting, and for such rent or fine as shall be specified in and by such consent as aforesaid, the see house and offices, and all or any part of the mensal or demesne lands of or belonging to the said bishopric of Waterford, or to the said other bishoprics, save as aforesaid: provided always, that if the bishop for the time being of the bishopric to which such bishopric of Waterford, or such other bishopric, save as aforesaid, shall be united by virtue hereof as aforesaid, do and shall, with and by the like consent as aforesaid, to be testified as aforesaid, elect and choose the see house of such bishopric of Waterford, or such other bishopric, save as aforesaid, to be and continue for ever to be the see house of such united bishopric, it shall not be lawful for the said commissioners so to demise the said see house and offices so selected and chosen as aforesaid, nor the mensal or demesne lands thereof or thereto respectively belonging; and in such case it shall be and become lawful for the said commissioners, and they are hereby empowered, by and with the like consent as aforesaid, to be testified as aforesaid, to demise, in like manner and upon the like terms as aforesaid, the see house and offices of the bishopric to which such bishopric of Waterford, or such other bishopric, save as aforesaid, shall be united as aforesaid, by virtue of this act, together with any part of the mensal or demesne lands thereof or thereto respectively belonging, instead of the see house and mensal or demesne lands of such bishopric of Waterford or other bishoprics so respectively becoming vacant, or united to any other archbishopric or bishopric, save as aforesaid.

“XL. Provided always, and be it enacted, that if such consents as aforesaid be not recited in the respective deeds of demise aforesaid, and if the said deeds of demise do not contain such covenant as aforesaid against assigning or subletting, or be not respectively executed by the said commissioners in the manner hereinbefore directed as to the execution of deeds by said commissioners, and the said bishops of the bishoprics which shall become united in manner aforesaid, for the time being respectively, that then the said demises shall be respectively null and void to all intents and purposes whatsoever.

“XLI. And be it further enacted, that it shall be lawful for the said commissioners, when and so soon as the said bishopric of Ossory and bishopric of Cork

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“XLVI. And be it further enacted, that when and as the now archiepiscopal sees of Tuam and Cashel shall become severally void, the Bishops of Tuam and Cashel shall thenceforth for ever respectively cease to have or exercise archiepiscopal jurisdiction within the said provinces of Tuam and Cashel; and all such archiepiscopal jurisdiction as may have theretofore belonged to and been exercised by the Bishop of Tuam shall be transferred to and vested in the Archbishop of Armagh for the time being, and all such archiepiscopal jurisdiction as may have theretofore belonged to and been exercised by the Bishop of Cashel shall be transferred to and vested in the Archbishop of Dublin for the time being; and the Bishops of Tuam and Cashel shall, as well as the other bishops of the said provinces of Tuam and Cashel, be subject to the archiepiscopal jurisdiction of the said Archbishops of Armagh and Dublin respectively; and the said Archbishops of Armagh and Dublin, and their successors respectively, shall have, use, and exercise, without further grant, installation, or ceremony whatsoever, all and singular the metropolitan rights, privileges, franchises, duties, powers, and authorities theretofore exercised or which might have been exercised within the said provinces of Tuam and Cashel respectively: provided always, that nothing herein contained shall in any respect abridge or affect the jurisdiction, privileges, rights, or authority of the Archbishop of Armagh as primate of all Ireland.

“XLVII. And be it enacted, that when and so soon as the now archiepiscopal see of Tuam shall become void, the bishopric of Ardagh, now held therewith, shall be united to and held together with the bishopric of Kilmore, and that the then Bishop of Kilmore shall be and become, by virtue of this act, and without further grant, installation, or ceremony whatsoever, Bishop of Ardagh, and have and exercise all and every the ecclesiastical patronages and jurisdictions in appointing, collating, and presenting to all and every the dignities, rectories, vicarages, curacies, chapelries, or other offices or promotions, by whatever name called, known, or described, heretofore lawfully had, used, exercised, and enjoyed by the *Archbishop of Tuam* (1) as Bishop of Ardagh, as also the right of nominating and appointing to all and every the offices of chancellor, vicar-general, official, principal registrar, and all other ecclesiastical offices of or belonging to the said bishopric of Ardagh; and his most excellent majesty, his heirs and successors, shall at all times thereafter grant, to be held by one and the same person, the said bishoprics of Kilmore and Ardagh, together with such other bishopric as shall under the provisions of this act be appointed to be held together with such bishopric of Kilmore.

“XLVIII. Provided always, and be it enacted, that all and singular the lands, tenements, and hereditaments, together with all and singular the tithes, rents, and emoluments, to the said bishopric of Ardagh appertaining and belonging, shall, from and after the time when the said now archiepiscopal see of Tuam shall become void as aforesaid, be and the same are hereby transferred to and vested in the said ecclesiastical commissioners and their successors for ever, to and for the like trusts, uses, and purposes, with the like powers, and subject in all respects to such and the like charges, conditions, and regulations, as hereinbefore provided in respect of the bishoprics mentioned in the first column of the said schedule (B) to this act annexed.

“XLIX. And be it enacted, that all and singular the lands, tenements, and hereditaments, with all and singular the tithes, rents, and emoluments whatsoever, appertaining or belonging to the preceptory of Tully or deanery of Christ Church heretofore held and enjoyed in *commendam* or otherwise by the Bishop of Kildare for the time being, as Dean of Christ Church, or by whatever other title, shall be deemed and taken to be, for the purposes of this act, part of the lands, tenements,

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(1) *Archbishop of Tuam*:—A testator appointed the Archbishop of Tuam for the time being an executor of his will; the archiepiscopal jurisdiction of Tuam having been abo-

lished by Stat. 3 & 4 Gul. 4, c. 37; probate was granted to the Bishop of Tuam as executor. In the goods of William Haynes, 3 Curt. 75.

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ents, tithes, rents, and emoluments, appertaining and belonging to the priory of Kildare, and be in like manner and time transferred to and held by the said ecclesiastical commissioners and their successors, and in all other respects to such and the like provisions.

And it is further enacted, that the said deanery of Christ Church shall, on the next avoidance thereof, be united to and held together with the deanery of Saint Patrick's; and that the then dean of the cathedral of Saint Patrick's, or his successors, shall be the dean of the said deanery of Christ Church, and his successors for ever shall be the deans thereof, by virtue of this act, and without further grant, installation, election, or consecration, any whatsoever, Dean and Deans of Christ Church for ever, and shall have and enjoy all and every the rights, privileges, jurisdiction, and authority which the said deanery of Christ Church, heretofore lawfully had, used, or enjoyed, by the deans thereof: provided nevertheless, that all and every the powers and authorities in appointing or presenting to benefices now belonging, in right of the said deanery, to the Dean of Christ Church, shall, from and after the date of such deanery, vest in and be exercised by the Archbishop of Dublin and his successors for ever.

And whereas an act was passed in the parliament of Ireland in the fortieth year of his majesty King George the Third, intituled, 'An Act to amend the laws by which the Lords Spiritual and Temporal, and the Commons, of Great Britain and the United Kingdom on the Part of Ireland, shall be summoned and assembled in the said Parliament;' and the said act of the parliament of Ireland was made part of an act passed in the parliament of England in the fifth year of his said majesty King George the Third, intituled, 'An Act for the Union of Great Britain and Ireland;' and the said two acts the right of sitting in the house of lords of the said United Kingdom, as between the lords spiritual of Ireland, stands regulated according to the said acts appointed to take place among the archbishops and bishops from session to session, and according to another like rotation to take place among the episcopal sees; and whereas the enactments made for reducing the number of the archiepiscopal sees in Ireland, and the union of certain of the episcopal sees, render it necessary to make provision for accommodating the said rotation to such enactments; be it therefore enacted, that when and as the now archiepiscopal sees of Cashel and Tuam shall become void, they and each of them respectively shall thenceforth come in the rotation by the said acts established amongst the archiepiscopal sees, and shall be included in the rotation by the said acts established to be kept amongst the episcopal sees, and therein take place next before the episcopal sees in the order of rotation of the episcopal sees the bishops whereof may be present in the house of lords in the next parliament for the session last previous; and the rotation by the said acts appointed to take place amongst the episcopal sees shall, in case of each of the said archiepiscopal sees becoming void, proceed to the archbishop whose see is next in rotation to the said archiepiscopal see becoming void as aforesaid.

And be it further enacted, that in the case of the bishopric of Waterford, and in the case of each and singular of the other bishoprics first column of the schedule to this act annexed, when and as they respectively become void, or united to any other bishopric, the rotation by the said acts appointed to take place amongst the episcopal sees shall proceed to the bishop whose see is next in rotation to the said see of Waterford or other bishopric becoming void, or united to any other bishopric as aforesaid; and the said bishop, or other see being or becoming void, or united to any other bishopric as aforesaid, shall for ever thereafter be excluded from and omitted out of the said rotation.

Provided always, and be it enacted, that, save as herein specifically provided, the order of rotation by the said recited acts established shall remain in full force and effect, and subject always to the regulations thereby made in case any archbishop or bishop be a temporal peer of the United Kingdom, or being a temporal peer of the United Kingdom called Ireland should be chosen by the said lords to be one of the representatives of the lords temporal.

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"LIV. And whereas the revenues of the archbishopric of Armagh and the bishopric of Derry have increased in such manner that, without affecting the just and competent support of the said dignities, a portion thereof may be beneficially applied for the other purposes of the established church in Ireland, in manner hereinafter mentioned; be it therefore further enacted, that when and so soon as the said archbishopric of Armagh shall become void, the successor thereto, and his successors for ever, Archbishops of Armagh, shall, from and out of the revenues of the said archbishopric, pay over to the said commissioners under this act the annual sum of four thousand and five hundred pounds, the same to be paid by two equal payments on each first day of July and first day of January in every year, the first payment or amount of such annual tax to be made on the first day of July or first day of January, as may happen, after the first half yearly payment of the revenue of such archbishopric of Armagh shall have become due and payable to such successor of the now Archbishop of Armagh: and that the now Bishop of Derry, having freely assented thereunto, shall, from and out of the revenues of the said bishopric, pay over to the said commissioners under this act the annual sum of four thousand and one hundred and sixty pounds; and when and so soon as the said bishopric of Derry shall become void, the successor thereto, and his successors for ever, Bishops of Derry, shall, from and out of the revenues of the said bishopric, pay over to the said commissioners under this act the annual sum of six thousand one hundred and sixty pounds, the same to be paid by two equal payments on each first day of July and first day of January in every year, the first payment thereof to be made on the first day of January in the year one thousand eight hundred and thirty-four; and the sums so from time to time to be paid to the said commissioners by the said Archbishops of Armagh and Bishops of Derry shall be applied to such and the like purposes as the proceeds of said tax hereby vested in the said commissioners and the revenue of such bishoprics so to be united with other bishoprics, and under like rules and regulations.

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"LV. Provided always, and be it enacted, that the now Bishop of Derry and his successors, and the successors of the now Archbishop of Armagh, shall not be liable, in respect of the said sums so by them to be respectively paid to the said commissioners, to be rated, taxed, or assessed in or to the annual tax hereinbefore appointed to be imposed or levied; anything hereinbefore contained to the contrary notwithstanding.

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"LVI. And be it enacted, that if at any time the said sums hereby directed to be paid by the said archbishop or bishop shall be in arrear and unpaid for six months next after the same shall have become due and payable as aforesaid, it shall be lawful for the said commissioners to recover the same by process of sequestration, to be applied for and issued in like manner as hereinbefore directed in case any archbishop or bishop shall fail to make payment of the annual rate, tax, or assessment by this act authorized to be imposed and levied, and subject in all respects to such and the like provisions.

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"LVII. And be it enacted, that while and so long as the temporalities of the said archbishopric and bishopric respectively shall at any time be in the custody of his most excellent majesty, his heirs and successors, the said annual payments shall be made to the said commissioners in like manner as the same are hereby directed to be made by the archbishop or bishop thereof respectively while the said sees are full.

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"LVIII. And be it further enacted, that all and every sum and sums of money due and payable at the passing of this act by any archdeacon, dean, prebendary, master, warden, incumbent, perpetual curate, parson, vicar, or other spiritual person, by whatever name called, known, or described, on account of first-fruits and arrears thereof, and any sum or sums at any time heretofore lent and advanced by, and now payable or hereafter to become payable, pursuant to the laws in force in Ireland, to the trustees and commissioners of the first-fruits in Ireland, for purchasing, building, rebuilding, improving, repairing, or enlarging glebe or other houses or offices, shall, from and after the passing of this act, be and the same and every part thereof are hereby vested in and transferred and made payable to the

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“LXII. And be it further enacted, that the said commissioners under this act are hereby authorised and empowered from time to time, at their discretion, to lay out at interest all or any part of such monies as shall at any time hereafter, by or under the provisions of this act, come to or be in their hands or at their disposal, in the purchase of government or parliamentary funds, stocks, or securities, and no other, either in England or Ireland, and from time to time change, transfer, or sell out such stocks, funds, or securities, or any part thereof, as they may find necessary or convenient.

“LXIII. And be it further enacted, that all and every the rents, issues, and profits of all lands, tenements, or hereditaments, and the said annual tax and the proceeds thereof, and all and every sum and sums of money and securities for money, vested in or which shall accrue to or in any manner come into or be in the hands, power, custody, or possession, or at the disposal of the said commissioners and their successors, under and by virtue of this act, and all interest, dividends, profits, and proceeds thereof, or any part thereof, (save and except the properties and funds respectively bequeathed by Doctor Hugh Boulter and Doctor Richard Robinson, and heretofore vested in the said trustees and commissioners of first-fruits in Ireland as hereinbefore mentioned, and the interest, dividends, and proceeds thereof respectively, and also save and except such other funds and properties as may be hereafter bequeathed to or vested in the said commissioners under this act, and their successors, for any special purposes,) shall be and the same are hereby declared to be applicable, and shall be applied in the manner and for the purposes following; (that is to say,) for the providing, in such manner and proportions, and subject to such regulations, as the said commissioners shall deem fitting, things necessary for the celebration of divine service in the church or chapel of every parish, union, perpetual curacy, or chapelry, or chapel of ease in Ireland, as required and authorized by any rubric or canon in force in England or Ireland, and also for the payment of the salaries for maintenance of the parial clerks or sextons or the clerks or sextons of any chapelry or chapel of ease, and also for defraying such expenses of building, rebuilding, enlarging, or repairing any church or chapel, or fencing and maintaining any churchyard as aforesaid, as have been heretofore defrayed by vestry assessment in Ireland, and also for supplying such parts or proportions of the expenses of providing for the said several matters aforesaid, and for putting into and keeping in repair cathedral and parochial churches, as the said commissioners are hereafter directed to contribute for such purposes; provided always, that in future such parish clerk or sexton shall and may be appointed by the minister, and by him removable, with the consent of the bishop, for any misconduct.

“LXIV. And be it further enacted, that in all cases where, under and by virtue of an act made in the twenty-first year of the reign of King George the Second intituled, ‘An Act for disappropriating Benefices belonging to Deans, Archdeacons, Dignitaries, and other Members of Cathedral Churches, and for appropriating others in their stead, and also for the Removal of the Sites of ruined Cathedral Churches,’ any parochial church shall have been or shall be made, or shall have become, by usage or custom, cathedral and parochial, and in all cases where under and by virtue of an act made in the parliament of Ireland in the thirty-ninth year of the reign of King George the Third, intituled, ‘An Act for the repairing of Cathedral Churches in Cases where the Parish Churches have been long in Ruins,’ any cathedral church shall have been or shall be made use of as a parish church, it shall and may be lawful for the said commissioners, and they are hereby required, to contribute to the repairs of such cathedral and parochial churches, in such proportion as has been agreed upon by and between the dean and chapter, or chapter, of such cathedral church, and by the protestant inhabitants of the parish or union in which such church is situate, that the inhabitants thereof should contribute to the rebuilding, enlarging, and putting into and keeping in repair of such cathedral and parochial churches; and if it shall happen that no such agreement as aforesaid shall have been made by and between the parties aforesaid, it shall and may be lawful for the lord lieutenant or other chief governor of

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repayment of such advances, shall be deemed and taken to be satisfied; provided that nothing herein contained shall affect or repeal any provision contained in any act or acts heretofore made in order to enforce the due application of any sum or sums of money so advanced, or the refunding thereof if not so applied.

“LXVII. And be it further enacted, that from and after the commencement of this act, the incumbent, or, in his absence, the officiating curate or minister officiating as curate of every parish, union, or chapelry, or perpetual curacy, in Ireland, and the dean and chapter, or chapter, of every such cathedral and parochial church, or cathedral used as a parish church, in Ireland, shall, and he and they are hereby required, on or before the first day of November in this present year, and on or before the first day of June in each and every succeeding year, to prepare or cause to be prepared an estimate of such sum or sums of money as will be necessary, according to his or their belief, for the ordinary repairs of the church or chapel of such parish, union, chapelry, or perpetual curacy, or of such cathedral and parochial church, or cathedral used as aforesaid respectively, for the ensuing year, and for providing things necessary for the celebration of divine service in every such church or chapel of any such parish, union, chapelry, or perpetual curacy, for such ensuing year, which estimate shall contain the several items and particulars of all the matters and things for which such sum or sums shall or may be required necessary for such church or chapel; and such estimate shall be transmitted by such person or persons whose duty it is to prepare the same to the ordinary of the diocese, on or before the first day of December in this present year, and on or before the first day of July in each and every succeeding year, together with a certificate under the hand or hands of such person or persons, stating that according to his or their belief the several matters and things contained in such estimate are or will be necessary or proper to be done or executed, or provided, for the use of or in the church or chapel of such parish, union, chapelry, or perpetual curacy, or such cathedral and parochial church, or cathedral used as aforesaid, as the case may be, and that the charges for the same and every of them as contained in such estimate are reasonable and proper charges: provided always, that such estimate, except in the case of cathedral churches, before it be sent to the ordinary of the diocese, shall be first approved of by the rural dean of the deanery in which the church or chapel to which such estimate shall relate shall be locally situate, which approval shall be certified by signature affixed to such estimate.

“LXVIII. And be it further enacted, that upon the receipt of such estimate and certificate as aforesaid, the archbishop, bishop, or other ordinary of the diocese, wherein such church or chapel shall be situate, or in case of the illness or absence from Ireland of such archbishop, bishop, or other ordinary, or during the vacancy of the see, then that the vicar-general of such diocese shall, and he and they are hereby required, when such estimate shall have been approved of by him, to signify his approbation thereof by certifying such approbation at the foot of such estimate, and to transmit such estimate, with such certificate of approbation thereof, to the said commissioners, who are hereby required to take the same into their consideration; and they are hereby authorized and required to grant the amount required by such estimate and certificate, for the purposes aforesaid, or any of them, or such lesser sum as they in their discretion shall think fit, and to issue and pay the same to such person or persons, in such manner, and subject to such regulations as they shall think fit.

“LXIX. And be it further enacted, that the said commissioners shall pay or cause to be paid on the first day of September in each year, in such manner as they shall think fit, for the maintenance of all and every the person or persons who at the passing of this act shall be clerk or clerks of any parish, union, or chapelry, or of any chapel of ease, (not being within the county of the city of Dublin or the suburbs thereof,) in which there shall be a church or chapel fit for the celebration of divine service according to the rites and ceremonies of the united churches of England and Ireland, the following salaries, so long as such person or persons shall be and continue to be such clerk or clerks as aforesaid; that is to say, for the clerk of every such parish in the church or chapel whereof there shall be divine service

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Salaries of
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Judge or
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usually celebrated on Sundays and festival days, and also on two common days at least in the week, a sum not exceeding twenty pounds nor less than ten pounds, and in all other cases a sum not exceeding ten pounds nor less than five pounds, as and for the maintenance and maintenances of every such clerk respectively for the year next ensuing, and in satisfaction and lieu of all other fees, dues, and allowances whatever, alleged or claimed to be payable to such parish clerk under any usage or custom.

“LXX. And be it enacted, that the said commissioners are hereby authorized and required to grant any sum or sums, not exceeding the sums of twenty pounds and ten pounds respectively above mentioned, which they in their discretion shall think fit, as and for the maintenance of any person or persons who shall from and after the passing of this act be appointed to the office of such clerk or clerks of such churches or chapels as aforesaid, and which salary shall also be in lieu and satisfaction of all other fees, dues, and allowances whatever alleged or claimed to be payable to such clerk under any usage or custom.

“LXXI. And be it further enacted, that if any church or chapel of any parish, or any such cathedral and parochial church, or cathedral used as a parish church, shall by reason of any accidental injury or other unforeseen event, be in immediate want of any extraordinary repairs or rebuilding or expenditure thereon, or if it should become necessary to enlarge any such church or chapel, the said commissioners appointed under this act, upon the application of such dean and chapter, or chapter, or of the incumbent, or in his absence of the officiating curate or minister of such parish, approved by the ordinary of the diocese, shall and may pay and apply such sum or sums of money as they shall think fit and necessary, or as by the provisions of this act they are bound to contribute with respect to any such cathedral and parochial church, or cathedral used as aforesaid, in making or executing such extraordinary repairs, or rebuilding or enlarging of any such church or chapel, or such cathedral and parochial church, or cathedral used as aforesaid.

“LXXII. And be it further enacted, that if any church, chapel, or other building used for religious worship according to the usage of the united church of England and Ireland shall be maliciously or wantonly demolished, pulled down, burned, or set fire to, or in any manner maliciously or wantonly injured or damaged, it shall and may be lawful for the said ecclesiastical commissioners, or any person or persons to be by them deputed in that behalf, by writing under their common seal, to sue for and recover satisfaction and amends for such malicious or wanton demolition, burning, firing, or injury or damage as aforesaid, at the next assizes to be held for the county in which such church, chapel, or other building may be situate, or if in the county of Dublin, at the next presenting term, or if in the city of Dublin, at the next quarter sessions for the said city, by exhibiting to the judge or judges of assize, or to the court of King's Bench for the said county of Dublin, or to the recorder of the city of Dublin if at such quarter sessions, a petition, praying such satisfaction and amends as aforesaid, and therein setting forth particularly the injury or damage done or committed, and the particular amount and nature thereof, by what number of persons such injury or damage was done or committed, and the names or descriptions of such offenders, so far as the same shall be known to the petitioners; and the matter of such petition shall be inquired into by such judge or judges of assize, or court of King's Bench, or recorder, in open court, in the presence of the grand jury impanelled and sworn at such assizes or presenting term or sessions, on the oath of such person or persons as may be produced to testify as to the same; and if on consideration of the matter such judge or judges of assize, or recorder, shall be of opinion that such demolition, burning, firing, or other injury or damage was wantonly or maliciously done, such judge or judges shall inquire into the amount of such injury or damage done or committed as aforesaid; and the said grand jury shall thereupon, and they are hereby required, pursuant to the directions of such judge or judges, court of King's Bench, or recorder as aforesaid, to present such sum or sums of money as shall appear to be the amount of the injury or damage committed as aforesaid to be

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raised either on the county, county of a city or town, barony, town or towns, parish or parishes, in or near which such offence shall have been committed, and in such proportions as they shall think fit; which sum or sums so presented as aforesaid shall be apportioned, levied, and raised by such ways and means and in such form or manner as other public money presented at the said assizes, or presenting term, or sessions; and such monies shall be paid to the said commissioners, or to the person or persons by them deputed as aforesaid, and be by such commissioners applied to rebuild or repair such church, chapel, or other building, and be for such purpose expended by such person or persons in such manner and subject to such regulations and security for the due application thereof as they shall think fit: provided that if any person or persons shall find himself, herself, or themselves aggrieved by any presentment to be made in pursuance of this act, such person or persons, in case the sum so presented do exceed the sum of five pounds, shall or may, at the said assizes, or presenting term, or sessions, traverse the same; which traverse shall be tried at the same or next ensuing assizes, presenting term, or sessions, as the judge or judges who shall allow the same shall think fit; and if on such traverse the issue shall be found for the traverser, such presentment shall be discharged, otherwise the same shall be final and conclusive to all persons; and in case the said issue shall be found against the traverser, it shall and may be lawful to and for the judge before whom the same shall be tried, in case he shall see fit, to award the costs thereof to be paid by the traverser, to be taxed and certified by the clerk of the crown, the payment whereof may be enforced, if necessary, by a summary order of his majesty's court of King's Bench in Ireland: provided always, that the said commissioners, or the person or persons by them deputed as aforesaid, or the rector, curate, or other officiating minister, or, in case of vacancy of the benefice, any two inhabitants of the parish, within thirty days after such offence shall have been committed, shall give notice thereof to the high constable of the barony and to the churchwardens of the parish where such offence shall have been committed, (if such high constable or churchwardens shall respectively reside within such barony and parish,) who are hereby required forthwith to publish the same within such barony and parish; and if such high constable or churchwardens shall not reside therein as aforesaid, then such notice shall be given to some two inhabitants of such barony or parish.

"LXXIII. And be it further enacted, that in all parishes and places where, by virtue of any law, statute, or custom, provision may heretofore have been made, by vestry or other assessment, for the maintenance of any curate, lecturer, clerk, or other minister or assistant in the celebration of divine worship, or attendant or sexton, such provision by vestry or other assessment shall from and after the passing of this act wholly cease and determine; and it shall and may be lawful for the said commissioners under this act, by and out of the proceeds of the said annual tax, and the other funds as aforesaid by this act vested in them, to provide for all such purposes in such manner and proportions as to them shall seem fitting.

"LXXIV. Provided always, that it shall be lawful for the said commissioners, and they are hereby authorized, to appoint such sum or sums of money to be expended under such rules and regulations, and security for ensuring the due application thereof, as they in their discretion shall think fit.

"LXXV. And be it further enacted, that every such incumbent, dean and chapter, or chapter, or other person or persons who shall have received from the said commissioners any sum or sums of money for any of the purposes hereinbefore mentioned, shall, within one year from the receipt of such sum or sums of money, return and transmit to the said commissioners a full statement and account of the expenditure of such sum or sums of money, and shall, if required by the said commissioners, verify the truth thereof upon oath, which oath any vicar-general, surrogate, justice of the peace, master or master extraordinary in Chancery, is and are respectively hereby empowered and required to administer.

"LXXVI. And be it enacted, that it shall be lawful for the said commissioners to sue for any part of any sum or sums of money granted for any of the purposes aforesaid which may be unapplied or not duly accounted for as herein directed, or

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any surplus thereof after the execution of the said purposes, by civil bill before the assistant barrister of the county wherein such church and parochial church or cathedral used as aforesaid in respect whereof the same may be due shall be situate, provided that such sum sued for by such civil bill shall not exceed the sum of fifty pounds, and if the same shall exceed the sum of fifty pounds, then by action in any of his majesty's superior courts in Ireland: and provided further, that if the person retaining the same or not duly accounting shall be possessed of any ecclesiastical benefice or other ecclesiastical emolument, then the said commissioners shall take proceedings to recover the same by process of sequestration, which sequestration shall be applied for and issued on the certificate of the said commissioners, in the manner and subject to the regulations hereinbefore directed as to sequestrations in any other case to be applied for by the said commissioners.

Commissioners
may apply
surplus monies.

"LXXVII. And be it further enacted, that when and so soon as in any year the said commissioners shall have in their hands any surplus or balance, after due provision shall have been made for the several objects and purposes hereinbefore mentioned, and not sooner, it shall and may be lawful for the said commissioners to apply and dispose of such surplus, or any part thereof, in such proportions as to the said commissioners shall seem fit, for all or any of the objects hereinafter mentioned.

Commissioners
may advance
part of surplus
for building
churches in
certain cases.

"LXXVIII. And be it enacted, that it shall and may be lawful for the said commissioners to advance or apply, out of the said surplus fund and monies at their disposal as aforesaid, such sum or sums as they shall think fit for the purpose of building churches or chapels of ease in any parish or place in Ireland, provided that an application in writing shall be made to such commissioners, through the bishop of the diocese, for such purpose, by at least twenty of the inhabitants of such parish or place, accompanied by a plan and estimate of the expense of building such church or chapel of ease, and that such application shall signify the willingness of the persons making the same to contribute or procure to be contributed, in such proportions as may have been mutually agreed upon by them, a sum not less than one fifth of the whole expense as stated in such estimate, for the purpose of building such church or chapel of ease; and provided further, that before any advance for such purpose shall be made by said commissioners, the several sums so subscribed or contributed shall be respectively paid or secured to be paid to the said commissioners, in such manner as the said commissioners shall appoint and require, and that for such purpose the said commissioners shall and they are hereby enabled to take such personal or real security as to them shall seem proper or necessary; and provided further, that such commissioners may employ an architect chosen by themselves to execute such building, and subject to such regulations as such commissioners shall think fit; and provided that if such sum or sums of money shall be paid by instalments, the last instalment shall be at least one fourth part of the whole sum granted for such purpose, and that such instalment shall not be paid until the said commissioners shall be satisfied, by the certificate of a competent architect, that the building of such church or chapel is completed in a sufficient and workmanlike manner, pursuant to the plan and estimate approved as aforesaid, and also by a certificate from the ordinary of the diocese that he, upon inspection thereof, is satisfied with the execution of such work; and the said commissioners shall have the like remedies for the recovery of any part of such sum or sums received from them for the purpose of any such building, which shall not have been duly applied for such purpose, and shall remain over and above after the execution of such purpose, as hereinbefore provided as to sums granted by said commissioners for the purpose of repairing churches or chapels; and the rents or profits which may arise from the letting or sale of pews and seats in such church or chapel shall be and become vested in such commissioners, to be employed by them as other monies which shall come into their hands under the provisions of this act: provided always, that if it shall appear to the said commissioners that, from the peculiar circumstances of any parish or place, it is expedient that a church or chapel of ease should be built in such parish or place, and that such application of twenty inhabitants as aforesaid, or contribution of one fifth of the

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expenses of building the same as aforesaid, cannot be obtained, it shall and may be lawful for the commissioners, upon the application of the bishop of the diocese, to advance, if they shall think fit, the necessary monies out of the funds at their disposal, without such application or contribution as aforesaid.

“LXXIX. Provided nevertheless, and be it enacted, that in consideration of such subscriptions as aforesaid, it shall and may be lawful for such commissioners to allot and assign such and so many of the seats and pews to be erected in said church or chapel of ease as to them shall seem fit or expedient to the persons who may have or entered into such subscription as aforesaid, according to such scheme for the classification thereof, with regard to the amount of their several subscriptions, as shall be proposed by such subscribers, and approved by such commissioners; and the pews so assigned to such subscribers as aforesaid shall be vested in them, and deemed and taken to be personal property, and assignable and transmissible as such.

“LXXX. And be it further enacted, that it shall and may be in like manner lawful for the said commissioners, out of any surplus funds or monies at their disposal, from time to time, and in such proportion as they shall think proper, to lend and advance, upon an application accompanied by a plan and estimate made by the incumbent of any benefice or parish, and approved of by the bishop of the diocese, any sum of money not exceeding two years net income of such benefice or parish, to be applied to the purpose of building or improving a mansion or glebe house and offices, or in the purchase of houses already built, for the fit and suitable habitation of such incumbent and his successors, or, if the said commissioners shall so think fit, in the purchase of glebe or demesne lands fit and convenient for the erection of such glebe house and offices.

“LXXXI. And be it further enacted, that the incumbent of any such benefice or parish to whom any such money shall be so advanced, or in case of his death or removal before the repayment of the whole sum so advanced, his successor or successors for the time being, shall, and he and they is and are hereby required and bound to repay to the said commissioners so much of the said sum as shall become due, by instalments during their respective incumbencies, in manner following; that is to say, four pounds *per centum* of the sum so advanced on the first day of July next after the expiration of one year from the day on which same shall have been so advanced and lent, (or within twenty-one days after,) and four pounds *per centum* more of the sum advanced on the first day of July in every succeeding year, (or within twenty-one days after,) until the sum so advanced shall be wholly repaid.

“LXXXII. Provided always, and be it further enacted, that no person shall be deemed a successor, so as to be charged by or under this act, who shall die or be removed within the space of one year from the death or removal of the incumbent immediately preceding him.

“LXXXIII. Provided also, that no successor shall in any case be liable to pay any such instalment before the first day of July next after he shall have so become a successor chargeable under this act, nor to pay any more than one such instalment on such first day of July, notwithstanding that more than one year may have intervened between the death or removal of the last incumbent who had become chargeable with the payment of any instalment under this act and such first day of July.

“LXXXIV. Provided also, that in cases where such last preceding incumbent shall die or be removed before he shall have received the whole of such sum so granted by way of loan, every person who shall be a successor of any such incumbent should be bound and obliged to repay to the said commissioners appointed
ment at the rate of four pounds *per centum* for the sum
ctually so advanced to such incumbent on account of
whole amount of such loan may not have been received
the first day of July next after such person shall have
isable by virtue of this act; and that no instalment not
ch loan shall be discharged, or be deemed or taken as

LIELMI IV. A.D. 1830-1837.

lect or default of any incumbent in respect of the which may have become due and payable during the intent and meaning of this act that instal-continue to be paid until the whole amount of to the said commissioners.

re enacted, that in order to enforce the punctual
 sums as shall be so lent and advanced in pur-
 -visions of this act, it shall and may be lawful
 under this act for the time being, and they
 id receive, previous to the advancing of any sum
 ent, a bond from such incumbent, which bond
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 vanced, conditioned for the due application of the
 two years from the advance, or for refunding to
 of the said money as shall not be so applied within
 to the said commissioners of all such instalments of
 al times before mentioned as may severally become
 the legal interest on such instalments respectively
 each instalment ought to have been paid until the
 bond shall have the same force and effect as bonds
 majesty, and for his use, have by virtue of an act
 first and twenty-second years of the reign of King
 n Act for the more speedy and effectual Recovery
 shall and may be prosecuted and carried on upon
 under the directions of the said commissioners,
 which shall be due thereon, and in such and the
 o the king's majesty may be prosecuted by virtue

that it shall and may be lawful for the said owner, at the time of making such advance, to signify it, at the lawful rate or any less rate, to be paid for using the said sum, or any other time, until repayment of the bond aforesaid shall be framed and payment

Further enacted, that all and every sum and sums the said commissioners appointed under this act to
1, shall, with or without interest, as the case may
any part thereof, be a charge on all the glebe lands,
etc, moduses, salaries, stipends, fees, gratuities, and
etc and profits whatsoever, arising or to arise from
in or persons shall be incumbent as aforesaid; and
the due application of such advances, or the regular
ments or any part thereof, on the days appointed
h incumbent, or his successor or successors, it shall
commissioners to recover the same by process of
ation shall be applied for and issued on the certifi-
the manner and subject to the regulations herein-
ons in any other case to be applied for by the said

ther enacted, that such sum or sums of money as
such incumbent by virtue of this act, shall be de-
duced, in the usual certificate to be given by any arch-
bishop now in force to enable an incumbent who
accessor, from any and every sum or sums by any
undued out of his own proper income in the building
which would otherwise be allowed by such cer-

STATUTA GULIELMI IV. A.D. 1830—1837.

cate; and a separate and distinct portion of the said certificate shall be allotted by the said archbishop or bishop for ascertaining the expenditure of the sum so lent and advanced by the said commissioners.

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“LXXXIX. And be it further enacted, that in case any such incumbent shall die or be removed before all the sums agreed to be advanced by the said commissioners appointed by virtue of this act for building or procuring such glebe house and offices as aforesaid shall have been actually advanced by the said commissioners, then and in such case his successor shall be entitled and bound to receive the remainder of the money so agreed to be advanced, and shall give, in proportion to the money remaining to be advanced, the like security that had been given by his predecessor, by bond to the king's most excellent majesty, the penalty of which bond shall be recovered in manner hereinbefore declared and enacted with respect to the recovery of the penalty of the bond so given by his predecessor; and the money so advanced, with or without interest, as the case may be, shall also be charged on such benefice in the same manner as the money advanced to such first incumbent, and recoverable in the like manner.

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“XC. Provided also, and be it further enacted, that the incumbent for the time being of such benefice shall annually, at his own expense, until the last instalment of such sum shall be paid, keep the buildings on which money so lent and advanced shall have been expended regularly insured against fire at some public insurance office in Great Britain or Ireland, to the full amount at least of the sum so lent and advanced; and in default thereof it shall be lawful for the court of Chancery or Exchequer in Ireland to sequester the profits of such benefice, parish, union, chapelry, or perpetual curacy, in like manner as herein directed as to sequestrations issued on the petition of the said commissioners, until such insurance shall be made.

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“XCI. Provided always, that nothing herein contained shall extend or be construed to extend to limit or restrain the power by this act vested in the commissioners to grant any sum or sums of money gratuitously to any incumbent or perpetual curate for the purpose hereinafter mentioned, whether such incumbent shall or shall not have received a loan to be in part applied to the said purpose, nor to obstruct, annul, make void, or alter the laws now in force for building, repairing, or improving glebe houses, or any of them, save as herein mentioned; but that such incumbents, in case they shall think proper to proceed under and according to the said laws, may do so in the same manner as if this act had not been made.

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“XCII. And be it enacted, that where the annual value of any benefice or of any perpetual curacy, which has not been augmented as herein mentioned, shall not amount to one hundred pounds *commensibus annis*, and there shall be no glebe house thereon, it shall be lawful for the said commissioners gratuitously to grant a sum of one hundred pounds to the incumbent thereof, in such manner as they shall think fit, to enable him the better to carry on the building of a glebe house thereon, and before such house is begun to be built.

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“XCIII. And be it further enacted, that it shall and may be lawful for the said commissioners under this act, when and as in their judgment it may be proper, out of such surplus funds and monies so as aforesaid from time to time remaining in their hands or at their disposal, to augment any benefice with cure of souls, living, or curacy, appropriate or inappropriate, or the maintenance of any parson, vicar, curate, and minister officiating in any church or chapel, or licensed place of worship in Ireland where the liturgy and rites of the united church of England and Ireland as now by law established are or shall be used and observed, and which shall appear to them to be under the clear yearly value of two hundred pounds, after allowing the deductions hereinbefore mentioned, either by the purchase of glebes or other lands, or tithes or compositions for tithes, or both, or by granting to the incumbent of such benefice or living, or to such parson, vicar, curate, or minister, an annual salary, to be paid out of the rents, issues, and profits of the several lands or tenements and the interest or dividends of the several monies and properties hereby vested in such commissioners as aforesaid, or in any other manner as to the said commissioners shall seem fit; provided always, that the value of such

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"XCVI. And be it further enacted by the authority aforesaid, that in case an incumbent of any such benefice, living, or curacy, or any parson, vicar, curate, minister, whose maintenance shall be augmented by the grant of such annual salary or otherwise by the said commissioners under this act, or which shall have been at any time heretofore augmented by the said trustees and commissioners of first-fruits in Ireland, shall accept and take any other benefice, living, or curacy, as he be instituted and inducted into the possession of the same, that then the said benefice, living, or curacy which shall have been so augmented shall from thenceforth be and be deemed and adjudged absolutely void to all intents and purposes whatsoever; and that it shall be lawful for the archbishop, bishop, or other patron to collate or present thereto, in like manner and form as if the former incumbent had died or resigned, any licence, union, or other dispensation to the contrary in anywise notwithstanding; and that every licence, union, or dispensation, of whatever name or names, quality or qualities whatsoever, obtained contrary to the true meaning and intention of this act, shall be absolutely void and of none effect; and in case any person already possessed of any benefice, living, or curacy shall be collated or instituted to any of the said benefices, livings, or curacies which have been heretofore augmented as aforesaid by the said trustees and commissioners of first-fruits in Ireland, or which shall be so augmented by the commissioners under this act aforesaid, every such collation, presentation, or nomination shall be utterly void to all intents and purposes whatsoever; provided always, that no lapse shall incur upon any avoidance of any benefice, living, or curacy which shall happen in consequence of this act, until six months after notice shall be given, in all cases in which notice is now by law required, to the person or persons having a right to present or nominate to the same, by the archbishop or bishop of the diocese, or other ordinary for the time being, in writing under his or their hand and archiepiscopal or episcopal seal or seals of office respectively.

"XCVII. And whereas the provision for augmenting such poor livings as shall be thought proper by the said commissioners to be so augmented is intended to extend not only to parsons, vicars, and curates who come in by presentation or collation, institution and induction, or licence, but likewise to such ministers who come in by donation, or are only stipendiary preachers or curates in and of improper or appropriate parishes, officiating in any church or chapel where the liturgy and rites of the united churches of England and Ireland as by law established shall be used and observed, some of which may happen not to be corporations nor have a legal succession, and therefore are incapable of taking a grant of such perpetual augmentation by a salary, or endowment of such tithes or land, as is hereby intended; and in some places it might be in the power of the improper donor, parson, or vicar to withdraw the allowance now or heretofore paid to the minister or curate serving the cure, or, in case of a chapelry, the incumbent of the mother church might refuse to employ a curate, or permit a minister duly nominated or licensed to officiate in such augmented chapel, and might officiate therein himself, and take the benefit of the augmentation, though his living be above the value of those which are hereby intended to be augmented, and the maintenance of the curate or minister would thus be sunk, instead of being augmented; therefore be it enacted by the authority aforesaid, that all such churches, curacies, and chapels which shall at any time hereafter be augmented by the said commissioners shall be and are hereby declared and established to be, from the time of such augmentations, perpetual cures and benefices; and the ministers duly nominated and licensed thereunto, and their successors respectively, shall be and be esteemed in law bodies politic and corporate, and shall have perpetual succession by such name and names as in the grant of such augmentation shall be mentioned, and shall have a legal capacity, and are hereby enabled to take in perpetuity, to themselves and their successors, all such lands and tenements and tithes as shall be granted to or purchased for them by the said commissioners, or such annual salaries as shall be so granted pursuant to this act, any law or statute to the contrary notwithstanding; and that the impropriators or patrons of any churches or donatives of the benefices so augmented for the time being, and their heirs, and the rectors and

ARTICLE IV. A.D. 1830-1837.

hereunto any such augmented curacy or chapel
re, shall be and are hereby utterly excluded from
directly, any profit or benefit by such augmenta-
and at all times from and after such augmentation,
ficiating in any church or chapel so augmented
salaries, and allowances which by ancient custom
f bounty, ought to be by them respectively paid
ght by due course of law, before the making of
ay or allow to the respective ministers officiating
or allowance as shall be agreed upon, if any shall
and such patron or impropriator upon making
are and shall be hereby perfectly vested in the
ch or chapel of the benefice so augmented, and

and be it enacted, that no such rector or vicar of
or ecclesiastical person or persons having cure of
where such church or chapel of the benefice is
s or their successors, shall be hereby divested of
the cure of souls, with all other parochial rights
and allowances to the church or chapel of the
only excepted,) shall hereafter be and remain in
if such augmentation had not been made.

the succession in such augmented cures hereby
e, and that the same may be duly and constantly
the authority aforesaid, that in case such aug-
in void by the space of six months, without any
fit person to serve the same, by the person or
ation thereunto, to the bishop or other ordinary,
e same shall lapse to the bishop or other ordi-
nary, and from the metropolitan to the crown,
d in the case of presentative livings and benefices:
h augmented cure may be granted or recovered,
' and shall cease and be determined, in the like
s the presentation to or any incumbency in any
respectively granted, recovered, or determined:
person or persons entitled to nominate to such
e to incur, but shall, before any advantage takes
itan, or crown respectively, nominate, such nomi-
e within six months, although so much time be
apace be vested in the crown.

ed, that all such donatives which have been sur-
ommissioners of first-fruits in Ireland, or which
gumented by the commissioners under this act, by
to them, shall be subject to the visitation and
iocess wherein such donative is or shall be, to all
soever: provided always, that no donative shall
t of the patron or patrons in writing under his or
l obtained.

re the said commissioners under this act shall, in
them by this act, think it convenient and fitting
pelry should receive an augmentation out of the
nts, or other funds and monies, hereby vested in
to and for the said commissioners, before they
treat and agree with the patron of any donative,
opriated without endowment of any vicarage, or
urch, as the case shall happen to be, for a perpe-
' allowance to the minister or curate of such sur-
pelry, and his successors, to be made in all sur-

STATUTA GULIELMI IV. A.D. 1830—1837.

ceeding times by such patron, impropriator, parson or vicar, and his and their heirs and successors, and for charging and subjecting the impropriate rectory or mother church or vicarage therewith and thereunto in such manner and with such remedies for recovery thereof as shall be thought fit; and such agreement made with the lord lieutenant or other chief governor or governors of Ireland for the time being, by and with the advice and consent of six or more of his majesty's privy council in Ireland, testified under their hands, in cases where the king's most excellent majesty, his heirs and successors, are or shall be interested, or with any bodies politic or corporate, or any other person or persons, having any estate or interest in possession, reversion, or remainder in any such impropriate rectory, in his or their own right, or in right of their wives, or in right of his or their churches, or with the guardian or guardians or committee or committees of or acting for any person or persons having such estate or interest, who at the time of such consent shall be respectively infants, idiots, or lunatics, or under any other legal disability, or with any parson or vicar of any mother church, shall be respectively good and effectual to all intents and purposes in law, with respect to such charges, against his majesty, his heirs and successors, or against all or any such bodies politic and corporate, or against the person or persons so agreeing, their wives, heirs, and successors respectively, and every of them, and against all and every their issue, and against every other person and persons claiming in remainder or reversion after any estate tail in the premises, according to the form of such agreement, as fully and in like manner as if such agreement had been made by his majesty, his heirs and successors, under his and their great seal, and as if such bodies politic and corporate had been free from any restraint, and as if such other persons so agreeing had been sole seised in his and their own right of such donative, impropriate rectory, or mother church as aforesaid, at the time of making such agreement; and that the agreements of guardians or committees for or on behalf of infants or idiots or lunatics under their guardianship, or of whom they shall be committees as aforesaid, shall be as good and effectual to all intents and purposes as if the said infants or idiots or lunatics respectively had been of full age and of sound mind, and had themselves entered into such agreement: provided always, that in case of any such agreement as aforesaid with any parson or vicar, the same shall be with the approbation and consent of his patron and ordinary; and in case of any such agreement made with any person in right of his wife, that the wife may be a party to the agreement, and seal and execute the same.

STAT.
GUL. 4
[1x.]

Such agreement to be with co-patron

"CII. And whereas it is expedient to provide a more effectual remedy in cases where the owners of impropriations or impropriate tithes are by law bound, but nevertheless refuse or neglect, to repair the chancel of any church, or maintain an officiating clergyman, in Ireland; be it therefore enacted, that from and after the passing of this act it shall and may be lawful for the said commissioners, or any archbishop or bishop of the diocese, to present a petition to the lord chancellor, lord keeper, or lords commissioners for the custody of the great seal, or master of the rolls, for the time being, or to the court of Exchequer, in Ireland, praying such relief as the nature of the case may require; and it shall be lawful for the lord chancellor, lord keeper, and commissioners for the custody of the great seal, and for the master of the rolls, and the court of Exchequer in Ireland, and they are hereby required, to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing in support of or in answer to such petition, to determine the same, and to make such order therein, and with respect to the costs of such petition, as to him or them shall seem just, and such order shall be final and conclusive, unless the party or parties who shall think himself or themselves aggrieved thereby shall, within one year from the time such order shall have been passed and entered by the proper officer, have preferred an appeal from such decision to the House of Lords, to whom it is hereby enacted and declared that an appeal shall lie from such order; and neither such petitions, nor any proceedings upon the same or relative thereto, nor the copies of any such petitions or proceedings, shall be subject or liable to the payment of any stamp duty whatever.

Remedy in cases of impropriator refusing to repair or maintain officiating clergyman

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her enacted by the authority aforesaid, that all augmentations, made by the said commissioners in pursuance of examined and entered into a book to be provided and kept by one or more officers to be by them appointed for such districts, being approved of by the said commissioners, and taken to be as records; and true copies thereof or of the by one or more credible witness or witnesses, shall be held to be good and sufficient evidence in law touching therein contained or relating thereto.

her enacted, that where any living, benefice, curacy, or augmentation by the said trustees and commissioners shall be augmented by the commissioners under this act, and there is or shall be no parsonage or residence of the minister, curate, chaplain, or incumbent for the commissioners under this act, by and with the consent of the bishop of the diocese, and they are hereby empowered to promote the residence of clergy on their benefices, to apply the surplus funds or monies as aforesaid remaining in their hands in such manner as they shall deem most advisable, in or towards building, or purchasing a house and other proper erections, for such living, benefice, curacy, or chapelry, convenient and suitable for the purposes hereof; which house shall for ever thereafter be deemed to be annexed to such living, benefice, curacy, or chapelry, to all intents and purposes whatsoever; and also in and towards the purchasing of any whole or part of a house, whether being within the local limits of such living, benefice, curacy, or chapelry, or not, but so as that the same be purchased as aforesaid, and being of freehold tenure, or copyhold of inheritance, or of any manor or lordship belonging to the same benefice, curacy, or chapelry; and which lands so purchased shall for ever, from and to the end of the year next ensuing, be and become annexed to and glebe of such living, benefice, curacy, or chapelry, to all intents and purposes whatsoever, and shall be held by such incumbent and his successors accordingly, as if the same had been purchased as aforesaid, and the whole or any part of the same had before such annexation were or was of copyhold tenure, or of any other tenure, and shall be held as if the same had before such annexation were or was of freehold tenure; and any other statute or law to the contrary notwithstanding, and in conformity with the laws now in force or that may hereafter be in force, shall be construed to extend to the same.

her enacted, that where any living, benefice, curacy, or augmentation by the said trustees and commissioners shall be augmented by the commissioners under this act, and there is or shall be no parsonage or residence of the minister, curate, chaplain, or incumbent for the commissioners under this act, by and with the consent of the bishop of the diocese, and they are hereby empowered to promote the residence of clergy on their benefices, to apply the surplus funds or monies as aforesaid remaining in their hands in such manner as they shall deem most advisable, in or towards building, or purchasing a house and other proper erections, for such living, benefice, curacy, or chapelry, convenient and suitable for the purposes hereof; which house shall for ever thereafter be deemed to be annexed to such living, benefice, curacy, or chapelry, to all intents and purposes whatsoever; and also in and towards the purchasing of any whole or part of a house, whether being within the local limits of such living, benefice, curacy, or chapelry, or not, but so as that the same be purchased as aforesaid, and being of freehold tenure, or copyhold of inheritance, or of any manor or lordship belonging to the same benefice, curacy, or chapelry; and which lands so purchased shall for ever, from and to the end of the year next ensuing, be and become annexed to and glebe of such living, benefice, curacy, or chapelry, to all intents and purposes whatsoever, and shall be held by such incumbent and his successors accordingly, as if the same had been purchased as aforesaid, and the whole or any part of the same had before such annexation were or was of copyhold tenure, or of any other tenure, and shall be held as if the same had before such annexation were or was of freehold tenure; and any other statute or law to the contrary notwithstanding, and in conformity with the laws now in force or that may hereafter be in force, shall be construed to extend to the same.

her enacted, that from and after the commencement of this act, it shall be lawful for the said commissioners under this act, by their corporate seal, by and with the consent of the chief governor or governors of Ireland for the time being, or of the council in Ireland in council assembled, (six at least of whom shall be of the archbishop or bishop of the diocese, and of the patrons, certified under his or their hand and seal or

STATUTA GULIELMI IV. A.D. 1830—1837.

hands and seals, attested by two or more credible witnesses subscribing thereunto, to divide any parish in Ireland, the average annual value whereof shall exceed eight hundred pounds, and to separate and disunite from such parish any townland, townlands, district, parcel or parcels of land, and all tithes, composition for tithes, dues, and ecclesiastical emoluments whatsoever, from such townland, townlands, district, parcel or parcels of land arising or to arise and payable to the ecclesiastical incumbent of such parish, and thenceforth to annex and unite in perpetuity, by the same or a different instrument, any such townland, townlands, district, parcel or parcels of land, and all such tithes, composition for tithes, dues, and ecclesiastical emoluments whatsoever, therefrom arising or to arise, to any other adjoining parish or parishes the annual average value of which respectively shall not exceed two hundred pounds: provided nevertheless, that the annual value of any such parish so divided as aforesaid shall not by such division be in any case reduced below the sum of three hundred pounds.

“CVII. And provided also, and be it enacted, that any such division of any parish shall take effect and come into operation upon the death or removal of any person who shall be the incumbent of any such divided parish at the time of the commencement of this act or at the time when such division shall be made as aforesaid, as the case may be, and not sooner; and that then and for ever thereafter such townland, townlands, district, parcel or parcels of land, and all such tithe, composition for tithe, dues, and ecclesiastical emoluments whatsoever therefrom respectively arising or to arise, shall cease to be or to be deemed a part or parts of or annexed to such divided parish, and shall become and be and be deemed a part or parts of or annexed to such augmented parish or parishes, to all intents and purposes whatsoever.

“CVIII. And be it further enacted, that it shall and may be lawful for the said commissioners, with such approbation and consent and in such manner as are hereinbefore last mentioned, to divide and separate the glebe belonging to any such parish so divided, and to grant a portion of such glebe to the incumbent of such divided portion of the parish or of such augmented parish, as the case may be, as and for a glebe for such parish, subject, however, to the laws now in force or that may hereafter be in force for the exchange of glebes; and that all such divisions of glebes shall be good, firm, and valid in law; and that such part or parts of such glebe as shall be so annexed shall be always deemed and taken to be the glebe or glebes of such parish or parishes to which the same shall be so annexed; and that the incumbent or incumbents of such parish or parishes to which the same shall be so annexed shall hold and enjoy such part or parts of such divided glebe, being so annexed, in as full and ample a manner to all intents and purposes as if such part or parts of such glebe had been always held with and enjoyed as the glebe belonging to such parish or parishes to which the same shall be so annexed, any law or usage to the contrary notwithstanding.

“CIX. And be it further enacted, that whenever any patron of any parish so to be divided as aforesaid shall happen to be a minor, idiot, lunatic, or feme covert, it shall and may be lawful for the guardian, committee, or husband of every such patron to consent to such division as aforesaid for such patron, and to certify his, her, or their consent under his, her, or their hand and seal or hands and seals, for such patron, who shall be bound thereby in such manner, and the same shall be as valid and effectual, as if he or she had been of full age, or sound mind, or feme sole, and had expressed such consent as aforesaid.

“CX. And be it further enacted, that before any such division or augmentation of any parish or parishes as last aforesaid shall be made and concluded, the bounds of such parish or parishes shall be ascertained by instrument in writing in manner following; (that is to say,) the said commissioners under this act, by instrument in writing under their seal, shall and may set out and describe the bounds of such parishes, and the several townlands or other parcels or denominations of lands which shall be comprised within such parishes respectively; and a copy of such instrument shall, within fourteen days from the date thereof, together with a map and survey of the said parishes respectively, and a statement of the annual value of

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parts to be so separated and disunited from such transmitted to the lord lieutenant or other chief in council, and the lord lieutenant or other chief shall confirm or alter the bounds of such parish or in such instrument, as the circumstances of the shall order such instrument to be altered according to such instrument so altered by any such order, or if by the lord lieutenant or other chief governor or within six weeks after the date of the transmission to the council office in Dublin Castle, then such order, shall be entered in the registry of the diocese, ten shillings and four pence, and no more, shall also be enrolled in the rolls office of the high court, and the sum of thirteen shillings shall be paid, over and above the expenses usually

ent disputes which might arise upon the apper-
t corn rents, pensions, procurations, synodals, and
ars of the diocesan schools by the several incum-
gmented parish or parishes; be it enacted, that it
; said commissioners under this act, and they are
to settle and adjudge the proportions of crowe
procurations, synodals, and the salaries of the said
ents of any such divided parish and such aug-
respectively to pay; which proportion, being so
riting under the seal of the said commissioners,
ook of the bishop of the diocese wherein such
shall be the proportions which the incumbents of
ted parishes are respectively to pay, and shall be
s said several incumbents of such divided or aug-
ively, and their respective successors, any law or
ending.

acted, that where any parish shall be divided an incumbent of any such divided parish shall be money from his next successor in such parish, in ed, on account of any purchase of glebe, or addi- ngs or improvements made on the glebe of such n to his predecessor on such account, according to ose, such incumbent shall have and be entitled to in that part of such divided parish within which ate, or on which such buildings or improvements sum as he would have been entitled to receive if ded, provided that the sum so to be received shall of that part of the parish: and such incumbent.

the said money, shall be entitled to receive such
paid from his successors, according to the laws in
manner as he ought in case such parish had not
lawful for the said commissioners to divide any
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n shall exceed two years' income of the divided
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heirs or successors, were thereunto signified by letters patent under the great seal of Ireland; provided always, that such consent of the lord lieutenant or other chief governor or governors of Ireland shall be enrolled in the rolls office of the high court of Chancery in Ireland, together with the instrument making and setting forth such division as aforesaid, for the enrolment of which consent the sum of three shillings and sixpence, and no more, shall be paid, over and above the expenses usually paid to the engrossing clerk for the same.

"CXIV. And be it further enacted, that where any person or persons, other than the crown, or an archbishop or bishop, shall be patron or patrons of any living or parish so to be divided as aforesaid, or shall be entitled to present a clerk thereto upon any vacancy or turn thereof, it shall and may be lawful for the said commissioners under this act, if they shall think fit so to do, out of the surplus funds remaining in their hands, upon obtaining the consent of such patron or patrons to such division of any such parish as aforesaid, to pay unto such patron or patrons such sum or sums of money as the said commissioners shall think fit as a compensation for the diminution of the annual value of such living or parish, so that such sum or sums of money shall in no case exceed twelve years purchase of the annual sum by which the income or annual value of such divided parish shall be reduced by means of and in consequence of such division as aforesaid; and such sum or sums of money shall be and become vested in and settled upon the same person or persons, and for and upon the same uses, estates, trusts, and limitations, and subject to the same powers, conditions, charges, and incumbrances as the advowson of or right of presentation to such divided parish was vested in, settled upon, or subject to, or would have been vested in, settled upon, or subject to, or as near thereto as the nature of the case may admit.

"CXV. And be it further enacted, that where any person or persons, other than the crown, or an archbishop or bishop, shall be patron or patrons of any living or parish so to be augmented by the annexation thereto of any part of any such divided parish, or shall be entitled to present a clerk thereto upon any vacancy or turn thereof, it shall and may be lawful for the said commissioners under this act, and they are hereby directed and required, and shall be entitled to demand, take, and receive from such patron or patrons of any such augmented parish or parishes such sum or sums of money as shall be mutually agreed upon by and between such commissioners and the respective patron or patrons, or, in case of disagreement between them, shall be fixed and determined by three arbitrators, to be chosen in the same manner as in the case of arbitrators appointed for the settlement of differences between the said commissioners and parties applying for the purchase of perpetuities under this act, and under and subject to the like regulations, so far as the same are applicable; which sum or sums of money so to be received by the said commissioners shall be added to the general funds of the said commissioners for the purposes of this act; and in default of payment of such sum or sums of money to the said commissioners within six calendar months after a demand thereof by notice in writing shall have been made and served upon such patron or patrons, the said sum or sums of money shall be and become a charge or lien on such advowson or on the inheritance of the same, and be paid and payable to the said commissioners, with interest thereon, in priority to all other charges or incumbrances upon such advowson.

"CXVI. And be it enacted, that whenever any benefice whereof the king shall be patron, or the right of presentation or collation whereto shall be in any archbishop, bishop, or other dignitary, or in any ecclesiastical corporation, shall, after the passing of this act, become void in any manner whatsoever, and that it shall appear to the commissioners under this act, by the certificate of the ordinary, that divine worship shall not have been celebrated therein for the three years next preceding the first day of February one thousand eight hundred and thirty-three, then and in such case it shall be lawful for the said commissioners, if they shall so think fit, by an instrument under their corporate seal, to direct that the appointment, presentation, or collation of any clerk to such benefice shall be suspended until such commissioners shall think fit by a like instrument otherwise to direct; and in the

STAT. 3 & 4
GUA. 4, c. 3
[1x.]

Commissioners
may pay com-
pensation to
patrons in
certain cases.

Commissioners
may require
compensation
in certain cases.

Commissioners
may suspend
appointment
of clerk to a
benefice where
divine worship
shall not have
been celebrated
for three
years.

Tithes and

STAT. 3 & 4
GUL. 4, c. 37.
[Ia.]

profits of such
benefice to
vest in com-
missioners.
Application of
them.

Authorizing
the appoint-
ment of an
officiating mi-
nister in any
unfilled bene-
fice, or the
occasional
assistance of
the minister of
some adjoining
parish.

Archbishop or
bishop to be
associated with
commissioners
in determining
upon suspen-
sions or remo-
vals of suspen-
sions.

Statement to
be made of
reasons for
such suspen-
sions.

Certain monies
payable under

meantime, and for and during such period as such benefice shall remain vacant, all and every the tithes, profits, and emoluments whatsoever belonging or appertaining thereto, and all arrears thereof which may have accrued due since the said benefice may have become void as aforesaid, shall be vested in and received by the said commissioners under this act, to be by them applied to the building or repairing of the church and glebe house in the said benefice; and if the circumstances of such benefice shall not require such application of the said funds, then to be paid into the general fund under the administration of the said commissioners; and the said commissioners shall have all and every the like remedies for the recovery of such tithes, profits, and emoluments, and all arrears thereof, as any clerk filling such benefice might or would have, and shall be for all such intents and purposes in the place and stead of such a clerk; and it shall and may be lawful for the said commissioners and the archbishop or bishop associated with them, pursuant to the provision hereinafter contained, in any case where the spiritual wants of any benefice as unfilled as aforesaid shall appear to require the appointment of an officiating minister, so to declare, and to appoint such moderate stipend or salary to be paid to such officiating minister as they shall think proper, and thereupon the bishop of the diocese shall appoint and license a curate for the performance of ecclesiastical duties within such benefice for and during such period as the same shall remain unfilled; and in case the spiritual wants of such benefice shall not appear to require the appointment of such curate, then and in such case, and for and during such period as aforesaid, the cure of souls, and all and every the occasional duty or duties within such benefice so remaining unfilled as aforesaid, shall be committed to the incumbent or officiating minister of some adjoining parish, to be remunerated by a moderate stipend or salary, in like manner fixed by the said commissioners and the archbishop or bishop associated with them, such incumbent or minister to be nominated and appointed by the ordinary, and whom such ordinary is hereby required to nominate and appoint at the request of the commissioners under this act, under such regulations as he may think fit to make; and the ordinary shall, and is hereby required, when thereunto required by the commissioners under this act, to grant such certificate as aforesaid in all such cases as aforesaid; and the said commissioners shall, from and out of the tithes, profits, and emoluments of such benefice hereby vested in them, pay to the curate so appointed as aforesaid, or to the incumbent or officiating minister to whom the cure of souls and occasional duty shall have been committed, as the case may be, such stipend or salary as may have been fixed and determined in manner aforesaid.

“CXVII. Provided always, and be it enacted, that whensoever the said commissioners under this act shall propose to suspend the appointment, presentation, or collation to any benefice, under the power hereinbefore vested in them, or of removing such suspension if it shall have taken place, they shall in either of such cases give notice of such intention to the archbishop or bishop of the diocese in which such benefice shall be situate, unless he happen to be one of the said commissioners: and such archbishop or bishop shall be associated with the said commissioners in determining upon the propriety of directing or removing such suspension as aforesaid, and shall and may vote upon all questions relating thereto as if he were a commissioner, and be deemed and taken to be for such purpose or purposes a member of the said corporation of the ecclesiastical commissioners of Ireland.

“CXVIII. Provided also, and be it further enacted, that in any case in which the said commissioners shall direct that the appointment, presentation, or collation of a clerk to any benefice shall be suspended, a full statement of the reasons on which such direction was founded, comprising the several particulars of the extent of such benefice, its annual value, the amount of the population, the number of protestants residing within it, the condition of the church and glebe house, if any, and the quantity of land belonging to it, shall be entered in a book to be kept for that purpose, and preserved among the records of the commission.

“CXIX. And whereas by an act made in the parliament of the United Kingdom, in the fifth year of the reign of his late majesty King George the Fourth,

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intituled, 'An Act to consolidate and amend the Laws for enforcing the Residence of Spiritual Persons on their Benefices, to restrain Spiritual Persons from carrying on for the Support and Maintenance of Stipendiary and empowered to pay over certain sums therein to commissioners of first-fruits in Ireland, for certain years; be it therefore enacted, that all and every payers of this act, in the manner and form and for the time by said recited act, with respect to payments to said commissioners of first-fruits, shall be as good, valid, and effectual to such sums, when paid, shall be applied by the commissioners in said recited act mentioned, in the same manner as had been made to the said trustees and commissioners and had not been passed.

commissioners under this act may hereafter purchase parishes for which they are purchased, but so near as may be and suitable for the residence of the officiating minister; be it enacted, that such houses, having been previously approved by the said commissioners, and duly registered in the said act, shall be deemed houses of residence appertaining to such purposes whatsoever.

be it enacted, that it shall and may be lawful for the said commissioners to advance all and every such sum and sums of money, and to do and perform such acts, matters, and things, and in such manner and form respectively, as by the said act in force at the passing of this act the trustees and commissioners in Ireland might or were empowered or authorized to do and done, if this act had not been passed; all which acts, matters, and things, when made, entered into, shall be valid and effectual to all intents and purposes as if the same had been enacted or declared to the contrary or otherwise by any other act hereafter to be made; and that all and every breach of covenant, or otherwise, which has been made or committed at any time hereafter, if this act had not been made, passed, and carried on by the said trustees and commissioners, shall and may be commenced, taken, and carried on by the commissioners of this act, in the name of their respective parishes, expressly named in any deed, covenant, agreement, or by act or acts of parliament, on or under or by virtue of the said act, as if the same might have been and shall be so commenced, that all and every sum and sums to be recovered in and by the said act shall and may be applied and disposed of by the said commissioners of this act as they in their discretion shall think fit, and the said commissioners shall pay, satisfy, and discharge hereby vested in them, all debts legally due by said commissioners of first-fruits in Ireland, whether for and on account of tithes, bills of costs, or otherwise, or any other account of this act, which said trustees and commissioners shall be bound to pay if this act had not been passed; and the said commissioners shall execute all and every covenant, contract, or agreement made or entered into by the said trustees and commissioners before the passing of this act, and do and perform all and every act, matter, and thing so contracted to be done, performed, and executed by the said trustees and commissioners of first-fruits, and which the said trustees and commissioners would have been bound to perform, execute, and do, if

the same had been enacted, that in case of any refusal or neglect of any archbishop, dean, prebendary, parson, vicar, curate, incumbent, or any other person, as aforesaid, by whatever name called, known, or otherwise, or persons whatsoever, to make or cause to be made

such annual sum as may be necessary, at the time of disappropriating the said tithes or portions of tithes or glebes, to make up such full annual value of four thousand pounds.

“CXXVI. And be it further enacted, that whenever, pursuant to the provisions aforesaid, any rectory, vicarage, tithes or portions of tithes, or glebe or portions thereof, shall be united to any vicarage or perpetual curacy, then and in such case the right of presentation to such rectory, vicarage, or perpetual curacy, in any and every vacancy thereof happening at any time after such disappropriation and union as aforesaid, shall belong to and be exercised by the king’s majesty, his heirs or successors, or by the archbishop, bishop, or other dignitary, or corporation or person having the right of grant, nomination, election, or appointment to the dignity, prebend, or canonry whereunto such rectory, vicarage, tithes or portions of tithes, or glebe or portion thereof, had, before such disappropriation, been united or annexed, and the dignitary, corporation, or person having the previous right of presentation to such rectory, vicarage, or perpetual curacy, in such turns or rotation and according to such manner as the lord lieutenant or other chief governor or governors and privy council of Ireland shall direct.

“CXXVII. And whereas the duties of archbishops and bishops in Ireland will be, by the aforesaid unions and consolidations of dioceses, considerably increased: and whereas doubts have arisen whether archdeacons in Ireland can lawfully exercise the same powers as may be exercised by archdeacons in England; be it therefore enacted by the authority aforesaid, that the several archdeacons in Ireland shall have and shall be deemed and taken to have and exercise all such powers, rights, authorities, privileges, and jurisdictions within their respective archdeaconries as any archdeacons in England have or may exercise within their respective archdeaconries by any law, statute, canon, or general custom in force in England.

“CXXVIII. And whereas it is expedient that the tenants or lessees of the lands of archbishops or bishops, and other sole ecclesiastical corporations, in Ireland, should be empowered to purchase a perpetual estate or interest in such lands and premises; be it therefore enacted, that from and after the commencement of this act it shall and may be lawful for any tenant or tenants, lessee or lessees, holding or who shall hold under or by virtue of any lease or contract for term of twenty-one years, or for term of twenty-one years or three lives, or for three lives, or for term of forty years, immediately from and under any archbishop or bishop, or other sole ecclesiastical corporation, in Ireland, any lands, premises, or hereditaments belonging to the respective sees or other spiritual promotion or dignity of any such archbishop or bishop or other sole ecclesiastical corporation, to purchase the fee simple and inheritance of and in the said lands, premises, and hereditaments so held by him or them as aforesaid, in the manner and at the rate of purchase money, and subject to the perpetual annual rents, and to the provisos, restrictions, regulations, and conditions hereinafter mentioned; (that is to say,) that it shall and may be lawful for any such tenant or lessee, by notice in writing under his hand, to notify to the said commissioners under this act, and to such archbishop or bishop or other ecclesiastical person under whom such lands, premises, or hereditaments are or shall be held, that he, such tenant or lessee, is ready and willing to purchase the fee simple and inheritance as aforesaid of and in the said lands, premises, or hereditaments so held by him under such archbishopric or bishopric, or other spiritual promotion or dignity, in the manner and pursuant to the provisions of this act; and that thereupon the said commissioners shall and may, and they are hereby authorized and required, to ascertain the annual rent or rents now thereby reserved and payable by virtue of such lease or contract out of the said lands and premises, and the amount of the sum or sums of money theretofore paid or agreed to be paid as and for the fine or fines and fees for renewal of any such lease or interest of and in the said lands and premises, in the case of leases usually renewed every or every alternate or every third year, for and during the period of nine years next preceding the service of such notice; and in the case of leases usually renewed at longer intervals, and in the case of leases for lives, for and during such period as shall include the three last previous occasions of such

STAT. 3 & 4
GUL. 4, c. 37
[Ia.]

Patronage to be exercised by person having right of appointment.

Archdeacons in Ireland to have same powers as archdeacons in England.

Tenants of bishops’ lands enabled to apply for a perpetuity therein, by notice to the commissioners under this act.

STAT. 3 & 4
GUL. 4, c. 37.
[12.]

renewal; and every such archbishop or bishop or other ecclesiastical person under whom the said lands and premises shall be held as aforesaid shall, upon being thereto required by the said commissioners by writing, certify to the said commissioners, by writing under his hand and seal, the amount of such annual rent, and every such fine and fines and fees so paid, or agreed to be paid, or usually paid or payable as aforesaid, for and during such period as aforesaid; and that it shall and may be lawful for the said commissioners under this act, and they are hereby empowered, if they shall so think fit, or shall be required by requisition under the hand and seal of the said archbishop or bishop or other ecclesiastical person, or tenant or tenants, lessee or lessees, to issue a commission under their seal to inquire into and ascertain the amount of such annual rent and such renewal fine or fines and fees as aforesaid so paid or payable, or agreed to be paid, or usually paid or payable as aforesaid, for and during the period aforesaid; which commission shall issue in the same manner, and subject to the like rules and regulations, with the like powers, as is and are hereinbefore provided with respect to commissions directed to be issued for inquiring into the annual value of ecclesiastical benefices.

Commissioners
in ascertaining
amount of
annual rent
shall not
include any
sum added
thereto since
16th August,
1832.

“CXXIX. Provided always, and be it enacted, that it shall and may be lawful for the said commissioners, and they are hereby empowered and directed, in each and every case in which they shall proceed to ascertain the amount of the annual rent or rents reserved and payable out of the lands and premises in which the tenant, lessee, or assignee thereof shall be desirous to purchase the fee simple and inheritance as aforesaid, to inquire and ascertain whether any and what addition has been made to the rent or rents reserved and payable to any archbishop or bishop or other ecclesiastical person out of the said lands and premises since the sixteenth day of August, in the year one thousand eight hundred and thirty-two; and in case it shall appear that the said yearly rent or rents has or have been increased since such period, and that such increase has been made in consequence of the change of the liability to the payment of the composition for tithes, then and in every such case the said commissioners shall separate the sum or sums which shall so appear to have been added on the aforesaid account to the yearly rent or rents theretofore usually reserved and payable out of such lands and premises, and shall not include such additional sum or rent in the rent to be reserved in any conveyance of such lands and premises to be executed by them or him pursuant to this act; and the said commissioners shall ascertain, by reference to the lease or contract made next before the reservation of such additional sum or rent, the annual and customary rent or rents, (penal rents or sums in the nature of penal rents excepted,) reserved and payable out of the said lands and premises; and such annual and customary rent or rents shall be deemed and taken to be the annual rent reserved and payable out of such lands and premises.

Commissioners
shall estimate
the average of
renewal fines,
and adding
thereto the
rent reserved
on lease,
declare the
amount of the
new rent to be
reserved.

“CXXX. And be it further enacted, that when such rent or rents, and fine or fines and fees shall have been ascertained by any of the ways or means aforesaid, it shall and may be lawful for the said commissioners appointed under this act, and they are hereby directed, to take and estimate the yearly average of the renewal fine or fines theretofore paid or agreed to be paid or payable as aforesaid, which yearly average of the said fine or fines and fees, when so ascertained as aforesaid, together with and in addition to the yearly rent or rents theretofore reserved or made payable in and by such lease or contract as aforesaid, shall be the amount of the annual rent to be thereafter reserved and made payable out of the said lands and premises to such archbishop or bishop or other ecclesiastical person, and his successors respectively, in and by the deed of conveyance hereinafter mentioned, subject only to such approval as hereinafter mentioned, and to such variation as may be made in the amount thereof according to the price of wheat or oats in any period of seven years, according to the provisions hereinafter mentioned.

Provision for
ascertaining
amount of
renewal fines in
certain cases.

“CXXXI. Provided always, and be it enacted, that whenever it shall appear that such renewal fines and fees have not been regularly paid during any such period as aforesaid, it shall and may be lawful for the said commissioners under this act, and they are hereby empowered and directed, by all or any of the ways or means aforesaid, to ascertain the amount as well of the annual rent as

STATUTA GULIELMI IV. A.D. 1830—1837.

of the annual or other renewal fine or fines and fees which he agreed to be paid, or payable, or which ought to have been paid the said lands and premises for and during such period as aforesaid to the theretofore accustomed mode of renewing such lease or to take and estimate accordingly the yearly average of such annual or fines; which said yearly average of such renewal fines, together with the addition to the said annual rent or rents theretofore reserved as aforesaid out of the said lands and premises, shall be the amount to be reserved and made payable in and by the deed of conveyance hereinafter mentioned, subject only to such approval as hereinafter provided; and if it shall happen that no fine or fines have been payable for renewing any such lease or interest as aforesaid for any or any part of such period, preceding the service of such notice that then in every such case it shall be lawful for the said commissioners to take and estimate the yearly average of such renewal fines and to such proportion of the improved yearly value as may, by the diocese or other spiritual promotion or dignity under which the premises are held, have determined the amount of fines payable on lands and premises held thereunder by like tenure and demise, (the yearly value to be ascertained by all such ways and means as the commissioners shall think fit, or by the issuing of a commission as last aforesaid subject to the like rules and regulations as such commission last aforesaid by reference to all the circumstances of the case, and to the tenant's beneficial interest in such lands and premises, according to the custom, to fix, ascertain, and determine the yearly average of such renewal fees; which said yearly average, estimated, ascertained, and determined in such way or manner as aforesaid, shall, together with and in addition to the annual rent or rents theretofore reserved and payable out of the said premises, be the amount of annual rent to be thereafter reserved and made payable out of the said lands and premises to such archbishop or his ecclesiastical person, and his and their successors respectively, in and by the deed of conveyance or demise hereinafter mentioned, subject only to such approval as hereinafter mentioned, and subject to variation according to the price of wheat or oats, as hereinafter provided.

"CXXXII. Provided, and be it further enacted, that in the case of lives the said commissioners under this act shall compute the yearly value of the renewal fines and fees in such manner as to them shall seem just and equitable to the average duration of lives and beneficial interests.

"CXXXIII. And be it further enacted, that when and so often as the annual rent so to be thereafter reserved and made payable out of the said lands and premises to such archbishop or bishop or other ecclesiastical person or his successors, shall have been ascertained and determined by the said commissioners under this act, by any of the ways or means hereinbefore mentioned, the said commissioners shall, and they are hereby directed to do so, in writing to the said archbishop or bishop or other ecclesiastical person to whom the said lands and premises are or shall be held as aforesaid, the said tenant or lessee of the said lands and premises who shall be

said, the amount of the said annual rent so reserved and made payable out of the said premises, together with the amount of pensioners computed as hereinafter mentioned, and the amount of the said annual rent so reserved and made payable out of the said premises, shall be the amount of annual rent to be thereafter reserved and made payable out of the said lands and premises to such archbishop or his ecclesiastical person, and his and their successors respectively, in and by the deed of conveyance or demise hereinafter mentioned, subject only to such approval as hereinafter mentioned, and subject to variation according to the price of wheat or oats, as hereinafter provided.

it further enacted, that whenever any tenant or who shall at any time hereafter hold lands or premises, the said commissioners under this act may, by the issuing of a commission as last aforesaid, subject to the like rules and regulations as such commission last aforesaid by reference to all the circumstances of the case, and to the tenant's beneficial interest in such lands and premises, according to the custom, to fix, ascertain, and determine the yearly average of such renewal fees; which said yearly average, estimated, ascertained, and determined in such way or manner as aforesaid, shall, together with and in addition to the annual rent or rents theretofore reserved and payable out of the said premises, be the amount of annual rent to be thereafter reserved and made payable out of the said lands and premises to such archbishop or his ecclesiastical person, and his and their successors respectively, in and by the deed of conveyance or demise hereinafter mentioned, subject only to such approval as hereinafter mentioned, and subject to variation according to the price of wheat or oats, as hereinafter provided.

of such purchase money mentioned and specified in and by such certificate, the said commissioners shall and they are hereby required, in such manner as hereinbefore provided as to the execution of deeds by them, to execute, seal, and deliver a deed of conveyance to such tenant or lessee of the fee-simple and inheritance of the said lands and premises, when the same shall be tendered for execution by the said tenant or lessee, unto and to the use of such tenant or lessee, his heirs and assigns, as he or they shall appoint, subject to such annual rent as aforesaid; and if the said lands and premises so to be purchased shall at the time of such purchase belong to or be held under any archbishop or bishop, or other ecclesiastical person, then and in such case on the production by the said tenant or lessee to the said archbishop or bishop or other ecclesiastical person of the said notice or certificate so delivered by the said commissioners as aforesaid, specifying the amount of such annual rent to be reserved and made payable in and by the said deed of conveyance, and specifying the amount of purchase money to be paid for such purchase as aforesaid, and upon production of such receipt of the said cashier or cashiers for such purchase money as aforesaid, such archbishop or bishop or other ecclesiastical person shall, and he and they is and are hereby required and directed to execute, seal, and deliver a deed of conveyance of the fee-simple and inheritance of the said lands and premises to such tenant or lessee, when the same shall be tendered for execution, subject to the annual rent so ascertained as aforesaid; and if such archbishop or bishop or other ecclesiastical person shall, on the production of such notice or certificate and receipt as aforesaid, refuse or neglect to execute such deed of conveyance when tendered for execution as aforesaid, for the space of two calendar months after such tender shall have been made as aforesaid, then, upon satisfactory proof being made to the said commissioners of such refusal or neglect, by affidavit to be sworn before any judge, surrogate, vicar-general, master or master extraordinary in Chancery, or justice of the peace, which affidavit or oath they are hereby respectively empowered to take or administer, or upon oath of a credible witness to be examined by the said commissioners, it shall and may be lawful for the said commissioners, and they are hereby empowered and required, to execute, seal, and deliver the said deed or deeds of conveyance in the name of and on behalf of the said archbishop or bishop or other ecclesiastical person so refusing or neglecting to execute the same as aforesaid, and to affix the corporate seal of the said commissioners to such deed or deeds, and to certify the cause of their so executing the same by writing at the foot of or on the back of the said deed or deeds; and such execution of the said deed or deeds by the said commissioners shall be as valid and effectual, to all intents and purposes whatsoever, as if the said deed or deeds had been duly executed, by the said archbishop or bishop or other ecclesiastical person, in pursuance of this act.

“CXXXVII. Provided always, and be it further enacted, that the recitals in any such deed of conveyance shall for all purposes whatever be deemed conclusive evidence of the truth of the facts therein stated.

“CXXXVIII. Provided always, and be it further enacted, that the said commissioners shall, and they are hereby directed, at the request of either party, to insert or cause to be inserted in each and every the said deed or deeds of conveyance a statement of the average price of wheat or oats (whichever of the two they shall consider as the corn principally grown in the county or district where such lands are situate) for the period of ten years immediately preceding the first day of May next before the service of such notice by such tenant or lessee as aforesaid, calculated upon the returns advertised in the Dublin Gazette during such period of ten years, which average price the said commissioners are hereby required and empowered to calculate and ascertain from such returns as aforesaid.

“CXXXIX. Provided always, and be it further enacted, that the said tenant or lessee so purchasing the fee simple and inheritance of and in such lands and premises as aforesaid shall seal and deliver a counterpart or counterparts of such deed or deeds of conveyance, one part whereof shall be delivered to the said archbishop or bishop or other ecclesiastical person, or to the said commissioners, as the case may be, to whom respectively the said annual rent shall be so reserved and made payable as aforesaid.

STAT. 3 & 4
GUL. 4, c. 37.
[1a.]

Recitals in deeds of conveyance conclusive. The average price of corn for ten years previous to be inserted in the conveyance.

A counterpart to be executed and delivered to the bishop or the commissioners.

day of May next before such application or the service of such notice, and for that purpose to nominate and appoint a person to be arbitrator for ascertaining the same accordingly; and such arbitrator is hereby authorized and required, from the Dublin Gazette, to ascertain the price of a barrel of wheat or oats upon the average of such term of seven years preceding, and to state and set forth such average price by his report in writing under his hand, to be delivered to the said commissioners; and if it shall appear that the average price of wheat, (when wheat shall be taken as the measure of such rent,) or that the average price of oats, (when oats shall be taken as the measure of such rent,) for such seven years preceding, is more or less by one tenth than the average price thereof set forth in the deed or deeds of conveyance, then and in such case the amount of such annual rent to be paid out of or in respect of the said lands and premises to such archbishop or bishop or other ecclesiastical person, or to the said commissioners, as the case may be, shall be increased or diminished by the said commissioners in such manner and to such extent that the amount of such annual rent payable for and during the next ensuing seven years shall bear the like proportion to the amount of the annual rent reserved and made payable out of the said lands and premises in such original deed of conveyance of the said lands and premises as the average price of wheat or oats ascertained at the time of such application shall bear to the average price thereof set forth in such original deed of conveyance; and the said commissioners under this act shall thereupon, in cases where the said annual rent shall be payable to any such archbishop or bishop or other ecclesiastical person, grant to such archbishop or bishop or other ecclesiastical person, purchaser, his heirs, appointees, or assigns, or, in cases where the said rent shall be payable to the said commissioners, shall, for the purpose of registry and enrolment as hereinafter mentioned, execute a certificate under their seal, setting forth the amount of such revised or new annual rent to be paid and payable out of the said lands and premises to such archbishop or bishop or other ecclesiastical person, or to the said commissioners, as the case may be, and cause notice of or a copy of the said certificate to be given to or served upon such archbishop or bishop or other ecclesiastical person, and the person or persons who shall have purchased the fee-simple and inheritance of and in the said lands and premises, or to the person or persons who shall have become possessed of his or their estate or interest therein, and shall also cause such certificate to be registered in the registry of the diocese wherein the said lands and premises shall be situate, and also to be enrolled in the rolls office of the high court of Chancery along with and annexed to the enrolment of such deed of conveyance; and a copy of such enrolment, duly compared and attested, shall be conclusive evidence of the amount of such revised and new annual rent; and such revised and new annual rent shall be paid to and received by such archbishop or bishop or other ecclesiastical person, or the said commissioners respectively, as the case may be, for seven years from and after the first day of May next before the service of such notice, and until such revised and new annual rent shall afterwards, upon a like application, be again varied and ascertained according to the average price of wheat or oats during the term of seven years then last past; and the several parties aforesaid are hereby respectively authorized to make such further application from time to time after the expiration of every seven years, during the continuance of such grant, in such and the like manner and form as hereinbefore directed with respect to the first application; and the costs, charges, and expenses of every such application, and of varying and re-ascertaining the amount of such annual rent, shall be defrayed by the person or persons who shall make such application as aforesaid; and any such revised and new annual rent shall, during the period when it shall be so in force, stand in the place of the said original annual rent reserved and made payable out of the said lands and premises upon such purchase or conveyance of the said lands and premises, and shall be paid and recoverable and charged and chargeable upon the said lands and premises, and against the purchaser, his heirs, appointees, or assigns, in like manner as the said original rent reserved in and by such deed of conveyance, and subject to the same regulations; and the several clauses and provisions hereof shall in every such case apply as fully and effectually

STAT. 3 & 4
GUL. 4, c. 37.
[18.]

arbitrators appointed under this act shall make in respect of the expenses of such arbitration.

“CXLV. And be it further enacted, that for the purpose of ascertaining the respective amount of purchase money to be paid by any such tenant or lessee as aforesaid for the purchase of the fee-simple and inheritance of and in any such lands and premises as aforesaid, the said commissioners appointed under this act shall inquire and ascertain, by the issuing of a commission, with the like powers and authorities and subject to the like regulations as any other commission to be issued under this act, or by such other ways and means as to them shall seem fit, the full improved yearly value of the said lands and premises, such full and improved annual value to be taken and estimated according to the usual and accustomed mode of ascertaining and estimating the same by the archbishop or bishop or other ecclesiastical corporation sole in whose diocese or dignity or promotion such lands and premises shall be respectively situate, and shall estimate and compute, according to the best of their knowledge, skill, and ability, the value of the fee-simple and inheritance in such lands and premises, subject to the annual rent to be reserved and made payable thereout by the deed of conveyance to be executed in manner hereinbefore appointed; and having estimated and computed the value of such fee-simple and inheritance, subject to such rent, the said commissioners shall deduct therefrom four pounds per centum on the amount thereof, and ascertain and declare the amount of such value so reduced; and the said commissioners shall also estimate and compute the value of the interest in such lands and premises possessed by such tenant or tenants, lessee or lessees, under his, her, or their subsisting lease, and shall determine and declare the difference between the value reduced by such per centage as aforesaid of such fee-simple and inheritance, subject to the rent aforesaid, and the value of the interest possessed under such lease, which difference shall be the amount of purchase money to be paid by such tenant or tenants, lessee or lessees, for the perpetuity to be acquired under this act; and the said commissioners shall insert such amount in the certificate of the terms of such purchase to be by them granted to such tenant or lessee as hereinbefore provided: provided always, that in case any such tenant or lessee shall be dissatisfied with the amount of purchase money adjudged payable in manner aforesaid by the said commissioners, the matter shall be referred to three arbitrators, one to be appointed by the said commissioners, another by such tenant or lessee, and the third by the two arbitrators appointed as aforesaid, within ten days after notice in writing to be given by such commissioners, tenant, or lessee for that purpose; and in case of the death or incapacity, or refusal to act of any or either of the said arbitrators, another shall be appointed in his stead by the party by whom or in whose behalf he was so appointed, or by the said two arbitrators appointed by the parties, as the case may be, within ten days next after notice thereof; and the said arbitrators, or any two of them, shall and are hereby authorized and empowered, by actual survey or valuation, or by the examination of witnesses upon oath (which oath the said arbitrators are hereby empowered to administer), and by such other ways and means as they shall think proper, to compute, estimate, and determine, in like manner as the said commissioners are hereinbefore directed, the amount of purchase money payable for the perpetuity to be acquired under this act, and to make their award therein by writing under their hands and seals, or under the hands and seals of any two of them; and such award shall be binding upon the said commissioners, and they shall amend accordingly the certificate of the terms of the purchase to be by them granted to such tenant or lessee, or grant a new certificate in lieu thereof; and the expenses of such arbitration shall be borne by the said commissioners, or by the said tenant or tenants or lessee or lessees, as such arbitrators shall direct.

“CXLVI. And be it further enacted, that the said annual rent so reserved and made payable by any such tenant or lessee or grantee out of or in respect of any such lands and premises, in any such deed or deeds of conveyance thereof as aforesaid, and every such revised and new annual rent as aforesaid, shall be recovered and recoverable by any such archbishop or bishop or other ecclesiastical person,

STAT. 3 & 4
GUL. 4, c. 37.
[Ia.]

Rates of purchase money.

Remedies for recovery of reserved rents

STAT. 3 & 4
GUL. 4. c. 37.
[18.]

and his successors, or by the said commissioners and their successors, as the case may be, by all or any of the ways, means, or remedies which, according to any law or statute now in force in Ireland or hereafter to be made, is or are or shall be provided for the recovery of any rent service upon any lease for life or for years executed by any landlord or person seized in fee-simple, and subject to all the like rules and regulations by statute or otherwise, any law, usage, or custom to the contrary notwithstanding: provided always, that if in any action of ejectment to be brought on account of the nonpayment of any such annual rent, pursuant to the statutes in force in Ireland as to nonpayment of rent, judgment shall be had and given for the plaintiff in such action, and execution shall have been executed, and such tenant, lessee, or grantee who shall have so purchased the fee-simple and inheritance as aforesaid of and in such lands and premises, his assignee or assignees, or the person or persons who shall be then entitled to his estate or interest therein, shall not, within six months from the time of such execution executed, do such act or acts or take such proceedings as are or shall be by law necessary for the redemption of the said lands and premises from the said judgment and execution, pursuant to the said statutes, then and in every such case it shall and may be lawful for any tenant, under-tenant, or owner of any derivative lease, estate, or interest in the said lands and premises, who shall have contributed to the purchase of the fee-simple and inheritance as aforesaid, his assignee or assignees, within nine months after such execution executed, to do such act or acts or take such proceedings for the redemption of the said lands and premises from the said judgment and execution, and for obtaining relief in respect of the same, as under the said recited statutes any mortgagee of a lease might do or take for the redemption of the said lease, or his estate or interest therein, from any judgment and execution in any action of ejectment for nonpayment of rent, pursuant to the said statutes, and for obtaining relief in respect of the same, and with the like effect to all intents and purposes; and after such redemption the sum or sums of money so paid or advanced for or on account of such redemption, and the costs thereof, shall be and be deemed a lien and charge upon such estate or interest of such tenant or person so failing or neglecting to pay the same, or to take such proceedings for such redemption as aforesaid, and shall be payable, with interest, to such person who shall have so paid or advanced such sum or sums, or obtained such redemption, or the same shall be recoverable by him (at his election) from such person so failing or neglecting as aforesaid, in and by any action of debt.

Upon application of owner, the archbishop, &c. may apportion the yearly rent then charged on lands on parts of such lands only.

“CXLVII. And be it further enacted, that it shall and may be lawful for any owner, his heirs, appointees, or assigns, at any time after the passing of this act, upon a division of the lands or premises held by him or them, either by sale or otherwise, (except by lease or demise at rack rent,) to make an application in writing to any archbishop or bishop or other ecclesiastical person under whom he or they shall then hold the said lands or premises, or to the commissioners under this act in case the said lands and premises shall have been vested in and transferred to the said commissioners, signifying the desire of such applicant that the yearly rent or rents then charged or to be charged on the said lands and premises by such deed of conveyance as aforesaid shall be divided and apportioned upon parts of the said lands and premises only; and thereupon in each and every such case such archbishop or bishop or other ecclesiastical person, or the said commissioners, as the case may be, shall and he or they is and are hereby authorised and required to divide or apportion the whole or any part of the said yearly rent or rents as aforesaid in such manner and proportions as by such application may be required, regard being had to the security of the several parts or proportions of the said yearly rent or rents; and in case of any disagreement in respect of such apportionment, then the same shall be made by one or more valuers, to be in all cases nominated by the said commissioners; and the expense of such apportionment shall be in all cases defrayed by the party applying for the same; and such archbishop or bishop or other ecclesiastical person, or the said commissioners, or, in case of such disagreement as aforesaid, such valuator or valuers shall declare what parts and proportions of the said yearly rent or rents respectively shall in

future be severally charged upon any part or parts of the said lands and premises, and shall state the names and denominations, the numbers of acres, and the metes and bounds of each portion, and the amount of rent to be reserved and made payable out of each such portion respectively; and after every such apportionment the yearly rents or sums so apportioned shall be reserved and be made and be payable in such parts and proportions, and chargeable only upon such proportions of the said lands and premises as shall be so declared to be liable to the payment thereof respectively; and in case the said apportionment shall be made before the execution of a conveyance of the fee-simple and inheritance, pursuant to this act, then and in every such case it shall and may be lawful for such archbishop or bishop, or for the said commissioners, to execute separate conveyances, in the manner herein before directed for executing conveyances, of each such part or proportion of the said lands and premises, subject only to the proportionate rent payable in respect thereof; and in case a conveyance shall have been made or executed by such archbishop or bishop, or the said commissioners, of the said lands and premises, then and in every such case the said archbishop or bishop, or the said commissioners, shall execute, under his or their respective seal, a certificate setting forth the said apportionment, and the amount of the rent to be charged or chargeable upon each portion of the said lands and premises, and shall cause the same to be registered in the registry of the diocese wherein the said lands and premises shall be situate, and also to be enrolled in the rolls office of the high court of Chancery along with and annexed to the enrolment of the deed of conveyance of such lands and premises as aforesaid; and after such registry and enrolment of such certificate the said lands and premises shall thenceforward stand and be charged and chargeable with the said yearly rent or sums in such parts and proportions only and in such manner as shall be specified in such certificate; and a copy of such enrolment, duly compared and attested, shall be conclusive evidence of the amount of rent with which each respective portion of the said lands and premises stands charged and chargeable.

“CXLVIII. And be it further enacted, that immediately upon the execution of such deed of conveyance as aforesaid of the said lands and premises, under the provisions of this act, the said lands and premises in the said deed of conveyance mentioned, and the estates or interests thereby so granted, shall thereupon respectively go to and be vested in, settled upon, and enjoyed by the same person or persons, for the like estate, estates, or interests, and to and upon the same uses, trusts, intents, and purposes respectively, (or as near thereto as the nature of each case and the difference of interest will admit,) as the said lands and premises stood settled or limited to, for, or upon, or such of them as at the time of making such conveyance shall be existing undetermined and capable of taking effect; provided always, that the execution of such deed of conveyance as aforesaid shall operate as and be and be deemed to be, to all intents and purposes, a surrender of all and every the then previously subsisting term or terms of years, estate, or interest in the said lands and premises derived from or under such archbishop or bishop or other ecclesiastical person, or the said commissioners, as the case may be; and the same and every of them shall thenceforth cease, determine, and be for ever extinguished.

“CXLIX. And be it further enacted, that whenever any such tenant or lessee who shall have purchased and acquired as aforesaid the fee-simple and inheritance of and in such lands and premises previously held by him as immediate and superior tenant under such archbishop or bishop or other ecclesiastical person, or the said commissioners appointed under this act, shall, by virtue of any lease, covenant, or contract theretofore made or entered into, be bound to renew to any other person or persons any lease of any such lands and premises, either as often as such archbishop or bishop or other ecclesiastical person respectively shall renew the lease of such lands and premises to him such immediate superior tenant, or in any other manner, then and in every such case the conveyance of the fee-simple as aforesaid of and in the said lands and premises as aforesaid to such immediate and superior tenant, (or the payment from time to time of the annual rent out of the said lands and premises to the said archbishop or bishop or other ecclesiastical person, or to

STAT. 3 & 4
GUL. 4, c. 37.
[1a.]

Lands comprised in new conveyances to be settled to former uses.

Tenant acquiring perpetuity shall renew to inferior tenants when bound by *toties quoties* covenant.

STAT. 3 & 4
GUL. 4, c. 37.
[12.]

Contribution
of inferior
tenants, how
ascertained.

Fine for
renewal to be
ascertained
according to
average price
of wheat or
oats.

Persons having
derivative
estates shall
contribute
towards pur-
chase money.

the said commissioners respectively,) shall (so long as the said estate or interest thereby granted shall continue) in all courts of law and equity, and to all intents and purposes whatsoever, as to such under tenant or inferior tenant, or person or persons having any such derivative estate or interest, and being entitled to the benefit of such covenant or contract for renewal, and as to all other derivative estates or interests in the said lands and premises dependent upon such covenant, contract, or agreement for renewal, be and be deemed, taken, and construed to be a renewal by such archbishop or bishop or other ecclesiastical person, or otherwise, from time to time of the lease of such immediate and superior tenant, for the purposes of and within the true intent and meaning of such covenant, contract, or agreement for renewal as aforesaid.

“CL. And be it further enacted, that when the fine to be paid upon the execution of any such renewal as before mentioned shall have been, by such covenant, contract, or agreement for renewal, agreed to be a certain or ascertained proportion of or dependent upon the amount of the renewal fine to be paid by the immediate superior tenant of such lands to such archbishop or bishop or other ecclesiastical person as aforesaid, then and in such case, upon and after the completion of such purchase of the fee-simple of and in the said lands and premises as aforesaid, the amount of such proportion of such renewal fine payable by such under or inferior tenant shall be ascertained by reference to the amount of the average renewal fine payable previously to the said purchase, as appearing in the certificate of the said commissioners appointed under this act, registered in the registry of the diocese, and enrolled in the rolls office of the court of Chancery as aforesaid, ascertaining the amount of the average renewal fine payable by the immediate superior tenant of the said lands previously to such purchase and sale of the fee-simple and inheritance therein as aforesaid, and in no other manner whatsoever.

“CLII. Provided always, and be it further enacted, that such fine to be paid upon the execution of any such renewal as aforesaid shall be subject to such variation as may be made in the amount thereof according to the price of wheat or oats in any period of seven years, according to the provisions hereinbefore contained, such variation to be applied for and ascertained in the like manner, and subject to like regulations, so far as the same are applicable, as hereinbefore provided in respect of the variation of the new rents to be reserved under this act.

“CLIII. And whereas such purchase of the fee-simple and inheritance of and in such lands by such immediate superior tenant of such archbishop or bishop or other ecclesiastical person, or the said commissioners, will, pursuant to the provisions hereof, enure to the benefit of all persons having derivative estates or interests in the said lands by virtue of leases containing covenants or contracts for renewal, and it is just that all persons having such derivative interests and claiming the benefit of the provisions of this act should contribute to the expense of such purchase; be it therefore enacted, that whenever any such tenant of such lands, holding the same immediately from and under such archbishop or bishop or other ecclesiastical person, or the said commissioners, shall have purchased the fee-simple and inheritance as aforesaid of and in the said lands and premises at a certain rate of purchase money as aforesaid, pursuant to the provisions of this act, and shall, after completing such purchase, be bound, under the provisions of this act, or otherwise, to renew any lease or leases of any of the said lands and premises to any under or inferior tenant, or any other person or persons, all and every such person and persons having any derivative estate or interest in the said lands and premises immediately or mediately from, through, or under such immediate superior tenant who shall have made such purchase as aforesaid, shall respectively contribute towards the amount of the purchase money thereof, or towards reimbursing and paying of a proportion of the same, each to his own next immediate landlord, according to the value of their respective interests, in manner following; that is to say, it shall and may be lawful for such immediate superior tenant who shall have made such purchase as aforesaid, his executors and administrators, by notice in writing, to call upon and require all and every such his under or inferior tenant or tenants, or persons holding immediately from or under him, as shall be entitled

STATUTA GULIELMI IV. A.D. 1830—1837.

[illegible]

enacted, that it shall and may be lawful for of the said lands under such archbishop or bishop or the said commissioners, as the case may be, or other person as aforesaid having or claiming in any of the said lands and premises immediately under such superior tenant, under or by virtue of a covenant or agreement for renewal, in case of a dispute between them or any of them respectively, or by any such inferior tenant to any such his son from whom he holds the said lands, or any person towards such purchase money as aforesaid, or the next immediate landlord or person from whom the said lands are held, of the sums of money paid or payable by such tenant for a contribution in respect of such purchase money for a period of six calendar months from the service of such writ there shall be an omission or neglect by any such tenant with respect to any such contribution, or in case of a dispute shall be made with respect to the same, or in case of neglecting any mortgage or sale of any land or any part thereof, or respecting the valuation of the said lands, according to the price of wheat or oats at the time of the said purchase, or any other additional and increased annual rent to be received by the said tenant under the provisions hereinafter contained in such petition to the high court of Chancery or common law court, he the premises respectively as the case may be, shall be entitled to relief in relation to the said matters; whereupon such court, without requiring proof of any notice served upon any person or persons, to make such petition to one of the masters of the court, or the chief remembrancer of the court of Exchequer, as the case may be, or chief remembrancer to inquire and report of them, as such court shall direct; and thereupon the said master or chief remembrancer, as the case may be, or any of the said parties, or any person or persons upon oath, respecting any of the matters so referred to the said court, or proof of service of notice of such petition upon any person or persons to be affected by such petition, to inquire of the said matter so referred to him, as in other cases of such petition or chief remembrancer under the orders of

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[illegible]

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such portion thereof as he was liable to pay as aforesaid, shall, by virtue of any deed, will, instrument, contract, or otherwise, be seized or possessed of or entitled to only a limited interest as tenant for life, or other like limited interest, in such lands and premises, or in such estate or interest therein, the executors and administrators of any such tenant for life or person having such like limited interest, having so paid or advanced any such purchase money or contribution money in respect of such purchase, shall after his death, as against all persons claiming any charge, incumbrance, or estate, in or upon such derivative estate or interest, be the first incumbrancer or incumbrancers upon, and have the first charge or lien upon, each estate or interest in such lands and premises, (saving always such annual rent as aforesaid payable to such archbishop or bishop or other ecclesiastical persons, or the said commissioners, or other head rent payable out of the same,) for the amount of such sum of money so paid by him, together with legal interest thereon from the time of the decease of such tenant for life or person having such like limited interest: provided nevertheless that if any part of such principal sum of money so paid and advanced by such person shall be repaid or refunded to such person having such limited interest, his executors or administrators, by any under or inferior tenant of the said lands and premises, by way of contribution in respect of any such purchase under the provisions thereof, such charge, lien, or incumbrance shall be reduced by the amount of the sum so refunded or repaid as aforesaid.

"CLIX. And be it further enacted, that for the purpose of raising such purchase money or contribution money in respect of such purchase as aforesaid, it shall and may be lawful for all bodies politic, corporate, and collegiate, corporations aggregate or sole, and all guilds, fraternities, and brotherhoods, whether corporate or not corporate, and all trustees for charities or other public purposes, and all joint stock companies, who are or shall be possessed of any estate or interest in any such lands or premises belonging to the see or other spiritual promotion or dignity of any archbishop or bishop, or other ecclesiastical persons, and also for any committee or curator of any idiot or lunatic, or of any person *non compos mentis*, and for any guardian of any infant, or for any person authorized to act for any incapacitated person, (which idiot, lunatic, *non compos mentis*, infant, or incapacitated person shall be possessed of or entitled to any estate or interest in any of the said lands and premises,) in the same manner as such persons might have done if not under any incapacity, and also for all trustees of any such lands and premises on behalf of the persons for whom they shall be trustees, and also for all persons having a limited interest in possession in any of such lands and premises as tenants for life, or such like limited estate, to contract or agree respectively as to the amount of any purchase money or contribution money in respect of such purchase to be paid as hereinbefore mentioned in respect of any such respective lands and premises, and to apply to or appear before any of the said courts as parties to any such petition or proceedings as hereinbefore mentioned, and to comply with and perform the orders of any of the said courts respecting any such contribution money or other matters; and, (for the purpose of performing any such order, or for raising any such purchase money or contribution money, or for doing or performing such other matters or things as shall in such respective cases be necessary or proper under the provisions of this act,) also to make or execute any such sale or mortgage of the whole or a portion of such respective lands and premises, or such respective interests or estates therein as shall be necessary or proper in each such case; and also to agree for or cause to be reserved or recoverable out of such respective lands and premises, or such respective estates or interests, such additional annual rent as aforesaid as may be necessary or proper under the provisions of this act, in lieu of payment of any such contribution money; and also to make, do, or execute, all other matters, acts, and things necessary or proper for the due performance of any of the said respective acts, or for complying with the provisions or executing the powers hereof in any respect, as to any such lands, in the same or in like manner, as nearly as the nature of each case will admit, as fully and effectually, to all intents and purposes, and subject to all the same rules and regulations, as, under the provisions hereof, any person of full age, being solely or

STAT. 3 & 4
GUL. 4, c. 37.
[1R.]

Definition of
terms in this
act.

absolutely possessed of or entitled for his own use to any lease of any such lands, or any derivative estate or interest therein, might or could make, do, or execute, the same or any of them under the provisions of this act; and that whenever in any of the provisions of this act relating to any such lands, in describing any tenant, landlord, or other person, a word importing the singular number or the masculine gender only be used, the same shall be understood to include and be applied to several persons as well as one person, and females as well as males, and to such bodies politic, corporate, or collegiate as aforesaid, and to such corporations aggregate or sole, guilds, fraternities, or brotherhoods, corporate or not corporate, trustees for charities or other public purposes, and trustees for any person or persons, as well as to individuals; and that the word 'landlord' shall extend as well to any person or persons, body corporate, politic, or collegiate, or other body of persons entitled to receive any rent out of any of such lands and premises, as to persons usually or legally designated by such word; and that the word 'tenant' shall extend as well to any person or persons, body politic, corporate, or collegiate, or other body of persons, who shall be bound to pay any rent out of any of such lands and premises, as to persons usually or legally designated by such word, unless in any of the foregoing cases there be something in the subject or context repugnant to such construction.

For the renewal
of leases held
under acts
whereof the
temporalities
may be vested
in the com-
missioners
under this act.

"CLX. And be it further enacted, that while and so long as any tenant or tenants, lessee or lessees, holding, or who shall at any time hereafter hold immediately from and under the said commissioners under this act, any lands, premises, or hereditaments heretofore belonging or which shall hereafter belong to any bishopric united or hereafter to be united to any other archbishopric or bishopric, and which lands, premises, and hereditaments, or the reversions thereof, shall have been transferred to and vested in the said commissioners by virtue of this act, shall be desirous of holding such lands, tenements, and hereditaments by the like tenure as the same have been theretofore holden by, and shall from time to time, at such periods as the lease in such lands, tenements, or hereditaments may have been theretofore usually renewed, or ought to be renewed according to the customary manner of renewing the same, or within six months thereafter, apply for a renewal of such lease, the said commissioners under this act shall and may accept a surrender of the then subsisting lease, and shall and are hereby required to demise anew the lands, tenements, or hereditaments therein contained for such like term or interest as may have been granted therein by the lease so surrendered, reserving by such new lease the annual rent or rents theretofore reserved out of the said lands, premises, and hereditaments by the lease so surrendered, and receiving for and in consideration of making such new lease payment of such a fine as may be equal to the average amount of the renewal fines theretofore paid or agreed to be paid, or customarily paid or payable for the renewal of the lease or interest in such lands, tenements, and hereditaments, such annual rent or rents and average amount of such renewal fines to be ascertained by all such and the like means as hereinbefore provided for ascertaining the same in the case of applications for the purchase of perpetuities under this act.

Where renewed
leases appear to
commissioners
to be of greater
or lesser value,
allowance to
be made ac-
cordingly.
If any differ-
ence arise
thereupon, the
same shall be
referred to
arbitration.

"CLXI. Provided always, and be it enacted, that in case the value of any new lease or interest so to be granted as aforesaid shall at any time appear to the said commissioners to be increased or diminished in any manner whatsoever, it shall and may be lawful for the said commissioners to accept or require such greater or or lesser renewal fine or fines as in their judgment may be just and reasonable with regard to such increased or diminished value; provided nevertheless, that if any difference as to the increase or reduction of such average renewal fine should arise between the said commissioners and the tenant or tenants, lessee or lessees claiming such renewal, the same shall be referred to the determination of three arbitrators, to be appointed in manner hereinbefore provided for the appointment of arbitrators to adjust differences between the said commissioners and tenants or lessees applying for the purchase of perpetuities under this act, and with the like powers and authorities so far as the same are applicable; and the determination of such arbitrators as to the amount of such increase or reduction of the said fine shall be

STATUTA GULIELMI IV. A.D. 1830—1837.

conclusive and binding upon all persons whomsoever; and the expense of arbitration shall be borne by the said commissioners, or by the said tenants, or lessee or lessees, as such arbitrators shall direct.

“CLXII. And be it further enacted, that it shall and may be lawful for any archbishop or bishop, or other ecclesiastical person, in any lease or demise of lands or premises to be made by him in right of his see or other spiritual jurisdiction, after the passing of this act, or for the said commissioners, in any demise to be made by them of any lands and premises vested in them pursuant to the provisions of this act, to separate any additional rent or sum reserved in consequence of the change in the liability to the payment of composition for any lease or demise of any such lands and premises made by him or them on or after the sixteenth day of August, one thousand eight hundred and thirty-two, from the former and customary annual rent or rents theretofore reserved and payable on such lands and premises, and to reserve such former and customary annual rent or rents in any new lease or demise to be made thereof by him or them after the passing of this act.

“CLXIII. And be it further enacted, that no lease or demise of any lands or premises to be made by any archbishop or bishop, or other ecclesiastical person, after the passing of this act, or by the said commissioners of any lands and premises vested or which may hereafter be vested in them pursuant to this act, shall be deemed or taken to be a letting, setting, or demise of any lands and premises within the meaning of an act passed in the second and third years of the reign of his majesty King William the Fourth, intituled, ‘An Act to amend the law relating to tithes in Ireland, passed respectively in the fourth, fifth, and in the seventh and eighth years of the reign of His late Majesty King George the Fourth, providing for the settlement of Composition for Tithes in Ireland, and to make such Compositions payable as to entitle the lessee or tenant thereof to hold the said lands and premises free from the payment of tithes or composition for tithes.

“CLXIV. And be it further enacted, that whenever any notice required by this act, or whenever any service of any order or other proceeding in any court which shall be required or be necessary for carrying into effect any provisions of this act, cannot be given or delivered to or cannot be effected upon any party or person or persons to or for whom such notice is directed or intended, or upon whom such service is to be effected, it shall be sufficient for the person obliged to give such notice or effect such service to leave such notice, or such order or proceeding, at the last or most usual place of abode of such party or person or persons to or upon whom such notice is to be given or service is to be effected, if the same shall be within Ireland, and if the same shall not be within Ireland, then to serve such notice or such copy upon the agent or receiver of the party or person or persons, and if such agent or receiver cannot be discovered, then it shall be sufficient to publish such notice, or to give notice of such order or proceeding, by publishing notice thereof three times in the Dublin Gazette, and also to give such notice to or make such service upon any principal or person of any of the said lands and premises respectively to which such notice, or such order or proceeding shall relate.

“CLXV. And be it further enacted, that the said commissioners under this act shall have power and authority, and are hereby empowered and authorized from time to time to administer an oath to any person or persons who shall at any time give them information or be examined of or concerning any matter or thing relating to the execution of this act, or any way concerning the several powers and trusts in them hereby reposed, and the due execution thereof.

“CLXVI. And be it further enacted, that this act may be altered, amended, or repealed by any act or acts to be made in this present session of parliament.

“CLXVII. And be it further enacted, that the schedules (A) and (B) annexed to this act shall be deemed and taken to be part thereof as fully and as effectually as all intents and purposes as if inserted herein.”

ELMI IV. A.D. 1830—1837.

SCHEDULES.

(A), Part the First;

*aposed upon all Benefices, Dignities, and other
is under the Rank of Bishopsrics.*

s it.	Value of Benefice.		Charge per cent.		
	Exceeding	And not exceeding			
d.	£	£	£	s.	d.
0	755	765	9	10	0
0	765	775	9	12	6
0	775	785	9	13	0
0	785	795	9	17	6
0	795	805	10	0	0
0	805	815	10	2	6
0	815	825	10	5	0
0	825	835	10	7	6
0	835	845	10	10	0
0	845	855	10	12	6
0	855	865	10	15	0
6	865	875	10	17	6
0	875	885	11	0	0
6	885	895	11	2	6
0	895	905	11	5	0
6	905	915	11	7	6
0	915	925	11	10	0
0	925	935	11	12	6
0	935	945	11	15	0
6	945	955	11	17	6
0	955	965	12	0	0
6	965	975	12	2	6
0	975	985	12	5	0
6	985	995	12	7	6
0	995	1005	12	10	0
6	1005	1015	12	12	6
0	1015	1025	12	15	0
6	1025	1035	12	17	6
0	1035	1045	13	0	0
6	1045	1055	13	2	6
0	1055	1065	13	5	0
6	1065	1075	13	7	6
0	1075	1085	13	10	0
6	1085	1095	13	12	6
0	1095	1105	13	15	0
6	1105	1115	13	17	6
0	1115	1125	14	0	0
6	1125	1135	14	2	6
0	1135	1145	14	5	0
6	1145	1155	14	7	6
0	1155	1165	14	10	0
6	1165	1175	14	12	6
0	1175	1185	14	15	0
6	1185	1195	14	17	6
0	exceeding				
6	1195	15	0	0

and to be subject to this per-centage.

Schedule (A), Part the Second;

STAT. 3 & 4
GUL. 4, c. 37.
[1R.]

Containing the Yearly Tax to be imposed upon all Archbishoprics and Bishoprics.

Yearly Value.	Yearly Tax.
Where the yearly value shall not exceed £4000	£5 per centum.
Where the yearly value shall exceed £4000 and shall not exceed £6000	£7 per centum.
Where the yearly value shall exceed £6000 and shall not exceed £8000	£10 per centum.
Where the yearly value shall exceed £8000 and shall not exceed £10,000	£12 per centum.
Where the yearly value shall exceed £10,000	£15 per centum.

Schedule (B).

Bishoprics, when and as void, to be united to Archbishoprics and Bishoprics to which the Bishoprics becoming void are to be united.

1 Dromore	Down and Connor.
2 Raphoe	Derry.
3 Clogher	Armagh.
4 Elphin	Kilmore.
5 Killybeg and Achonry	Tuam.
6 Clonfert and Kilmaedugh	Killaloe and Kilfenora.
7 Kildare	Dublin and Glandelagh.
8 Ossory	Ferns and Leighlin.
9 Waterford and Lismore	Cashel and Emly.
10 Cork and Ross	Cloyne.

LXV. STAT. 3 & 4 GULIELMI 4, c. 41(1). A.D. 1833.

STAT. 3 & 4
GUL. 4, c. 41.

"An Act for the better Administration of Justice in His Majesty's Privy Council."

"Whereas by virtue of an act passed in a session of parliament of the second and third years of the reign of his present majesty, intituled, 'An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council,' it was enacted, that from and after the first day of February one thousand eight hundred and thirty-three, it should be lawful for every person who might theretofore, by virtue either of an act passed in the twenty-fifth year of the reign of King Henry the Eighth, intituled, 'The Submission of the Clergy and Restraint of Appeals,' or of an act passed in the eighth year of the reign of Queen Elizabeth, intituled, 'For the avoiding of tedious Suits in Civil and Marine Causes,' have appealed or made suit to his majesty in his high court of Chancery, to appeal or make suit to the king's majesty, his heirs or successors, in council, within such time, in such manner, and subject to such rules, orders, and regulations for the due and more convenient proceeding, as should seem meet and necessary, and upon such security, if any, as his majesty, his heirs and successors, should from time to time by order in council direct; and whereas, by letters patent under the great seal of Great Britain, certain persons, members of his majesty's privy council, together with others, being judges and barons of his majesty's courts of record at Westminster, have been from time to time appointed to be his majesty's commissioners for receiving, hearing, and determining appeals from his majesty's courts of Admiralty in causes of prize; and whereas, from the decisions of various courts of judicature in the East Indies, and in the plantations, colonies, and other dominions of his majesty abroad, an appeal lies to his majesty in council; and whereas matters of appeal or petition to his majesty in council have usually been heard before a committee of the whole of his majesty's privy council, who have made a report to his majesty in council, whereupon the final judgment or determination hath been given by his majesty; and whereas it is expedient to make certain provisions for the more effectual hearing and reporting

2 & 3 Gul. 4,
c. 92.

25 Hen. 8,
c. 19.
8 Eliz. c. 5.

STAT. 3 & 4
GUL. 4, c. 41.

Certain persons to form a committee, to be styled "The Judicial Committee of the Privy Council."

Appeals from Vice-Admiralty courts abroad, &c. to be made to the king in council.

on appeals to his majesty in council and on other matters, and to give such powers and jurisdiction to his majesty in council as hereinafter mentioned; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the president for the time being of his majesty's privy council, the lord high chancellor of Great Britain for the time being, and such of the members of his majesty's privy council as shall from time to time hold any of the offices following, that is to say, the office of lord keeper or first lord commissioner of the great seal of Great Britain, lord chief justice or judge of the court of King's Bench, master of the rolls, vice-chancellor of England, lord chief justice or judge of the court of Common Pleas, lord chief baron or baron of the court of Exchequer, judge of the Prerogative court of the Lord Archbishop of Canterbury, judge of the high court of Admiralty, and chief judge of the court in Bankruptcy, and also all persons, members of his majesty's privy council, who shall have been president thereof or held the office of lord chancellor of Great Britain, or shall have held any of the other offices hereinbefore mentioned, shall form a committee of his majesty's said privy council, and shall be styled, 'The Judicial Committee of the Privy Council;' provided nevertheless, that it shall be lawful for his majesty from time to time, as and when he shall think fit, by his sign manual, to appoint any two other persons, being privy councillors, to be members of the said committee.

"II. And be it further enacted, that from and after the first day of June one thousand eight hundred and thirty-three, *all appeals* or applications in prize suits and in all other suits or proceedings in the courts of Admiralty, or Vice-Admiralty courts, or any other court in the plantations in America and other his majesty's dominions or elsewhere abroad, which may now, by virtue of any law, statute, commission, or usage, be made to the high court of Admiralty in England, or to the lords commissioners in prize cases, *shall be made to his majesty in council* (1), and not to the said high court of Admiralty in England or to such commis-

(1) *All appeals shall be made to his majesty in council*.—Under this statute, the judicial committee of the Privy Council are not empowered to make an order *proprio vigore*, for the payment of alimony, until a husband shall obey its decrees for restitution: thus, in *Taylor v. Taylor*, (2 Eccles. Notes of Cases, 174,) which was originally a suit for restitution of conjugal rights, commenced in the Consistory court of London, by Mrs. Elizabeth Henrietta Taylor, against Mr. John Donnithorne Taylor, her husband: it appeared that, the parties were married in 1830, and cohabited till October, 1837, (six children being the issue of the marriage,) when the parties separated, the husband making the wife a liberal allowance. The following year, Mrs. Taylor brought the suit for restitution, which was met on the part of Mr. Taylor with a plea in bar, that she had withdrawn from his society without cause, and had brought a charge of adultery against him, and, well knowing it was entirely devoid of foundation, refused to retract it. The judge of the Consistory court rejected this allegation, which sentence was confirmed by the Arches court, the case being remitted. Pending the suit, Mr. Taylor was ordered to pay Mrs. Taylor 800*l.* a year alimony, which he did for some time, and the cause having come to hearing, the court decreed that Mr. Taylor should take his wife home, and treat her with conjugal affection. From this decree Mr. Taylor appealed to the queen in council,

and also discontinued the payment of the 800*l.* a year, on the ground that, the wife having obtained a decree for restitution of conjugal rights, the suit was no longer pending, and she was no longer entitled to alimony. The appeal came on to be heard, February 10, when their Lordships affirmed the decree of the court below, and subsequently, (July 7,) made an order, that the husband should continue to pay his wife alimony until he obeyed the decree by taking her home, &c., and decreed a monition against Mr. Taylor for payment of the arrears then due. Their lordships' order was served upon Mr. Taylor's solicitor and proctor, Mr. Taylor being abroad, out of the jurisdiction; as also subsequent monitions issued by the Consistory court, but no attention had been paid to them. An application was now made to their lordships to pronounce Mr. Taylor in contempt, "in not having obeyed the said monitions, in order for process of sequestration to issue against his estate, to enforce obedience thereto, under Stat. 2 & 3 Gul. 4, c. 93, s. 2."

It was contended, that their lordships had authority to enforce their former order by pronouncing the husband in contempt, upon which an application would be made to the court of Chancery for a writ *de contempte capiendo* against the goods of the party. This was the only remedy the wife had in such a case. Stat. 2 & 3 Gul. 4, c. 93, which abolished the old writ *de arcecommunicata capiendo*, directed that the ecclesiastical court

sioners as aforesaid; and such appeals shall be made in the same manner and form and within such time wherein such appeals might, if this act had not been passed, have been made to the said high court of Admiralty or to the lords commissioners in prize cases respectively; and that all laws or statutes now in force with respect to any such appeals or applications shall apply to any appeals to be made in pursuance of this act to his majesty in council.

"III. And be it further enacted, that all appeals or complaints in the nature of appeals whatever, which, either by virtue of this act, or of any law, statute, or custom, may be brought before his majesty or his majesty in council, from or in respect of the determination, sentence, rule, or order of any court, judge, or judicial officer, and all such appeals as are now pending and unheard, shall, from and after the passing of this act, be referred by his majesty to the said judicial committee of his privy council, and that such appeals, causes, and matters shall be heard by the said judicial committee, and a report or recommendation thereon shall be made to his majesty in council for his decision thereon as heretofore, in the same manner and form as has been heretofore the custom with respect to matters referred by his majesty to the whole of his privy council or a committee thereof (the nature of such report or recommendation being always stated in open court).

"IV. And be it further enacted, that it shall be lawful for his majesty to refer to the said judicial committee for hearing or consideration any such other matters whatsoever as his majesty shall think fit, and such committee shall thereupon hear or consider the same, and shall advise his majesty thereon in manner aforesaid.

"V. And be it further enacted, that no matter shall be heard, nor shall any order, report, or recommendation be made, by the said judicial committee, in pursuance of this act, unless in the presence of at least four members of the said committee; and that no report or recommendation shall be made to his majesty unless a majority of the members of such judicial committee present at the hearing shall concur in such report or recommendation: provided always, that nothing herein contained shall prevent his majesty, if he shall think fit, from summoning any other of the members of his said privy council to attend the meetings of the said committee.

"VI. And be it further enacted, that in case his majesty shall be pleased, by directions under his sign manual, to require the attendance at the said committee for the purposes of this act of any member or members of the said privy council who shall be a judge or judges of the court of King's Bench, or of the court of Common Pleas, or of the court of Exchequer, such arrangements for dispensing with the attendance of such judge or judges upon his or their ordinary duties during the time of such attendance at the privy council as aforesaid shall be made by the judges of the court or courts to which such judge or judges shall belong respectively in regard to the business of the court and by the judges of the said three courts, or by any eight or more of such judges, including the chiefs of the several courts, in regard to all other duties, as may be necessary and consistent with the public service.

"VII. And be it enacted, that it shall be lawful for the said judicial committee,

STAT. 3 &
GUL. 4, c.

All appeals from sent of any judge &c. to be referred by his majesty to the committee report the

His majesty may refer other matters to the committee

No matter be heard in presence of four members of the committee.

In case requiring directions any judge or judges of the court to which they belong to arrange with regard to the business of the court

Evidence

should signify that the party was in contempt, and that thereupon a writ *de contempte capiendo* should issue; and Stat. 3 & 4 Gul. 4, c. 41, constituting the judicial committee, enacted that the queen in council should have the same powers as the ecclesiastical courts in such cases.

On the part of Mr. Taylor, it was urged, that one objection to their lordships' making such an order as was now prayed for was, that their lordships' former order was made in their own name, and by their own authority, and was not an order of the queen in council, founded upon a report by their lordships. Admitting, therefore, that the statute gave the queen in council the same power as the ecclesiastical courts in such cases, their

lordships had no such power *proprio vigore*, and the former order, not having been confirmed by her majesty, was irregular, and could not be enforced.

Lord Brougham: "Their lordships are of opinion that this objection is well founded. The statute gives the power to the queen in council, and not to their lordships. The consequence would be, that such orders could not be made until a council was held at Windsor or Brighton, or wherever the court might be, when their lordships' report might be confirmed by her majesty. In the present case, the defect might be remedied by obtaining her majesty's confirmation of the former order."

STAT. 3 & 4
GUL. 4, c. 41.
be taken ~~and~~
oath, or upon
written depo-
sitions.

Committee
may order any
particular wit-
nesses to be
examined, and
as to any par-
ticular facts,
and may remit
causes for
rehearing.

Witnesses to
be examined
on oath, and
to be liable to
punishment
for perjury.

Committee
may direct an
issue to try
any fact;

may, in certain
cases, direct
depositions
to be read at
the trial of the
issue;

may make
such orders as
to the admis-
sion of evi-
dence as are
made by the
court of Chan-
cery;
and may direct
new trials of
issues.

Powers, &c. of
13 Geo. 3,
c. 63, and 1

in any matter which shall be referred to such committee, to examine witnesses by word of mouth, (and either before or after examination by deposition,) or to direct that the depositions of any witness shall be taken in writing by the registrar of the said privy council to be appointed by his majesty as hereinafter mentioned, or by such other person or persons, and in such manner, order, and course, as his majesty in council or the said judicial committee shall appoint and direct; and that the said registrar and such other person or persons so to be appointed shall have the same powers as are now possessed by an examiner of the high court of Chancery or of any court ecclesiastical.

“VIII. And be it enacted, that in any matter which shall come before the said judicial committee it shall be lawful for the said committee to direct that such witnesses shall be examined or re-examined, and as to such facts as to the said committee shall seem fit, notwithstanding any such witnesses may not have been examined, or no evidence may have been given on any such facts in a previous stage of the matter; and it shall also be lawful for his majesty in council, on the recommendation of the said committee, upon any appeal, to remit the matter which shall be the subject of such appeal to the court from the decision of which such appeal shall have been made, and at the same time to direct that such court shall rehear such matter, in such form, and either generally or upon certain points only, and upon such rehearing take such additional evidence, though before rejected, or reject such evidence before admitted, as his majesty in council shall direct; and further, on any such remitting or otherwise, it shall be lawful for his majesty in council to direct that one or more feigned issue or issues shall be tried in any court in any of his majesty's dominions abroad, for any purpose for which such issue or issues shall to his majesty in council seem proper.

“IX. And be it enacted, that every witness who shall be examined in pursuance of this act shall give his or her evidence upon oath, or if a Quaker or Moravian upon solemn affirmation, which oath and affirmation respectively shall be administered by the said judicial committee and registrar, and by such other person or persons as his majesty in council or the said judicial committee shall appoint; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury, and shall be punished accordingly.

“X. And be it enacted, that it shall be lawful for the said judicial committee to direct one or more feigned issue or issues to be tried in any court of common law, and either at bar, before a judge of assize, or at the sittings for the trial of issues in London or Middlesex, and either by a special or common jury, in like manner and for the same purpose as is now done by the high court of Chancery.

“XI. And be it enacted, that it shall be in the discretion of the said judicial committee to direct that, on the trial of any such issue, the depositions already taken of any witness who shall have died, or who shall be incapable to give oral testimony, shall be received in evidence; and further, that such deeds, evidences, and writings shall be produced, and that such facts shall be admitted, as to the said committee shall seem fit.

“XII. And be it enacted, that it shall be lawful for the said judicial committee to make such and the like orders respecting the admission of persons, whether parties or others, to be examined as witnesses upon the trial of any such issues as aforesaid, as the lord high chancellor or the court of Chancery has been used to make respecting the admission of witnesses upon the trial of issues directed by the lord chancellor or the court of Chancery.

“XIII. And be it enacted, that it shall be lawful for the said judicial committee to direct one or more new trial or new trials of any issue, either generally or upon certain points only; and that in case any witness examined at a former trial of the same issue shall have died, or have, through bodily or mental disease or infirmity, become incapable to repeat his testimony, it shall be lawful for the said committee to direct that parol evidence of the testimony of such witness shall be received.

“XIV. And whereas by an act passed in the thirteenth year of his late majesty King George the Third, and intituled, ‘An Act for establishing certain Regulations for the better Management of the Affairs of the East India Company, as well

in India as in Europe,' and by an act passed in the first year of the reign of his present majesty, and intituled, 'An Act to enable the Courts of Law to order the Examination of Witnesses upon Interrogatories and otherwise,' certain powers are given to certain courts therein mentioned to enforce, and provisions are made for the examination of witnesses by commission upon interrogatories and otherwise; be it therefore further enacted, that all the powers and provisions contained in the two last-mentioned acts, or either of them, shall extend to and be exercised by the said judicial committee in all respects as if such committee had been therein named as one of his majesty's courts of law at Westminster.

"XV. And be it enacted, that the costs incurred in the prosecution of any appeal or matter referred to the said judicial committee, and of such issues as the same committee shall under this act direct, shall be paid by such party or parties, person or persons, and be taxed by the aforesaid registrar, or such other person or persons, to be appointed by his majesty in council or the said judicial committee, and in such manner as the said committee shall direct.

"XVI. And be it further enacted, that the orders or decrees of his majesty in council made, in pursuance of any recommendation of the said judicial committee, in any matter of appeal from the judgment or order of any court or judge, shall be enrolled, for safe custody, in such manner, and the same may be inspected and copies thereof taken under such regulations, as his majesty in council shall direct.

"XVII. And be it further enacted, that it shall be lawful for the said committee to refer any matters to be examined and reported on to the aforesaid registrar, or to such other person or persons as shall be appointed by his majesty in council or by the said judicial committee, in the same manner and for the like purposes as matters are referred by the court of Chancery to a master of the said court; and that for the purposes of this act the said registrar and the said person or persons so to be appointed shall have the same powers and authorities as are now possessed by a master in Chancery.

"XVIII. And be it further enacted, that it shall be lawful for his majesty, under his sign manual, to appoint any person to be the registrar of the said privy council, as regards the purposes of this act, and to direct what duties shall be performed by the said registrar.

"XIX. And be it further enacted, that it shall be lawful for the president for the time being of the said privy council to require the attendance of any witnesses, and the production of any deeds, evidences, or writings, by writ to be issued by such president in such and the same form, or as nearly as may be, as that in which a writ of *subpoena ad testificandum* or of *subpoena duces tecum* is now issued by his majesty's court of King's Bench at Westminster; and that every person disobeying any such writ so to be issued by the said president shall be considered as in contempt of the said judicial committee, and shall also be liable to such and the same penalties and consequences as if such writ had issued out of the said court of King's Bench, and may be sued for such penalties in the said court.

"XX. And be it further enacted, that all appeals to his majesty in council shall be made within such times respectively within which the same may now be made, where such time shall be fixed by any law or usage, and where no such law or usage shall exist, then within such time as shall be ordered by his majesty in council; and that, subject to any right subsisting under any charter or constitution of any colony or plantation, it shall be lawful for his majesty in council to alter any usage as to the time of making appeals, and to make any order respecting the time of appealing to his majesty in council.

"XXI. And be it further enacted, that the order or decree of his majesty in council on any appeal from the order, sentence, or decree of any court of justice in the East Indies, or of any colony, plantation, or other his majesty's dominions abroad, shall be carried into effect in such manner, and subject to such limitations and conditions, as his majesty in council shall, on the recommendation of the said judicial committee, direct; and it shall be lawful for his majesty in council, on such recommendation, by order, to direct that such court of justice shall carry the same into effect accordingly, and thereupon such court of justice shall have the

STAT. 31
GUL. 4, c
Gul. 4, c
with regard
examination
witnesses
applied to
judicial committee.

Costs to
the discretion
of the committee.

Decrees
enrolled.

Committee
may refer
matters to
registrar in
manner
matters to
court of
Chancery
reference to a master

The king
appoints
registrar.

Attendant
witnesses
production
papers, &c
may be
compelled by
process.

Time of
appealing

Decrees
courts abroad
to be carried
into effect
the king
council direct.

STAT. 3 & 4
GUL. 4, c. 41.

Act not to
abridge powers
of privy
council.

His majesty
may direct the
East India
Company to
bring on
appeals from
the Sudder
Dewanny
Adawlut courts
to a hearing.

Orders made
on such appeals
to have effect
notwithstand-
death of par-
ties, &c.

His majesty
empowered to
make orders
for regulating
the mode, &c.
of such ap-
peals.

His majesty
empowered to
appoint one of
the barons of
the court of
Exchequer to
sit in equity in
the absence of
the chief baron.

same powers of carrying into effect and enforcing such order or decree as are possessed by or are hereby given to his majesty in council: provided always, that nothing in this act contained shall impeach or abridge the powers, jurisdiction, or authority of his majesty's privy council as heretofore exercised by such council, or in anywise alter the constitution or duties of the said privy council, except so far as the same are expressly altered by this act, and for the purposes aforesaid.

"XXII. And whereas various appeals to his majesty in council from the courts of Sudder Dewanny Adawlut at the several presidencies of Calcutta, Madras, and Bombay in the East Indies, have been admitted by the said courts, and the transcripts of the proceedings in appeal have been from time to time transmitted under the seal of the said courts, through the united company of merchants in England trading to the East Indies, to the office of his majesty's said privy council, but the suitors in the causes so appealed have not taken the necessary measures to bring on the same to a hearing; be it therefore further enacted by the authority aforesaid, that it shall be lawful for his majesty in council to give such directions to the said united company and other persons for the purpose of bringing to a hearing before the said committee the several cases appealed or hereafter to be appealed to his majesty in council from the several courts of Sudder Dewanny Adawlut in the East Indies, and for appointing agents and counsel for the different parties in such appeals, and to make such orders for security and payment of the costs thereof, as his said majesty in council shall think fit; and thereupon such appeals shall be heard and reported on to his majesty in council, and shall be by his majesty in council determined in the same manner, and the judgments, orders, and decrees of his majesty in council thereon shall be of the same force and effect, as if the same had been brought to a hearing by the direction of the parties appealing in the usual course of proceeding; provided always, that such last-mentioned powers shall not extend to any appeals from the said courts of Sudder Dewanny Adawlut, other than appeals in which no proceedings have been or shall hereafter be taken in England on either side for a period of two years subsequent to the admission of the appeal by such court of Sudder Dewanny Adawlut.

"XXIII. And be it enacted, that in any case where any order shall have been made on any such appeal as last aforesaid, the same shall have full force and effect notwithstanding the death of any of the parties interested therein; but that in all cases where any such appeal may have been withdrawn or discontinued, or any compromise made in respect of the matter in dispute, before the hearing thereof, then the determination of his majesty in council in respect of such appeal shall have no effect.

"XXIV. And be it further enacted, that it shall be lawful for his majesty in council from time to time to make any such rules and orders as may be thought fit for the regulating the mode, form, and time of appeal to be made from the decisions of the said courts of Sudder Dewanny Adawlut, or any other courts of judicature in India or elsewhere to the eastward of the Cape of Good Hope, (from the decisions of which an appeal lies to his majesty in council,) and in like manner from time to time to make such other regulations for the preventing delays in the making or hearing such appeals, and as to the expenses attending the said appeals, and as to the amount or value of the property in respect of which any such appeal may be made.

"XXV. And whereas by an act of parliament passed in the fifty-seventh year of the reign of his majesty King George the Third, intituled, 'An Act to facilitate the hearing and determining of Suits in Equity in His Majesty's Court of Exchequer at Westminster,' it was enacted that the lord chief baron of the said court for the time being should have power to hear and determine all causes, matters, and things which should be at any time depending in the said court of Exchequer as a court of equity, and that if the said lord chief baron of the court of Exchequer should by sickness or any other unavoidable cause be prevented from sitting on the equity side of the said court for the purposes in the said act mentioned, then it should and might be lawful for his majesty and his successors to nominate and appoint from time to time, by warrant under the royal sign manual, revocable at

STATUTA GULIELMI IV. A.D. 1830—1837.

pleasure, any one other of the barons of the degree of the coif of the said court for the time being, to hear and determine the causes, matters, and things in the said act mentioned; and whereas by reason of the great increase of business on the common law or plea side of the said court of Exchequer the lord chief baron is prevented from giving so much time as heretofore to the sittings on the equity side of the said court, and the sittings on such equity side of the said court being necessarily suspended during the absence of the lord chief baron, great inconvenience is thereby sustained by the suitors and practitioners on the equity side of the said court; and whereas the lord chief baron may by this act become liable to the performance of other additional duties unconnected with the said court of Exchequer, and it is desirable that the said court of Exchequer should sit as a court of equity without any unnecessary interruption, for the purpose of hearing and determining causes, matters, and things depending in the said court as a court of equity; and whereas doubts have arisen whether or not the above-recited act extends to cases of the lord chief baron being prevented from sitting by the performance of judicial duties elsewhere; be it therefore declared and enacted, that it shall and may be lawful for his majesty and his successors to nominate and appoint from time to time by warrant under the royal sign manual, revocable at pleasure, any one of the barons of the degree of the coif of the said court for the time being to hear and determine (on such days as the lord chief baron of the said court shall sit on the common law side of the said court during the term, or shall preside at the sittings at nisi prius in London or Middlesex after the term, or shall attend at the judicial committee of his majesty's privy council under the provisions of this act) all causes, matters, and things which shall at any time be depending in the said court of Exchequer as a court of equity.

STAT. 3
GUL. 4.

"XXVI. And be it further enacted, that during the absence of the chief judge in bankruptcy from the court of review established by virtue of an act passed in the first and second year of his present majesty, intituled, 'An Act to establish a Court in Bankruptcy,' by reason of his attendance at the said judicial committee by virtue of this act, any two judges of the said court shall and may form a court of review in bankruptcy, and shall and may make, do, and execute all orders, acts, matters, powers, and things whatsoever which by virtue of the said act the judges of the said court or any three of them are authorized to make, do, or execute, and in all respects whatsoever as if three of the said judges were present, except that nothing herein contained shall authorize any two judges of the said court to hear and determine any matter brought under the review of the said court by way of appeal from the determination or decision of any commissioner or subdivision court appointed by virtue of the said act.

Two ju-
the cou-
bankrup-
act for
chief ju-
the cou-
review
his atten-
at the a-
judicial
mittee.

"XXVII. And be it further enacted, that all the clauses and provisions contained in the said act of parliament which relate to the baron nominated and appointed under that act shall apply and be extended to the baron nominated and appointed under the authority of this act.

Powers
57 Geo.
extends
this act.

"XXVIII. And be it enacted, that the said judicial committee shall have and enjoy in all respects such and the same power of punishing contempts and of compelling appearances, and that his majesty in council shall have and enjoy in all respects such and the same powers of enforcing judgments, decrees, and orders, as are now exercised by the high court of Chancery or the court of King's Bench, (and both *in personam* and *in rem*), or as are given to any court ecclesiastical by an act of parliament passed in a session of parliament of the second and third years of the reign of his present majesty, intituled, 'An Act for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland;' and that all such powers as are given to courts ecclesiastical, if of punishing contempts or of compelling appearances, shall be exercised by the said judicial committee, and if of enforcing decrees and orders shall be exercised by his majesty in council, in such and the same manner as the powers in and by such act of parliament given, and shall be of as much force and effect as if the same had been thereby expressly given to the said committee or to his majesty in council.

Power c
enforce
decrees.

2 & 3 G.
c. 93.

"XXIX. And be it further enacted, that, subject to such orders as his majesty

Registr

[IV. A.D. 1830—1837.

it shall be lawful for the present registrar shall so think fit, either in person or by said judicial committee of all causes and said last-mentioned act, would have been such registrar was entitled to attend, is offices of registrar of the high courts of rizee, and likewise, subject to any order of form, and do all acts, matters, and things refofore been done by the said registrar or d appeals.

members of his majesty's privy council in the East Indies or any of his majesty's being appointed for that purpose by his judicial committee of the privy council, r and above any annuity granted to them foressaid, the sum of four hundred pounds to attend as aforesaid, as an indemnity for ur; and such sum of four hundred pounds the consolidated fund of the United King-

it enacted, that nothing herein contained any treaty or engagement already entered e taken to restrain his majesty from acced- ce, potentate, or power, in which treaty it reons other than the said judicial commu- als from his majesty's courts of Admiralty ts, decrees, and orders of such other person be of the same force and effect of which is act had not been passed."

LIEBMAN 4, c. 42. A.D. 1833.

of the Law, and the better Advancement 'justice."

ted, that in all writs of *scire facias*, the ard of execution shall recover his costs of . as upon a judgment after plea pleaded or ment shall be given either for or against a a defendant or tenant, upon any demurrer y in whose favour such judgment shall be r his costs in that behalf."

ULIELMI 4, c. 45. A.D. 1833.

s(1) *solemnized at Hamburg since the British Factory there."*

amburgh was dissolved, and the privileges and eight hundred and eight: and whereas alrn resident in Hamburg have since the ges been solemnized there by the chaplain idon, or some minister of the church of lain, in the British episcopal chapel, and in

. But the *lex loci contractus* as to marriage. . will not prevail if either of the contracting parties be under a legal incapacity by the law of the domicile. *Cowsey v. Beasley*, 3 Hagg. 639. *Vide* Stephens on Nisi Prius. tit. ADULTERY, 18.

STATUTA GULIELMI IV. A.D. 1830—1837.

private houses in that city, before witnesses, according to the rites of the church of England: and whereas it is expedient that no doubts should hereafter arise as to the validity of such marriages: may it therefore be declared and enacted; and be it declared and enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all marriages of parties subjects or parties one of them being a subject of this realm, which have been solemnized at Hamburg since the abolition of the British factory there, by the chaplain appointed by the Lord Bishop of London, or by any ministers of the church of England officiating instead of such chaplain, in the episcopal chapel of the said city, or in any other place, before witnesses, according to the rites of the church of England, shall be good and valid in law to all intents and purposes as if the same had been solemnized in the British factory at Hamburg before the abolition thereof."

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of fa
ther
valic

LXVIII. STAT. 3 & 4 GULIELMI 4, c. 49 (1). A.D. 1833.

"An Act to allow Quakers and Moravians to make Affirmation in all Cases where an Oath is or shall be required."

STA:
GUL

LXIX. STAT. 3 & 4 GULIELMI 4, c. 70. A.D. 1833.

"An Act to alter and amend an Act of the forty-first year of His Majesty King George the Third, for the better Regulation of Public Notaries in England."

STA:
GUL

"Whereas by an act passed in the forty-first year of the reign of his late majesty King George the Third, intituled, 'An Act for the better Regulation of Public Notaries in England,' it is enacted, that after the first day of August, one thousand eight hundred and one, no person shall be sworn, admitted, and enrolled as a public notary unless such person shall have been bound by a contract in writing or by indenture of apprenticeship to serve as a clerk or apprentice for the term of not less than seven years to a public notary, or a person using the art and mystery of a scrivener, (according to the privilege and custom of the city of London, such scrivener being also a public notary,) duly sworn, admitted, and enrolled, and shall have continued in such service for the said term of seven years; and certain other enactments are contained in the said act, regulating the admission and practice of notaries public; and whereas the provisions of the said act are in their operation found to be extremely inconvenient in some places distant from the city of London; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act so much of the said recited act as requires that persons to be admitted notaries public shall have served a clerkship or apprenticeship for seven years, as hereinbefore mentioned, shall, so far as the same affects persons being attorneys, solicitors, or proctors admitted as hereinafter mentioned, be limited and confined to the city of London and liberties of Westminster, the borough of Southwark, and the circuit of ten miles from the Royal Exchange in the said city of London."

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"II. And be it further enacted, that from and after the passing of this act it shall and may be lawful for the master of the court of Faculties of his grace the Lord Archbishop of Canterbury in London from time to time, upon being satisfied as well of the fitness of the person as of the expediency of the appointment, to appoint, admit, and cause to be sworn and enrolled in the said court of Faculties any person or persons residing at any place distant more than ten miles from the Royal Exchange in the said city of London who shall have been previously admitted, sworn, and enrolled an attorney or solicitor in any of the courts at Westminster, or who shall be a proctor practising in any ecclesiastical court, to be a notary public or notaries public to practice within any district in which it shall

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(1) Vide Stat. 1 & 2 Vict. c. 77.

GULIELMI IV. A.D. 1830—1837.

the said master of the court of Faculties that there is a sufficient number of such notaries public admitted to provisions of the said recited act for the due conveyance of such district, as the said master of the court of Faculties is not elsewhere; any law or usage to the contrary notwithstanding.

and be it further enacted, that nothing herein contained
y notary who shall be admitted by virtue of this act to
perform or certify any notarial act whatsoever, within
e liberties of Westminster, the borough of Southwark,
n miles from the Royal Exchange in the said city of

and be it further enacted, that if any notary admitted
ractice as a notary, or perform or certify any notarial act
strict specified and limited in and by the faculty to be
of this act, or within the city of London, the liberties of
of Southwark, or the circuit of ten miles from the
on aforesaid, then and in every such case it shall be
Faculties, on complaint made in a summary way, and
use every such notary so offending to be struck off the
person so struck off shall thenceforth for ever after be
ctising as a notary or performing or certifying any
anything herein contained to the contrary notwith-

1. 3 & 4 GULIELMI 4, c. 82. A.D. 1853.

ple called Separatists to make a solemn Affirmation and Declaration instead of an Oath."

r. 3 & 4 GULIELMI 4, c. 85. A.D. 1833.

Arrangement with the East India Company, and for the His Majesty's Indian Territories, till the thirtieth day of August one thousand eight hundred and fifty-four."

reas the present diocese of the bishopric of Calcutta is of incumbent thereof to perform efficiently all the duties, gaging his health and life, and it is therefore expedient the bishop of the said diocese, and for that purpose to ng new limits to the diocese of the said bishop, and for two separate and distinct bishoprics, but nevertheless ubordinate and subject to the Bishop of Calcutta for the ors, as their metropolitan; be it therefore enacted, that majesty to erect, found, and constitute two bishoprics, ric of Madras, and the other the bishopric of Bombay, nominate and appoint bishops to such bishoprics under ops of Madras and Bombay respectively, there shall be revenues of the said territories to such bishops respec- four thousand sicca rupees by the year.

ed, that the said salaries shall commence from the time shall be appointed to the said office of bishop shall take of their respective offices; and that such salaries shall be perquisites, emoluments, or advantages whatsoever; and nates, emoluments, or advantages whatsoever shall be a by such bishop or either of them, in any manner or os whatsoever, other than the salaries aforesaid, and that shall be entitled to such salaries so long as they shall unctions of their several offices in the British territories

STATUTA GULIELMI IV. A.D. 1830—1837.

"XCI. And be it enacted, that the said court of directors shall and they are required to pay to the bishops so from time to time to be appointed to the said bishoprics of Madras and Bombay, in case they shall be resident in the United Kingdom at the time of their respective appointments, the sum of five hundred pounds each, for the purpose of defraying the expenses of their equipments and voyage.

"XCII. Provided always, and be it enacted, that such bishops shall not have or use any jurisdiction, or exercise any episcopal functions whatsoever, either in the said territories or elsewhere, but only such jurisdiction and functions as shall or may from time to time be limited to them respectively by his majesty by his royal letters patent under the great seal of the said United Kingdom.

"XCIII. And be it enacted, that it shall and may be lawful for his majesty from time to time, if he shall think fit, by his royal letters patent under the great seal of the said United Kingdom, to assign limits to the diocese of the bishopric of Calcutta and to the dioceses of the said bishoprics of Madras and Bombay respectively, and from time to time to alter and vary the same limits respectively, as to his majesty shall seem fit, and to grant to such bishops respectively within the limits of their respective dioceses the exercise of episcopal functions, and of such ecclesiastical jurisdiction as his majesty shall think necessary for the superintendence and good government of the ministers of the united church of England and Ireland therein.

"XCIV. Provided always, and be it enacted, that the Bishop of Calcutta for the time being shall be deemed and taken to be the metropolitan bishop in India, and as such shall have, enjoy, and exercise all such ecclesiastical jurisdiction and episcopal functions, for the purposes aforesaid, as his majesty shall by his royal letters patent under the great seal of the said United Kingdom think necessary to direct, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being: and that the Bishops of Madras and Bombay for the time being respectively shall be subject to the Bishop of Calcutta for the time being as such metropolitan, and shall, at the time of their respective appointments to such bishoprics, or at the time of their respective consecrations as bishop, take an oath of obedience to the said Bishop of Calcutta in such manner as his majesty by his said royal letters patent shall be pleased to direct.

"XCV. And be it enacted, that when and as often as it shall please his majesty to issue any letters patent respecting the bishopric of Calcutta, Madras, or Bombay, or for the nomination or appointment of any person thereto respectively, the warrant for the bill in every such case shall be countersigned by the president of the board of commissioners for the affairs of India, and by no other person.

"XCVI. And be it enacted, that it shall and may be lawful for his majesty, his heirs and successors, by warrant under his royal sign manual, countersigned by the chancellor of the exchequer for the time being, to grant to any such Bishop of Madras or Bombay respectively, who shall have exercised in the British territories aforesaid for fifteen years the office of such bishop a pension not exceeding eight hundred pounds per annum, to be paid quarterly by the said company.

"XCVII. And be it enacted, that in all cases when it shall happen the said person nominated and appointed to be bishop of either of the said bishoprics of Madras or Bombay shall depart this life within six calendar months next after the day when he shall have arrived in India for the purpose of taking upon him the office of such bishop, there shall be payable out of the territorial revenues from which the salary of such bishop so dying shall be payable, to the legal personal representatives of such bishop, such sum or sums of money as shall, together with the sum or sums paid to or drawn by such bishop in respect of his salary, make up the full amount of one year's salary; and when and so often as it shall happen that any such bishop shall depart this life while in possession of such office, and after the expiration of six calendar months from the time of his arrival in India for the purpose of taking upon him such office, then and in every such case there shall be payable out of the territorial revenues from which the salary of the said bishop so dying shall be payable, to his legal personal representatives, over and above

STAT. 3 & 4
GUL. 4, c. 85.

As to residence
of Bishop of
Madras or
Bombay if
translated to
Calcutta.

As to conse-
cration of any
person under
the degree of a
bishop, if resi-
dent in India,
appointed to a
bishopric.

Provision for
expenses of
visitations.

No archdeacon
in India to
have a salary
exceeding 3000
sicca rupees.

Two chaplains
of the church
of Scotland to
be on the
establishment
of each presi-
dency.

what may have been due to him at the time of his death, a sum equal to the full amount of the salary of such bishop for six calendar months.

"XCVIII. And be it enacted, that if it shall happen that either of the Bishops of Madras or Bombay shall be translated to the bishopric of Calcutta, the period of residence of such person as Bishop of Madras or Bombay shall be accounted for and taken as a residence as Bishop of Calcutta; and if any person now an archdeacon in the said territories shall be appointed Bishop of Madras or Bombay, the period of his residence in India as such archdeacon shall for all the purposes of this act be accounted for and taken as a residence as such bishop.

"XCIX. Provided also, and be it enacted, that if any person under the degree of a bishop shall be appointed to either of the bishoprics of Calcutta, Madras, or Bombay, who at the time of such appointment shall be resident in India, then and in such case it shall and may be lawful for the Archbishop of Canterbury, when and as he shall be required so to do by his majesty by his royal letters patent under the great seal of the said United Kingdom, to issue a commission under his hand and seal, to be directed to the two remaining bishops authorizing and charging them to perform all such requisite ceremonies for the consecration of the person so to be appointed to the degree and office of a bishop.

"C. And be it enacted, that the expenses of visitations to be made from time to time by the said Bishops of Madras and Bombay respectively shall be paid by the said company out of the revenues of the said territories; provided that no greater sum on account of such visitations be at any time issued than shall from time to time be defined and settled by the court of directors of the said company, with the approbation of the commissioners for the affairs of India.

"CI. And be it enacted, that no archdeacon hereafter to be appointed for the archdeaconry of the presidency of Fort William in Bengal, or the archdeaconry of the presidency of Fort Saint George, or the archdeaconry of the presidency and island of Bombay, shall receive in respect of his archdeaconry any salary exceeding three thousand sicca rupees per annum: provided always, that the whole expense incurred in respect of the said bishops and archdeacons shall not exceed one hundred and twenty thousand sicca rupees per annum.

"CII. And be it enacted, that of the establishment of chaplains maintained by the said company at each of the presidencies of the said territories two chaplains shall always be ministers of the church of Scotland, and shall have and enjoy from the said company such salary as shall from time to time be allotted to the military chaplains at the several presidencies: provided always, that the ministers of the church of Scotland to be appointed chaplains at the said presidencies as aforesaid shall be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale, and to the General Assembly of the church of Scotland: provided always, that nothing herein contained shall be so construed as to prevent the governor-general in council from granting from time to time, with the sanction of the court of directors and of the commissioners for the affairs of India, to any sect, persuasion, or community of Christians not being of the united church of England and Ireland, or of the church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship."

STAT. 3 & 4
GUL. 4, c. 92.
[IR.]

LXXII. STAT. 3 & 4 GULIELMI 4, c. 92. [IRELAND.] A.D. 1833.

"An Act to explain and amend the Provisions of certain Acts for the erecting and establishing Public Infermeries, Hospitals, and Dispensaries, in Ireland."

LXXIII. STAT. 3 & 4 GULIELMI 4, c. 100(1). [IRELAND.] A.D. 1833.

STAT. 3 &
GUL. 4, c.
[IR.]

"An Act for the Relief of the Owners of Tithes in Ireland, and for the Amendment of an Act passed in the last Session of Parliament, intituled, An Act to amend three Acts passed respectively in the fourth, fifth, and in the seventh and eighth years of the Reign of His late Majesty King George the Fourth, providing for the establishing of Compositions for Tithes in Ireland, and to make such Compositions permanent."

LXXIV. STAT. 3 & 4 GULIELMI 4, c. 102(2). [IRELAND.] A.D. 1833.

STAT. 3 &
GUL. 4, c.
[IR.]

"An Act to repeal certain Penal Enactments made in the Parliament of Ireland against Roman Catholic Clergymen, for celebrating Marriages contrary to the Provisions of certain Acts made in the Parliament of Ireland."

"Whereas Roman catholic clergymen were by certain acts of the parliament of Ireland rendered liable to punishment, pains, and penalties, for celebrating marriages contrary to the provisions thereof, to which punishment, pains, and penalties, no other clergymen or ministers are liable: and whereas it is expedient to amend the law in this respect, be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that so much of the following acts made in the parliament of Ireland, (that is to say,) of an act passed in the sixth year of the reign of Queen Anne, intituled, 'An Act for the more effectual preventing the taking away and marrying Children against the Will of their Parents or Guardians;' also of an act passed in the twelfth year of the reign of King George the First, intituled, 'An Act to prevent Marriages by degraded Clergymen and Popish Priests, and for preventing Marriages consummated from being avoided by Pre-contracts, and for the more effectual preventing of Bigamy;' also of an act passed in the twenty-third year of the reign of King George the Second, intituled, 'An Act for explaining and making more effectual an Act, intituled, "An Act for the more effectual preventing Clandestine Marriages;"' and another act passed in the twelfth year of his late majesty's reign, intituled, 'An Act to prevent Marriages by degraded Clergymen and Popish Priests, and for preventing Marriages consummated from being avoided by Pre-contracts, and for the more effectual punishing of Bigamy;' also of an act passed in the thirty-third year of the reign of King George the Third, intituled, 'An Act for the Relief of His Majesty's Popish or Roman Catholic Subjects of Ireland,' as contains any penal enactment which exclusively affects a Roman catholic clergyman celebrating marriage between any persons, knowing them or either of them at the time of such marriage to be of the protestant religion, or as declares or enacts that any Roman catholic clergyman who shall celebrate any marriage between two protestants or reputed protestants, or between a protestant or reputed protestant and a Roman catholic, shall be guilty of felony, and suffer death as a felon, without benefit of clergy or of the statute, or as enacts and declares that any Roman catholic clergyman who shall celebrate any marriage between two protestants, or between any such protestant and papist, unless such protestant and papist shall have been first married by a clergyman of the protestant religion, shall forfeit the sum of five hundred pounds to his majesty upon conviction thereof, shall from and after the passing of this act be repealed, and that so much and such parts only of the said recited acts are hereby repealed.

So much
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6 Ann. h
12 Geo. 1

23 Geo. 1

12 Geo. :

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"II. Provided always, and be it enacted, that nothing herein contained shall extend to any proceeding, criminal or civil, commenced before the passing of this act; and that nothing herein contained shall be construed to repeal so much of any of the said recited acts as expressly or by implication repeals any former act or acts, nor to revive or recognise any enactment as being in force at the time of the passing of this act which by any act heretofore made was expressly or by implication repealed or altered.

Nothing
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(1) Amended by Stat. 1 & 2 Vict. c. 109. (2) *Vide post.* Stat. 5 & 6 Vict. c. 28, s. 1.

1A GULIELMI IV. A.D. 1830—1837.

her enacted, that nothing in this act shall extend or be the giving validity to any marriage ceremony in Ireland, now valid under the existing laws, or to the repeal of any law for preventing the performance of the marriage ceremony.

STAT. 3 & 4 GULIELMI 4, c. 105. A.D. 1833.

the Amendment of the Law relating to Dower."

urther enacted, that no widow shall hereafter be entitled *vis*, or dower *ex assensu patris*."

STAT. 3 & 4 GULIELMI 4, c. 106. A.D. 1833.

the Amendment of the Law of Inheritance."

e king's most excellent majesty, by and with the advice spiritual and temporal, and commons, in this present and by the authority of the same, that the words and mentioned, which in their ordinary signification have a ent meaning, shall in this act, except where the nature of text of the act shall exclude such construction, be interpreted is to say,) the word 'land' shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal or copyhold, or of any other tenure, and whether the common law, or according to the custom of gavelkind or any other custom, and to money to be laid out in the purchase of chattels and other personal property transmissible to heirs, the same hereditaments and properties or any of them, and to any estate for any life or lives, or other estate transmissible, right, or title of entry or action, and any other estate inherited, and whether the same estates, possibilities, reversions, or any of them, shall be in possession, reversion, or purchase; and the words 'the purchaser' shall mean the person and otherwise than by descent, or than by any estate, the effect of which the land shall have become part of or in any manner as other land acquired by descent; and the word 'heir' shall mean the person entitled to inherit land by reason of consanguinity, as well as an ancestor or collateral relation, as where he shall be a descendant; and the expression 'descendants' of any ancestor shall extend to trace their descent through such ancestor; and the expression 'the person entitled to land' shall extend to the last person who had a right to the land, whether he did or did not obtain the possession or the receipt of the land; and the word 'assurance' shall mean any deed or instrument by which any land shall be conveyed or transferred; and every word importing the singular number only shall extend to several persons or things as well as one person or thing; and the masculine gender only shall extend and be applied to females.

er enacted, that in every case descent shall be traced from the person from whom the land shall be proved that he inherited the same; and the intent that the pedigree may never be carried further than the person from whom the land shall be proved that he inherited the same; and the land shall, for the purposes of this act, be considered as descended from the person from whom he inherited the same; and the person from whom he inherited the same shall be considered as the purchaser unless it shall be proved that he inherited the same from the last person from whom the land shall be proved that he inherited the same; and in every case be considered to have been the purchaser from whom the land shall be proved that he inherited the same.

STATUTA GULIELMI IV. A.D. 1830—1837.

"III. And be it further enacted, that when any land shall have been devised by any testator who shall die after the thirty-first day of December, one thousand eight hundred and thirty-three, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devise, and not by descent; and when any land shall have been limited, by any assurance executed after the said thirty-first day of December, one thousand eight hundred and thirty-three, to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

"IV. And be it further enacted, that when any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors, contained in an assurance executed after the said thirty-first day of December, one thousand eight hundred and thirty-three, or under a limitation to the heirs or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said thirty-first day of December, one thousand eight hundred and thirty-three, then and in any of such cases such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land.

"V. And be it further enacted, that no brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent.

"VI. And be it further enacted, that every lineal ancestor shall be capable of being heir to any of his issue; and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

"VII. And be it further enacted and declared, that none of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed; and also that no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and that no female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

"VIII. And be it further enacted and declared, that where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor, and her descendants.

"IX. And be it further enacted, that any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir; and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the

LMI IV. A.D. 1830—1837.

r of the half blood on the part of the mother

hat when the person from whom the descent
had any relation who, having been attainted,
shall have taken place, then such attainer
inheriting such land who would have been
acing his descent through such relation, if he
land shall have escheated in consequence of
of January, one thousand eight hundred and

that this act shall not extend to any descent
n of any person who shall die before the mid
ght hundred and thirty-four.

d, that where any assurance executed before
ousand eight hundred and thirty-four, or the
re the same first day of January, one thou-
shall contain any limitation or gift to the
which the person or persons answering the
o an estate by purchase, then the person or
ch description of heir if this act had not been
of such limitation or gift, whether the person
x be living on or after the said first day of
l and thirty-four."

GULIELMI 4, CAP. CX. A.D. 1833.

*7 into effect Agreements between the Bishop of
and Serjeants at Law, for vesting in the said
' Inn, Chancery Lane, and between the Parish
l the said Society; and for other Purposes."*

GULIELMI 4, cap. ii. A.D. 1834.

*Parish of Tisbury, in the County of Wilt,
aid Parish into three Parishes."*

GULIELMI 4, cap. v. A.D. 1834.

*Abdication of the Vicarage and Parish Church
stine of Lancaster, and to confirm the Sale of
tation thereto."*

GULIELMI 4, cap. vi. A.D. 1834.

*in the Feoffees acting under the Will of Isaac
County of York, held for certain Charitable
of Keighley, in the said County. . . ."*

GULIELMI 4, cap. vii. A.D. 1834.

*d Chapter of the Cathedral Church of Saint
work, to grant Licences for building upon and
the Manor of Sutton Court, in the Parish of
dleser, and to grant Licences to demise such
d to fix the Fines payable upon Admission to
"*

STATUTA GULIELMI IV. A.D. 1830—1837.

LXXXII. STAT. 4 & 5 GULIELMI 4, cap. ix. A.D. 1834.

"An Act to commute for a Corn Rent certain Tithes (1) within the Parish of Kirkby Lonsdale, in the County of Westmorland."

STAT.
GUL.

(1) *Certain tithes*.—A question arose under this statute in *Fisher (Clerk) v Birrell & another, Commissioners, &c.* (2 Q. B. 239), and from the report it appears, that an action of *assumpsit* was brought by the plaintiff against the defendants on a feigned issue under the above statute; which (sect. 1) states it to be expedient, that a commutation should be made of all tithes, (with exceptions, not material here,) throughout the parish, and recites that it has been proposed to make a valuation throughout the parish of the tithes (among others) of the milk of newly-calved cows when their number exceeds four, the valuation to commence with the fifth cow: and it appoints the defendants commissioners for valuing such tithes, and for carrying the act into execution. Sect. 25 enacts, that, if any person shall think himself aggrieved by any determination of the commissioners, it shall be lawful for him to proceed to a trial at law, in the court of Queen's Bench, of the matters so determined, and that he shall, for that purpose, cause an action to be brought upon a feigned issue against the commissioners for the time being, in cases where the matter of such claim and determination shall be exclusively between such party and the commissioners. Sect. 30 enacts, "That in the valuation of the tithe of milk the said commissioners shall compute the value of the milk of each milch cow upon each farm, commencing with the fifth cow, subject to a reasonable deduction in respect of such milk as may by law be exempt from the payment of tithe, all milk consumed in the family of the occupier, where such occupier resides in a house of husbandry in the same parish being considered as exempt from the render of tithes, a due proportion of the milk of the first four cows being included in the calculation."

The first count of the declaration, and the first plea, raised an issue upon the following question: "Whether, in the valuation of the tithe of milk in the said parish of Kirkby Lonsdale, the said defendants, as such commissioners as aforesaid, duly and properly computed the value of the milk of each milch cow upon each farm, commencing with the fifth cow, subject only to a reasonable deduction in respect of such milk as may by law be exempt from the payment of tithe; all milk consumed in the family of the occupier, where such occupier resides in a house of husbandry in the same parish, being considered as exempt from the render of tithes; a due proportion of the milk of the first four cows being included in the calculation." There were other issues, but not sufficiently important to be stated.

On the trial, before Mr. Justice Coltman, at the Westmorland summer assizes, 1839, it appeared that, the commissioners having made their estimate and determination on the matters submitted to them, the following among other objections was taken by the

plaintiff, the vicar of Kirkby Lonsdale, to their decision as to tithe of milk. That, in calculating that tithe, they had excluded from their estimate the milk consumed by calves, as well that given to them by hand and pail as that which they suck from the cow; whereas the vicar was entitled to tithe of all milk consumed by calves, except so much as was sucked by them from the cow. The learned judge, in summing up, stated, as his opinion, that all the milk sucked by the calf was exempt from tithe; so also was the milk that would have been sucked if the farmer had permitted it; and therefore all the milk given to the calf was, in his opinion, exempt. The jury found for the defendants on all the issues. In the ensuing term, a rule nisi was obtained for a new trial on the ground of misdirection on the above issue; and also on the ground that the verdict, on another issue, was against the evidence.

Upon such facts Lord Denman observed, "In this case there were, amongst others, two issues, one as to tithe of milk, the other as to tithe of calves."

"With respect to the first, the learned judge directed the jury, that there should be deduction made in respect of milk given to calves but not sucked by them from the cow. The case of *Bosworth v. Limbrick*, (3 Gwillim, 1101; 2 E. & Y. 310; 8 C. (in Dom. Proc.) as *Cullimore v. Bosworth*, 7 Bro. P. C. 57, 2nd ed.) was cited to shew that this direction was wrong; but it does not necessarily go that length. It was further urged, that the principle on which turnips are titheable must govern this case. It is established in numerous cases that, if turnips be drawn and given to milch cows or other profitable cattle, they are titheable; though, if the same cows or cattle had depastured them without their being drawn, the turnips would not be titheable. So, it was said, if calves suck the cows, the milk is not titheable, but, if the cows be milked, that milk is titheable, whether applied to the feeding of calves or any other purpose, except the use of the family.

"The analogy seems to be perfect: yet we should have hesitated to act upon it, because we do not see any sound principle upon which the decisions as to turnips can be justified. But, when we find that the legislature, by Stat. 5 & 6 Gul. 4, c. 75, has done away with the distinction in regard to turnips, expressly providing that turnips severed and eaten on the ground shall be titheable in the manner only as if eaten without being severed, we have a different analogy suggested, upon which we have no hesitation in acting.

"The judge's direction was said to be wrong, because he had not expressly limited the exception of milk given to calves to the period before the calves themselves were titheable. We do not find that any objection, on account of the want of such limitation, was made at the trial, and we have no doubt

IV. A.D. 1830—1837.

ELM 4, c. 22 (1). A.D. 1834.

*1 year of King George the Second, re-
mittees, and other periodical Payments."*

seventh year of the reign of his majesty
act for the more effectually securing the
by Tenants,' it was enacted, that when
before or on the day on which any rent
lease or lease of any lands, tenements, or
ath of such tenant for life, the executor
uld and might, in an action on the case,
under-tenants of such lands, tenements,
die on the day on which the same was
ch day then a proportion, of such rent
ived of the last year or quarter of a year
rowing due as aforesaid, making all just
f respectively: and whereas doubts have
of the said act apply to every case in
the death of the person by whom such
eath of any life or lives for which such

although every such case is within the
und prevented by the said act; and it is
d be removed by a declaratory law: and
other payments due at fixed or stated
was provision be made for the purpose,)
(and their representatives) whose income
as sources by the determination thereof
prived of means to satisfy just demands,
annuities, and other payments not being
: be it therefore enacted and declared by
with the advice and consent of the lords
his present parliament assembled, and by
rved and made payable on any demise or
ta which have been and shall be made,
or shall determine on the death of the
person was not strictly tenant for life
as for which such person was entitled to
the rents reserved by such leases, and the
person granting the same, his or her execu-
,) be considered as within the provisions

from and after the passing of this act all
nant in fee or for any life interest, or by
which leases shall have been granted after
ge, and other rents, annuities, pensions,
other payments of every description, in
Ireland, made payable or coming due at
hall be executed after the passing of this
trument) that shall come into operation
rtioned so and in such manner that on
y such rents, annuities, pensions, divi-
payments as aforesaid, or in the estate,

new trial as to that issue only, on payment
of costs of that issue: and the verdict on all
the other issues must stand."

(1) This statute has been extended to rent
charges under Stat. 6 & 7 Geo. 4, c. 71, s.
86.

STATUTA GULIELMI IV. A.D. 1830—1837.

fund, office, or benefice from or in respect of which the same shall be issuing or derived, or on the determination by any other means whatsoever of the interest of any such person, he or she, and his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents, annuities, pensions, dividends, moduses, compositions, and other payments according to the time which shall have elapsed from the commencement or last period of payment thereof respectively (as the case may be), including the day of the death of such person, or of the determination of his or her interest, all just allowances and deductions in respect of charges on such rents, annuities, pensions, dividends, moduses, compositions, and other payments being made; and that every such person, his or her executors, administrators, and assigns, shall have such and the same remedies at law and in equity for recovering such apportioned parts of the said rents, annuities, pensions, dividends, moduses, compositions, and other payments, when the entire portion of which such apportioned parts shall form part shall become due and payable, and not before, as he, she, or they would have had for recovering and obtaining such entire rents, annuities, pensions, dividends, moduses, compositions, and other payments if entitled thereto, but so that persons liable to pay rents reserved by any lease or demise, and the lands, tenements, and hereditaments comprised therein, shall not be resorted to for such apportioned parts specifically as aforesaid, but the entire rents of which such portions shall form a part shall be received and recovered by the person or persons who if this act had not passed would have been entitled to such entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under this act in any action or suit at law or in equity.

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"III. Provided always, and be it enacted, that the provisions herein contained shall not apply to any case in which it shall be expressly stipulated that no apportionment shall take place, or to annual sums made payable in policies of assurance of any description."

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LXXXIV. STAT. 4 & 5 GULIELMI 4, c. 25 (1). A.D. 1834.

"An Act to alter and extend the Provisions of an Act passed in the eleventh year of the Reign of His late Majesty King George the Fourth, for amending and consolidating the Laws relating to the Pay of the Royal Navy."

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"VIII. And whereas by the said recited act, in order to avoid the expense which the relatives of deceased officers, seamen, and others may otherwise be put to in obtaining payment of small sums due to such deceased persons, provision is made for the payment thereof without probate or letters of administration in the several cases therein mentioned, under a certificate or cheque, to be issued by the inspector of seamen's wills, which officer, by an act passed in the second year of the reign of his present majesty for amending the laws relating to the civil departments of the navy, is also empowered to issue a similar certificate or check in other cases as therein mentioned; and whereas it is expedient to extend the said provision to cases not provided for by either of the said acts, and to consolidate the law upon this subject; be it further enacted, that from and after the thirtieth day of September one thousand eight hundred and thirty-four, in the case of the death of any commissioned, warrant, or petty officer, seaman, commissioned or non-commissioned officer of royal marines or private marine, or of any widow entitled to a pension on the establishment of the navy, or of any person entitled to an allowance from the Compassionate Fund, or of any person having been employed in any of his majesty's dock-yards, naval victualling, or medical establishments, or in any of the civil departments of the navy, or of any person entitled to any prize money, bounty, grant, or other money in the nature of naval prize, and respectively leaving assets to be administered which shall not in the whole exceed the sum of thirty-two pounds, it shall be lawful for the inspector of seamen's wills in the Admiralty office, after having satisfied himself, by due investigation, of the right of any claimant to probate of the will if the deceased shall have left a

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(1) *Vide* Stat. 11 Geo. 4 & 1 Gal. 4, c. 20.

7, to letters of administration, and also on due proof, inspector, that the assets of the deceased to be admitted exceed the sum of thirty-two pounds, to issue a bill in admission of the claim, which certificate shall be a warrant for executing the office of lord high admiral, president, and so far as regards any monies payable in not exceeding thirty-two pounds, shall have the same effect as the deceased's will, or a grant of administration of the office might have; and that payment to be made under the said certificate of any monies not exceeding the said sum of thirty-two pounds on account of any naval pay or wages, or pay or salary as marine pay, or of any half-pay, pension or prize, or any share in the nature of prize, or of any allowance from the said office due on account of the deceased's services, or superannuation retirement from any services in any of his majesty's naval or medical establishments, or in any of the civil departments under the direction of the said commissioners, shall be paid against all parties as effectually as if the same had letters of administration, and shall be allowed to the executor of the accounts."

Act of hanging the Bodies of Criminals in Chains." enacted, that in every case of conviction in Ireland of any crime before which such prisoner shall have been tried he be buried within the precincts of the prison within which he has been confined after conviction, and the sentence to be pronounced shall express that the body of such prisoner shall be buried in such prison."

is relating to Marriages celebrated by Roman Catholics
re not of the Established Church, in Scotland."

nt to facilitate the exchange of pieces of land lying common fields, meadows, or pastures, for other pieces m, or being part of the inclosed lands in the same ay it therefore please your majesty that it may be y the king's most excellent majesty, by and with the rds spiritual and temporal, and commons, in this preud by the authority of the same, that from and after ll be lawful for any person who shall be seized or pos- sion to any land in any common field, as tenant in feal or special, or for life or lives, or by the curtesy of tate of freehold, or for years determinable on any life years whereof one hundred years shall be unexpired, s, fees for charitable or other uses, husband, or com- t the time of making any exchange authorised by this lunatic, or fame covert, or under any other disability, consent as hereinafter mentioned to grant and convey d to any other person in lieu of and in exchange for g in the same or any other common field, or for any e same or any adjoining parish, and to accept and take land in lieu of and in exchange for the land in such

STATUTA GULIELMI IV. A.D. 1830—1837.

"II. And be it further enacted, that it shall be lawful for any person who shall be seised or possessed of or entitled in possession to any land which it may be desirable to exchange for the land in such common field, whether such person shall be tenant in fee-simple, or in fee-tail, general or special, or for life or lives, or by the curtesy of England, or for any other estate of freehold, or for years determinable on any life or lives, or for any term of years whereof one hundred years shall be unexpired, and for the guardian, trustee, feoffee for charitable or other uses, husband, or committee of such person who shall be an infant, idiot, lunatic, or feme covert, or under any other disability, to consent and agree to such exchange, and to grant and convey such land to the person proposing to make such exchange in lieu of and in exchange for the land lying in such common field, subject to the provisions hereinafter contained.

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"III. Provided always, and be it further enacted, that when any such exchange shall be made by any person having a less estate or interest than in fee-simple in the land to be by him granted or conveyed in exchange, or shall be made by any person under any disability, the land to be so taken in exchange shall at the time of making such exchange be, or shall by the payment of a sufficient sum for equality of exchange be made, of equal value with or not of less value than the land to be granted or conveyed in exchange.

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"IV. And be it further enacted, that whenever any exchange shall be proposed to be made under the authority of this act, and either of the parties thereto shall have a less estate or interest in the land to be by him granted or conveyed in exchange than a fee-simple, or shall be under any disability, such exchange shall not be completed unless the person to whom the next immediate vested estate of freehold in remainder or reversion shall have been limited, (provided such person shall be of the full age of twenty-one years, and being a female shall be unmarried,) shall consent thereto, and shall testify such consent by signing the draft deed of exchange hereinafter mentioned, and such consent shall be sufficient for the purpose of authorizing such exchange notwithstanding the person giving the same may have an equitable estate only in the land intended to be conveyed in exchange, or may have previously disposed of or charged or incumbered his reversionary estate therein: provided always, that if the person to whom such next immediate vested estate in remainder or reversion may have been limited shall at the time of such exchange happen to be an infant or feme covert, or an idiot or lunatic, then and in such case it shall be lawful for the guardian or husband or committee of such infant, feme covert, idiot, or lunatic, (such guardian, husband, or committee not being himself the person by whom the exchange is proposed to be made,) to consent to such exchange, and to sign the draft deed of exchange in his or her stead; provided further, that whenever the guardian or husband or committee of such infant, feme covert, idiot, or lunatic shall himself be the person by whom such exchange is proposed to be made, then and in such case it shall be lawful for the court of Chancery, upon petition, to be preferred to the said court in a summary way, to appoint a person to act as protector to such infant, feme covert, idiot, or lunatic for the purposes of this act, and, if he shall think fit so to do, to consent to such exchange, and to sign the draft deed of exchange in the stead of such infant, feme covert, idiot, or lunatic, or of his or her guardian, husband, or committee.

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"V. Provided always, and be it further enacted, that no exchange shall be made of any land held in right of any benefice, without the consent of the patron thereof, and of the archbishop or bishop to whose ordinary or peculiar jurisdiction the said benefice may be subject, such consent to be signified by the patron and archbishop or bishop respectively signing the draft deed of exchange hereinafter mentioned; and such consent, when so given and signified, shall be a sufficient authority for such exchange, any law or statute to the contrary notwithstanding; provided always, that if the patronage of such benefice shall happen to be in the crown, and the benefice shall exceed the yearly value of twenty pounds in the king's books, it shall be lawful for the lord high treasurer or the first lord commissioner of the treasury for the time being, but if it shall not exceed the yearly

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TUTA GULIELMI IV. A.D. 1830—1837.

made in the king's books, then for the lord high chancellor, lord privy seal, and commissioners of the great seal for the time being to consent to sign the draft deed of exchange on behalf of the crown, and such benefice shall happen to be in the crown in right of the king, it shall be lawful for the chancellor for the time being of the king to sign the draft deed of exchange on behalf of the king; and if the patronage of such benefice shall be part of the patronage of the crown in right of the duchy of Cornwall, then for the duke of Cornwall to sign the draft deed of exchange on behalf of the duke; and if the patronage of such benefice shall be part of the patronage of the crown, to consent to such exchange, and to sign the draft deed of exchange on behalf either of the Duke of Cornwall, or of the Duke of Cornwall, or on behalf of the crown in right of the duchy of Cornwall; such benefice shall happen to be a minor, idiot, lunatic, or feme covert, it shall be lawful for the guardian, committee, or husband of such person to sign the draft deed of exchange on behalf of such person, and on his or her behalf.

And it is further enacted, that no exchange shall be made in pursuance of this act by any bishop, dean, or other head of a cathedral, or other ecclesiastical corporation sole, unless, in the case of a cathedral, with the consent of the archbishop of the province, to be signified by the signing the draft deed of exchange hereinafter mentioned, or by a dean or other head of a chapter, with the consent of the chapter, to be signified by their affixing their common seal to the said draft deed of exchange, in the case of an archdeacon, prebendary, or other ecclesiastical corporation sole, with the consent of the archbishop or bishop of the diocese, by such archbishop or bishop signing the said draft deed of exchange.

And it is further enacted, that every exchange under the authority of this act, made according to the form in the schedule to this act annexed, shall be valid in all respects, notwithstanding the number of parties and the circumstances of the case, when executed by the respective parties, be valid and effectual to all intents and purposes, without livery of seisin made or to be made, by any person or party to perfect or complete the same.

And it is further enacted, that whenever any land or tenement shall be exchanged under the authority of this act, the same shall be produced to the court rolls of the manor of which the land may be parcel, or to his steward, or to the clerk of the court, who shall cause the same to be entered on the court rolls of the manor.

And it is further enacted, that the fees and charges to be demanded by the clerk of a manor for entering on the court rolls of such manor any deed or other instrument required by this act to be entered thereon, shall be the sum of sixpence for every law folio of seventy-two words contained in the deed or other instrument.

And it is further enacted, that whenever any exchange shall be made in pursuance of this act by any archbishop, bishop, dean or other head of a cathedral, or other ecclesiastical corporation sole, or by the incumbent of any benefice, the deed of exchange being executed by the respective parties, shall in the case of the exchange being made by an archbishop or bishop, be entered in his own registry, in the case of the exchange being made by a dean or other head of a cathedral, or other ecclesiastical corporation, be entered in the registry of the cathedral or other ecclesiastical corporation, or by the incumbent of a benefice, be entered in the registry of the bishop of the diocese.

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"XI. And be it further enacted, that an office copy of any deed of exchange or other instrument which under the provisions of this act shall be entered on any such registry as aforesaid, (such office copy being certified by the registrar or his deputy,) shall be allowed as evidence thereof in all courts and places, and every person shall be entitled to require any such office copy, and shall also be allowed at all usual and proper times to search for and inspect any deed of exchange or other instrument which shall be so entered; and the registrar shall be entitled to charge for the entry of every such deed of exchange or other instrument after the rate of sixpence for every law folio of seventy-two words contained therein, and the sum of one shilling and no more for allowing any such search or inspection as aforesaid, and after the rate of sixpence for every law folio of seventy-two words in any office copy to be made and certified as aforesaid.

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"XII. And be it further enacted, that before any exchange shall be made under the authority of this act a draft of the intended deed of exchange, containing a correct description of the several lands proposed to be exchanged, and signed by the respective parties, and also by the several persons whose consent to such exchange is hereinbefore required to be given, and accompanied by an estimate of the value as well of the land proposed to be given as of the land proposed to be taken in exchange, and whenever the exchange shall be proposed to be made by or with any person under disability, then accompanied also by a copy of the several limitations contained in the deed or will under which such person may be entitled, shall be deposited with the clerk of the peace of the county in which the greater part of the land may be situated: and a notice of such draft and estimate having been so deposited (such notice containing a description of the land intended to be exchanged) shall be published in some newspaper usually circulated in the county wherein such land is situated at three several times in three successive months after such draft and estimate shall have been so deposited; provided always, that whenever a corporation aggregate shall be one of the parties to such proposed exchange, or the consent of a corporation aggregate shall be necessary thereto, the affixing of the common seal of such corporation to such draft deed of exchange shall be deemed a sufficient compliance with the provisions of this act.

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"XIII. And be it further enacted, that if any person claiming to have an interest in the land proposed to be exchanged shall object to such exchange, it shall be lawful for him to state such objection in writing, and to deposit the same with the clerk of the peace at any time not less than fourteen days before the holding of the assizes at which such proposed exchange shall be taken into consideration as hereinafter mentioned; and such draft deed of exchange, and estimate, and copy of limitations, and the said statement of objection, shall be open to the inspection of any person.

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"XIV. And be it further enacted, that the justices of the peace for the several counties, ridings, divisions, cities, towns, liberties, and precincts within England and Wales, shall in the manner directed by an act passed in the fifty-seventh year of the reign of King George the Third, intituled, 'An Act to enable Justices of the Peace to settle the Fees to be taken by the Clerks of the Peace of the respective Counties and other Divisions of England and Wales,' ascertain, make, and settle a table of fees and allowances to be taken by the clerks of the peace for such counties, ridings, divisions, cities, towns, liberties, and precincts, for their trouble in the execution of the duties imposed upon them by this act, and such fees shall be subject to alteration and regulation in the manner by the said act directed.

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"XV. And be it further enacted, that the clerk of the peace shall cause the said draft deed of exchange, estimate, and statement of objection, (if any,) and all other papers relating thereto, to be laid before the senior judge of nisi prius at the assizes to be holden next after the expiration of three months from the time of the deposit of such draft deed of exchange with the clerk of the peace as aforesaid; and such judge shall appoint a barrister, of not less than five years standing, for taking into consideration the said draft deed and statement, who shall forthwith appoint a time for that purpose.

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"XVI. And be it further enacted, that such barrister shall be empowered to

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ive the next immediate vested estate of free-
ch estate, and that the notices and the con-
ly given; and such barrister shall hear and
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ll have been appointed, or, in case of the

STATUTA GULIELMI IV. A.D. 1830—1837.

death or illness or retirement of such judge, to any other judge of the superior courts of Record at Westminster, who shall examine and allow the same, or so much or such parts thereof as he shall see fit; and the same when so allowed shall be paid in the same manner as the other costs and charges incident to such exchange are hereinbefore directed to be paid: provided always, that if more than one case of exchange shall be referred to the same barrister, the remuneration to such barrister shall not be cumulative, but shall be considered as fixed for the day and not for the case.

"XXIII. And be it further enacted, that in case any money shall be directed to be paid by either party to the other of them for equality of exchange, and the party to whom such money shall be directed to be paid shall (in case it shall exceed the sum of twenty pounds) be paid with all convenient speed into the bank of England in the name and with the privity of the accountant-general of the court of Chancery, to be placed to his account there *ex parte* the person entitled to the rents and profits of the land for or in respect of which such money shall be payable, to the intent that such money shall be applied, under the direction of the court, to be signified by an order made in a summary way upon a petition to be preferred by or on behalf of the person who would have been entitled to the rents and profits of the said land, either in the purchase or redemption of the land tax, or in discharging any debt or incumbrance affecting the said land, or affecting any other lands standing settled therewith to the same or the like uses, or in the purchase of other lands, which shall be conveyed to the same or the like uses, or such of them as shall be then subsisting and capable of taking effect; and in the meantime and until such purchase shall be made the said money shall, by order of the said court, upon application thereto, be invested by the said accountant-general in his name in some of the public funds, and the dividends thereof shall from time to time be paid to the person who would have been entitled to the rents of the land so to be purchased and settled; but in case such money shall not exceed the sum of twenty pounds, then the same shall be paid to the person entitled to the rents and profits of the land for or in respect of which the same may be payable, or in case of infancy, lunacy, idiocy, or coverture, to his or her guardian, committee, or husband, as the case may be.

"XXIV. And be it further enacted, that from and immediately after such deed of exchange as hereinbefore is mentioned shall have been duly executed by the necessary parties, the land which by such deed is given in exchange shall be exonerated and discharged from the uses, trusts, powers, conditions, limitations, and restrictions, charges, and incumbrances then affecting the same, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, and restrictions, charges and incumbrances, as affected the land taken in exchange at the same date; and the land so taken in exchange shall be exonerated and discharged from all uses, trusts, powers, conditions, limitations and restrictions, charges and incumbrances then affecting the same, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations and restrictions, charges, and incumbrances as affected the lands given in exchange at the same time.

"XXV. And be it further enacted, that no person to whom any land shall have been granted or conveyed in exchange according to the provisions of this act, shall at any time thereafter be evicted from the peaceable and quiet possession of such land by reason or in consequence of any person claiming right thereto through any title prior to that of, or through any defect of title in, the person by whom such land may have been granted or conveyed; but nevertheless it shall be lawful for the person claiming such right, and he is hereby authorized and empowered, to use, exercise, and enjoy all such and the same powers and remedies in trying his right to and in obtaining and recovering possession of the land which shall have been granted or conveyed in exchange as the person so claiming would in case this act had not been made have been enabled to use, exercise, or enjoy in trying the right to and recovering the possession of the land in exchange for which the same shall have been so granted or conveyed under the authority of this act.

STATUTA GULIELMI IV. A.D. 1250—1257.

the rectory, vicarage, or perpetual curacy to which such disappropriated parish tithes or portions of tithes or glebes may be united, or in the separate benefice and parish into which the said disappropriated parish, tithes or portions of tithes, or glebes may be formed, divine service shall be constantly and duly celebrated; and if the same shall be made a separate benefice and parish, then and in such case it shall and may be lawful for the king's majesty, or other person or persons, or body or bodies corporate, having the right of nomination, appointment, or presentation to such archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, present, collate, nominate, and appoint a clerk to be the clerk; and such clerk when duly presented, instituted or collated, and his successors, shall be and become bodies politic and corporately endowed with all the tithes, portions of tithes, or glebes of such parish, and so disappropriated, disunited, and dissolved, and shall have the actual cure of souls of and within the said

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[1257.]

acted, that where under this or any other act any parish in which a perpetual curate endowed shall be disappropriated or disunited from any benefice, such curate shall immediately upon such disunion, and by virtue thereof, be and become rector of the parish so disappropriated or disunited; and shall merge in the said rectory or vicarage.

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becomes
rector of such

Further enacted, that in any case in which the said lord lieutenant or governors of Ireland and council shall have power by any provisions of the said recited act or this act, and shall think fit to unite, and divest, any rectory, vicarage, tithes or portions of tithes, or glebes, or parts thereof, from and out of any archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, it shall and may be lawful for the said lord lieutenant or other chief governor or governors and council, to unite and annex to any adjoining or neighbouring perpetual curacy as aforesaid, such rectory, vicarage, tithes, or glebes, or portions thereof respectively, which shall so have been disappropriated, or divested as aforesaid, together with the actual cure of souls of such rectory or vicarage, or such part or parts thereof as shall be respectively, or within such place or places respectively, be so united and annexed; and in such case the said lord lieutenant or other chief governor or governors and council shall direct in what manner the right of presentation or nomination to such rectory, vicarage, or perpetual curacy shall upon the dissolution thereof belong to or be exercised by and between the heirs and successors, and by and between any other person or persons, or corporations, in like manner as the said lord lieutenant or other chief governor or governors and council are authorized and empowered to unite, and divest, any rectory, vicarage, tithes or portions of tithes, or glebes, or parts thereof respectively, or shall be united to any vicarage or perpetual curacy, by or by virtue of the said recited act.

Lord lieut.
may unite
any adjoining
parish to
rectory,
disappropriated
from benefice.

It is also enacted, that by the said act it is made lawful for the lord lieutenant or governors of Ireland, with the privy council there, in the consent therein mentioned, to disappropriate, disunite, or dissolve, any rectory, vicarage, tithes or portions of tithes, or glebe, from any archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, and to unite the same to any vicarage, perpetual or other curacies, or such parishes as are distinct parishes or benefices; be it enacted, that the said parishes in towns where ministers' money is paid, whether the same be belonging thereto or not; and that it shall and may be lawful for the said lord lieutenant or other chief governor or governors of Ireland, with the consent of the dignitary, or other ecclesiastical person having the cure of souls in any such parish, or in his said dignity, prebend, or canonry, to

The provisions
of 3 & 4
4, c. 37,
124, extend
to ministers'
money.

.T. 4 & 5 ecclesiastical patron or incumbent had probable cause for defending such action;
L. 4, c. 39. but in no case, when the defence to any such action shall be grounded upon a presentation or presentations, collation or collations, previously made to any benefice, shall such presentation or presentations, collation or collations, be deemed or considered probable cause for defending such action."

.T. 4 & 5 XCII. STAT. 4 & 5 GULIELMI 4, C. 40. A.D. 1834.

L. 4, c. 40. "*An Act to amend an Act of the tenth year of His late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies.*"

.T. 4 & 5 XCIII. STAT. 4 & 5 GULIELMI 4, C. 41. [SCOTLAND.] A.D. 1834.

L. 4, c. 41. "*An Act to regulate the Appointment of Ministers to Churches in Scotland erected by voluntary Contribution.*"

.T. 4 & 5 XCIV. STAT. 4 & 5 GULIELMI 4, C. 46. [IRELAND.] A.D. 1834.

L. 4, c. 46. "*An Act to amend an Act passed in the fifty-eighth year of King George the Third, for establishing Fever Hospitals, and to make other Regulations for Relief of the suffering Poor, and for preventing the Increase of Infectious Fevers in Ireland.*"

other ecclesiastical patron or incumbent, had probable cause for defending such action."

"The question is, whether this proviso extends to the former statute and judgments on demurrer, or is limited to cases of verdict for the plaintiff. What is there so to limit it? The terms of the proviso are sufficiently large to comprehend judgment on demurrer, and no reason can be assigned for the restriction proposed: it is as just that the bishop should receive the protection of the court on demurrer as on verdict; and if so, why should not the clause be interpreted as in other cases, where there are several statutes *in pari materia*?"

"Then, as to the question whether the bishop had probable cause for defending the action, in a case which we took time to consider, it might be permitted to the bishop to doubt."

The following remarks have been extracted from the First Report of the Real Property Commissioners, p. 53 (May 11, 1829):

"We have next to mention a species of real property of great importance, as to which there is at present no limitation. The possessory action of *quare impedit*, by which the right to an advowson is usually tried, may be brought upon any presentation however remote. Thus, the title to an advowson may be questioned after a family has been for centuries in the undisturbed possession of it; and, upon the sale of an advowson, or of a best presentation, great trouble and expense are generally incurred in making out a title to the satisfaction of the purchaser. There must be some difficulty in framing a limitation for a species of property of so peculiar a nature. Mere length of time would not satisfy justice, unless the period were much beyond the usual bounds of living memory, because an opportunity of contesting the right may not occur more than once in a century. Lord Coke states an in-

stance of a living of his own, in which a person had been incumbent above fifty years; and instances might easily be mentioned, in which two successive incumbents had continued for upwards of a hundred years. But adopting the suggestion of Mr. Justice Blackstone, whose high authority we are glad to have for this, as well as for some other amendments of the law which we propose, we think a limitation may be safely framed, compounded of length of time and number of avoidances, or rather of presentations, or opportunities to present by the patron. We conceive that, (counting from the time when the title to an advowson has accrued in possession,) as soon as sixty years have elapsed, and there have been three presentations, with institution and induction thereupon by a person claiming adversely to be patron, the right should be barred. The length of the period is required to guard against collusive avoidances and presentations; and it seems sufficient for this purpose. Presentations by the crown, on the promotion of the incumbent to a bishopric, of course will not be reckoned; but a presentation by lapse, we think ought, as an opportunity then existed of asserting the right. It seems unnecessary to clog the limitation with disabilities which have generally not been allowed where the period exceeded twenty years; but, as against a remainder-man, after any estate less than an estate tail, the period of sixty years must be reckoned from the remainder-man coming into possession on the determination of the particular estate. It has been suggested that the period should be extended to one hundred years; and that the adverse possession should be a bar to all the world. It seems, however, more in analogy to the general principles of the law of England to give effect to adverse enjoyment, only from the accruing of the right to be barred."

XCV. STAT. 4 & 5 GULIELMI 4, CAP. LXV. A.D. 1834.

"An Act for establishing a general Cemetery in the Neighbourhood of the City of Dublin."

STAT. 4 & 5
GUL. 4, CAP.
LXV.

XCVI. STAT. 4 & 5 GULIELMI 4, c. 73. A.D. 1834.

"An Act to grant Relief from the Duties of Assessed Taxes in certain Cases."

STAT. 4 & 5
GUL. 4, c. 73

"IV. And whereas by the said acts respectively passed in the forty-eighth and fifty-second years of King George the Third, certain further duties over and above the other duties therein mentioned are granted and made payable for every male servant retained or employed in any of the capacities mentioned in schedule (C), number 1, to the said acts respectively annexed, by any male person never having been married; be it enacted, that the said further or additional duties so granted and made payable as aforesaid by reason or on account of the person retaining or employing any such male servant never having been married shall cease to be paid or payable for or in respect of any male servant retained or employed by any priest of the Roman catholic faith who shall have duly taken and subscribed the oaths and declarations required by law; provided such priest shall duly return a list of all such servants retained or employed by him, and shall add the letter B to the signature of his name to every such list, in like manner as other persons never having been married are required by the laws in force to denote the same by adding the said letter B to their signatures to such lists as aforesaid; and provided such exemption shall be duly claimed in the manner hereinafter directed.

Roman catholic
clergymen
exempted from
the additional
duties granted
in respect of
bachelors'
servants.

"V. And be it enacted, that any rector, vicar, or curate, actually doing duty in the church or chapel of which he is rector, vicar, or curate, (except such person who shall occasionally perform the duty appertaining to any rector, vicar, or curate, without being the regular officiating minister of the parish or place in which such duty shall be performed,) and any priest of the Roman catholic faith who shall have duly taken and subscribed the oaths and declarations required by law, and any teacher or preacher of any separate congregation of protestant dissenters whose place of meeting shall have been duly registered, such teacher or preacher, having duly taken and subscribed the oaths and declaration required by law, and not following any secular occupation except that of a schoolmaster, shall respectively be exempt from the duties granted by any act or acts relating to the duties of assessed taxes for one horse, mare, gelding, or mule, kept or used for the purpose of riding or of drawing any carriage not chargeable with duty; provided the person claiming such exemption shall not be possessed of an income of one hundred and twenty pounds per annum or upwards, whether arising from ecclesiastical preferment or otherwise, and shall not keep more than one horse, mare, gelding, or mule, which otherwise would be chargeable with duty under the said acts; and provided also, that such exemption shall be duly claimed in the manner hereinafter directed."

Clergymen as
dissenting
ministers,
whose income
are under 120
a year, ex-
empted from
the duty on
one riding
horse.

XCVII. STAT. 4 & 5 GULIELMI 4, CAP. LXXV. A.D. 1834.

"An Act for making the Hamlet of Hammersmith, within the Parish of Fulham, in the County of Middlesex, a distinct and separate Parish; and for converting the Perpetual Curacy of the Church of Saint Paul, Hammersmith, into a Vicarage, and for the Endowment thereof."

STAT. 4 & 5
GUL. 4, CAP.
LXXV.

XCVIII. STAT. 4 & 5 GULIELMI 4, c. 76 (1). A.D. 1834.

"An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales."

STAT. 4 & 5
GUL. 4, c. 7

"XLVI. And be it further enacted, that it shall be lawful for the said commissioners, as and when they shall see fit, by order under their hands and seals, to direct the overseers or guardians of any parish or union, or of so many parishes or

Commissioners
may direct
overseers and

(1) Vide Stat. 1 & 2 Gul. 4, c. 60; Stat. 6 & 7 Gul. 4, c. 86; and Stat. 2 & 3 Vict. c. 56.

STAT. 4 & 5
GUL. 4, c. 76.
guardians to
appoint
paid officers

unions as the said commissioners may in such order specify and declare to be united for the purpose only of appointing and paying officers, to appoint such *paid officers* (1), with such qualifications as the said commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of

(1) *Paid officers*.—In *Regina v. Braintree Union (The Guardians of the Poor of)*, (1 Q. B. 130,) it was held that, the poor-law commissioners may order the guardians of a union to appoint a chaplain for the union workhouse, with a salary; such chaplain being an officer within the meaning of Stat. 4 & 5 Gul. 4, c. 76, s. 46, interpreted by sect. 109; and that it was no objection to such order that, by a previous order, not expressly altered or rescinded, the commissioners had authorized the guardians to appoint such chaplain if they deemed it necessary, and had specified his duties in case of his appointment.

Lord Denman delivering the judgment of the court in the following language: "This was an argument on the return to a writ of *mandamus*; but it brought into question the validity of the writ, which directed the guardians to appoint a chaplain to a union workhouse, according to an order of the poor-law commissioners that that order is not warranted by the act. The defendants denied that such a power is given by the act, and properly called on the prosecutors to shew what provision of the act could be carried into execution by the chaplain of a workhouse, as the paid officers to be appointed under the forty-sixth clause must be appointed either with reference to the administration of the relief and employment of the poor, or to auditing of accounts, or to the general terms, 'otherwise carrying the provisions of this act into execution;' and it was admitted that this appointment could not be referred to either of the two former objects.

"The effect of these general terms was much considered in the recent case of *Regina v. The Poor-Law Commissioners, in the matter of the Cambridge Union*, (9 A. & E. 911,) and the language used by the judges on that occasion was pressed upon us in argument. We there held that the appointment of a collector of poor-rates was not within those general terms, because there is no provision of the act which has any reference to the collection of the poor-rates, they being made and collected under other acts, and the act in question applying only to the expenditure of those rates after they are collected. The only provision to be found in the act, which could authorize the appointment of a collector, was that respecting a union of parishes for the purpose of rating; in which case the rate would be made and collected under the act in question; and the cases of such unions afforded occasions on which the interpretation clause containing the word 'collector' under the head of 'officer,' might operate. The same interpretation clause, under the same head of 'officer,' has the word 'clergymen;' and, applying the same tests as were applied in the case in 9 *Adolphus and Ellis*, the result will appear to be very different. It is true that no provision is to be found in the act in question directly

authorizing the appointment of a chaplain, or even using the word 'chaplain,' or any word of a similar import; but the 19th section plainly shows the intention of the legislature, that the inmates of the union workhouse, of whatever religious persuasion, should have religious assistance from ministers of their own persuasion; it shews moreover that some general regulations for affording such assistance to the inmates were intended, as well as some exceptions and particular regulations in favour of those who dissent, and could not conscientiously reap the benefit of those general regulations. Then the 42nd section, giving power to the commissioners to make rules and regulations for the government of workhouses, makes it further incumbent upon them to carry into effect the intentions of the legislature, as shewn in the 19th section. In these sections, therefore, are to be found the provisions of the act as to religious assistance and instruction to the inmates of the workhouse; and the 46th section gives the commissioners the means of carrying into effect those provisions in the only way in which it could be done beneficially, namely, by enabling them to call on the guardians to appoint a chaplain with an adequate salary, who, by the interpretation clause, comes clearly under the head of a paid 'officer.'

"This is not the only instance of such indirect provision in this act. Medical attendance is evidently contemplated; yet there is no specific enactment as to the appointment of medical men; but they are included in the interpretation clause under the head of 'officer,' in the same manner as 'clergymen.' Neither were chaplains of workhouses unknown to the law; for many local acts of parliament contain express provisions respecting their appointment. Indeed, that circumstance was used in argument by the counsel in favour of the return, as furnishing something on which the word 'clergymen' is the interpretation clause might operate, and so make it unnecessary to find any part of the act in question to which to apply it. But, whatever force may belong to that argument, it would be very strange if the act meant to give the commissioners by express provision a control over chaplains under local acts, and not allow them to create similar duties and officers in the establishment which they were themselves to form.

"Remarks of this nature are by no means conclusive; we have no inclination to affirm judicially that the law has called a power into existence, merely because there is a probability of its having intended to do so, or because it may have manifested the wish to have something done for which that power would furnish the means. But we have no doubt that the religious instruction of the inmates was intended to be involved in the management of the workhouse, and that the legislature actually intended to give a general power

the poor, and for the examining and auditing, allowing or disallowing of accounts in such parish or union, or united parishes, and otherwise carrying the provisions of this act into execution; and the said commissioners may and they are hereby empowered to define and specify and direct the execution of the respective duties of such officers, and the places or limits within which the same shall be performed, and direct the mode of the appointment and determine the continuance in office or dismissal of such officers, and the amount and nature of the security to be given by each of the said officers as the said commissioners shall think ought to give security, and when the said commissioners may see occasion, to regulate the amount of salaries payable to such officers respectively, and the time and mode of payment thereof, and the proportions in which such respective parishes or unions shall contribute to such payment; and such salaries shall be chargeable upon and payable out of the poor-rates of such parish or union, or respective parishes, in the manner and proportion fixed by the said commissioners, and shall be recoverable against the overseers or guardians of such parish or union or parishes, by all such ways and means as the salaries of assistant overseers or other paid officers of any parish or union are recoverable by law; and all such payments shall be valid, and shall be allowed in the accounts of the overseers or guardians paying the same.

STAT. 4 & 5
GUL. 4, c. 7
for parishes &
unions;
and fix their
duties, and the
mode of ap-
pointment or
dismissal, and
the security;
and regulate
their salaries

"LIV. And be it further enacted, that from and after the passing of this act, the ordering, giving, and directing of all relief to the poor of any parish which, according to the provisions of any of the said recited acts, or of an act passed in the first and second years of the reign of his present majesty, intituled, 'An Act for the better regulating of Vestries, and for the Appointment of Auditors of Accounts in certain Parishes in England and Wales,' or of this act, or of any local acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not, (but subject in all cases to, and saving and excepting the powers of the said commissioners appointed under this act,) shall appertain and belong exclusively to such guardians of the poor or select vestry, according to the respective provisions of the acts under which such guardians or select vestry may have been or shall be appointed; and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor-rate than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity, in which cases he is hereby required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money. . . .

No relief to
in future give
except by order
of guardians,
&c.
1 & 2 Gul. 4
c. 60.

"CIX. . . the word 'officer' shall be construed to extend to any clergyman. . ."

XCIX. STAT. 4 & 5 GULIELMI 4, c. 83. A.D. 1834.

STAT. 4 & 5
GUL. 4, c. 8

"An Act to amend an Act passed in the third year of His present Majesty, intituled, *An Act for shortening the Time required in Claims of Modus Decimandi or Exemption from or Discharge of Tithes.*"

"Whereas by an act passed in the third year of the reign of his present majesty, intituled, 'An Act for shortening the Time required in Claims of *Modus Decimandi*, or Exemption from or Discharge of Tithes,' certain provisions were made limiting the period within which, in cases of claims of a *modus decimandi*, the payment or render of such modus, and in cases of claim of or to any exemption from or discharge of tithes by composition real or otherwise, the enjoyment of the land without payment or render of tithes or money, or other matter in lieu thereof, should be shown to have taken place: and whereas it was by the said act further

2 & 3 Gul. 4
c. 100.

to appoint chaplains, as it found that power existing in numerous parishes already.

"Thinking that the commissioners have acted strictly within the forty-sixth clause, this decision is by no means opposed by the *Cambridge case*, (9 A. & E. 911,) in which we thought their order was not within it.

"We say nothing on the return, which merely offers reasons of expediency and po-

licy against this particular exercise of discretion. Of such matters, those to whom the discretion is confided are the sole judges. Nor do we remark on the argument respecting the possibility of appointing ministers of particular sects or persuasions, the right question being that of appointing any clergyman."

Peremptory mandamus awarded.

danger of some material evidence in support of the right or claim of such party being lost in consequence of such suspension, to proceed in such action or suit to the extent of proving such fact or facts the evidence respecting which shall be so shown as aforesaid to be in danger of being lost through such suspense.

"VL Provided always, and be it enacted, that nothing in this act contained shall prevent the prosecution of any suit in law or equity for the recovery of any tithes claimed or demanded previous to the passing of the said recited act, or for the recovery of the value thereof."

C. STAT. 4 & 5 GULIELMI 4, c. 90 (1). [IRELAND.] A.D. 1834.

"An Act to amend an Act made in the third and fourth year of the Reign of His present Majesty, intituled, An Act to alter and amend the Laws relating to the Temporalities of the Church of Ireland."

"Whereas an act was passed in the last session of parliament, intituled, 'An Act to alter and amend the Laws relating to the Temporalities of the Church in Ireland;' and whereas it is expedient to amend the said act; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being, and his majesty's privy council there, in the case of the deanery of Lismore now vacant, when they shall so think fit, at any time after the passing of this act, and in the case of any and every other ecclesiastical dignity or office under the rank of an archbishopric or bishopric, the person holding which shall not have actual cure of souls within any parish appropriated thereto, and also in the case of any and every rector whereof the king shall be patron, or the right of presentation or collation whereunto shall be in any archbishop, bishop, or other dignitary, or in any ecclesiastical corporation, and the rector whereof shall not have actual cure of souls therein, whensoever after the passing of this act any such dignity, office, or rectory shall become void in any manner whatsoever, upon the recommendation of the ecclesiastical commissioners for Ireland, signified by an instrument under their corporate seal, if the said lord lieutenant or other chief governor or governors and council shall so think fit, to order and direct that the appointment to such dignity, office, or rectory, shall be suspended until such lord lieutenant or other chief governor or governors and council shall think fit otherwise to direct; and in the meantime, and for and during such period as such dignity, office, or rectory shall remain vacant, all and every the tithes, glebes, lands, rents, profits, and emoluments whatsoever belonging or appertaining thereto, and all arrears of such tithes, rents, profits, and emoluments which may have accrued due since the same may have become void as aforesaid, shall be vested in and received by the said ecclesiastical commissioners, to be by them applied towards the like purposes as the other monies and funds accruing to or vested in them under the provisions of the said act; and the said ecclesiastical commissioners shall have all and every the like remedies for the recovery of such tithes, glebes, rents, lands, profits, and emoluments, and all arrears thereof, as any person filling such dignity, office, or rectory might or would have, and shall be for all such intents and purposes in the place and stead of such person; provided always, that in the case of any such suspension as aforesaid it shall and may be lawful for the chapter of any diocese or cathedral church, or members thereof, to nominate and appoint some fit and proper person to perform and exercise all such acts and duties in relation to the property of any such chapter or cathedral church or otherwise as might or ought to have been or be performed or exercised by any successor in such dignity or office so suspended if such successor had been appointed; and such person so nominated and appointed shall have all such powers and authorities, and be subject to all such liabilities, in relation to the performance of such acts and powers, spiritual or other duties, as any such successor, if duly appointed, would have had or been subject to; and all the acts of

STAT. 4 & 5
GUL. 4, c. 83.
to be proceeded
with.

As to previous
claims.

STAT. 4 & 5
GUL. 4, c. 90.
[Ia.]

3 & 4 Gul. 4,
c. 37.

The appoint-
ment to suc-
cure dignities
may be sus-
pended by
lord lieutenant
and council, or
the recom-
mendation of
the ecclesias-
tical commis-
sioners.

(1) Vide Stat. 5 & 7 Gul. 4, c. 99.

STAT. 4 & 5
GUL. 4, c. 90.
[12.]

Lord lieutenant
and privy
council em-
powered to
remove sus-
pension.

Patronage of
suspended
dignity, how
to be exercised.

Charges upon
suspended
benefices, how
to be regulated.

The tithes, &c.
of parishes in
which there
may be no
vicar or
perpetual
curate, may be
disappropri-
ated from the
dignities to
which they are
annexed, in
like manner as
the tithes of
parishes in
which there
shall be such
vicars or
curates.

the persons so appointed shall be of equal force and validity as the acts of any such successor if so appointed.

"II. Provided always, and be it further enacted, that if in any case it shall seem expedient to the lord lieutenant or other chief governor or governors of Ireland for the time being and his majesty's privy council there, to remove any such suspension and to give authority for the appointment to any office, dignity, or rectory, subject to the severance therefrom of all and every the tithes, glebes, lands, rents, profits, and emoluments whatsoever appertaining thereto, it shall be lawful for the lord lieutenant or other chief governor or governors of Ireland for the time being and his majesty's privy council there, to remove such suspension accordingly, on the condition hereinbefore contained.

"III. Provided also, and be it further enacted, that whenever any right of presentation, nomination, or appointment to any vicarage or perpetual or other curacy shall be annexed or incident to any office, dignity, or rectory, the appointment to which shall be so suspended, then and in every such case such right of presentation, nomination, or appointment shall, upon every avoidance of such vicarage or perpetual curacy which shall happen during such suspension, belong to and be exercised by the same person or persons, or body or bodies corporate, by whom the right of appointment to such office, dignity, or rectory might have been exercised in case the same had not been suspended.

"IV. And whereas it is by the said recited act, amongst other things, enacted, that it shall and may be lawful for the said commissioners to settle and adjudge the proportions of crown rents, port corn rents, pensions, procurations, synodals, and the salaries of the schoolmasters of the diocesan schools, which the incumbents of any parish or parishes divided or augmented pursuant to the provisions of the said recited act are respectively to pay; and whereas it is expedient that the said provision should be extended to other charges affecting such parishes; be it therefore enacted, that all duties, powers, and authorities which are imposed upon or vested in the said commissioners by virtue of the said recited act and of this act, or of either of them, touching or concerning the settlement or adjudication of the proportions of such crown rents, port corn rents, pensions, procurations, synodals, and salaries so to be paid as aforesaid, shall extend and be applicable to the settlement and adjudication of the proportions of all other charges whatever charged upon or payable out of such divided or augmented parishes to be paid by the several incumbents thereof respectively after such division or augmentation; and such last-mentioned proportions shall be adjusted and registered in such manner as in and by the said act is directed, and shall be binding and conclusive upon the said several incumbents of such divided or augmented parish or parishes respectively, and their respective successors, any law or custom to the contrary notwithstanding.

"V. And whereas the provisions of the said act for the disappropriation of parishes, or the tithes or portions of tithes and glebes thereof, from the dignities to which the same may be united or appropriated, are limited to cases in which there are vicars or curates discharging the duties of such parishes; and it is expedient to remove such limitation; be it therefore enacted, that where there shall not be any vicar or curate in any parish which, or the tithes or any portions of the tithes and glebes whereof, may be appropriated or united to any archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, it shall and may be lawful for the said lord lieutenant or other chief governor or governors and council, if they shall so think fit, by and with the consent and approbation of the archbishop, bishop, dean, archdeacon, dignitary, prebendary, or canon thereof, or whosoever such archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry shall be void, to disappropriate, disunite, and divest such parish, and all tithes, portions of tithes, or glebes thereunto belonging, from and out of such archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, and, if they shall so think fit, to order and direct that such parish, tithes or portions of tithes, or glebes, so disunited shall from thenceforward be united and annexed to any neighbouring rectory, vicarage, or perpetual curacy, as hereinafter mentioned, or shall be and become for ever a separate benefice and parish; provided nevertheless, that in

the rectory, vicarage, or perpetual curacy to which such disappropriated parish tithes or portions of tithes or glebes may be united, or in the separate benefice and parish into which the said disappropriated parish, tithes or portions of tithes, or glebes may be formed, divine service shall be constantly and duly celebrated; and if the same shall be made a separate benefice and parish, then and in such case it shall and may be lawful for the king's majesty, or other person or persons, or body or bodies corporate, having the right of nomination, appointment, or presentation to such archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, from time to time to present, collate, nominate, and appoint a clerk to be the incumbent of such parish; and such clerk when duly presented, instituted or collated, and inducted, and his successors, shall be and become bodies politic and corporate, and shall be perpetually endowed with all the tithes, portions of tithes, and glebes so belonging to such parish, and so disappropriated, disunited, and divested as aforesaid, and shall have the actual cure of souls of and within the said parish.

"VI. And be it enacted, that where under this or any other act any parish in which there shall be any perpetual curate endowed shall be disappropriated or disunited from any ecclesiastical dignity or benefice, such curate shall immediately upon such disappropriation or disunion, and by virtue thereof, be and become rector or vicar, as the case may be, of the parish so disappropriated or disunited; and such perpetual curacy shall merge in the said rectory or vicarage.

"VII. And be it further enacted, that in any case in which the said lord lieutenant or other chief governor or governors of Ireland and council shall have power and authority under the provisions of the said recited act or this act, and shall think fit, to disappropriate, disunite, and divest, any rectory, vicarage, tithes or portions of tithes, and glebes, or part or parts thereof, from and out of any archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, it shall and may be lawful for such lord lieutenant or other chief governor or governors and council, if they shall so think fit, to unite and annex to any adjoining or neighbouring rectory, vicarage, or perpetual curacy as aforesaid, such rectory, vicarage, tithes, or glebes, or any part or parts or portions thereof respectively, which shall so have been disappropriated, disunited, or divested as aforesaid, together with the actual cure of souls within such rectory or vicarage, or such part or parts thereof as shall be so united or annexed respectively, or within such place or places respectively whereof the tithes or glebes shall be so united and annexed; and in such case the said lord lieutenant or other chief governor or governors and council shall direct and regulate the rotations or turns in which the right of presentation or nomination to such adjoining or neighbouring rectory, vicarage, or perpetual cure shall upon any and every future avoidance thereof belong to or be exercised by and between the king's majesty, his heirs and successors, and by and between any other person or persons, or corporation or corporations, in like manner as the said lord lieutenant or other chief governor or governors and council are authorized and empowered to do in case any rectory, vicarage, tithes or portions of tithes, or glebes or portions thereof, has or have been or shall be united to any vicarage or perpetual curacy, pursuant to the provisions of the said recited act.

"VIII. And whereas by the said act it is made lawful for the lord lieutenant or other chief governor or governors of Ireland, with the privy council there, in case of vacancy, or with the consent therein mentioned, to disappropriate, disunite, and divest any rectory, vicarage, tithes or portions of tithes, or glebe, from any archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, and to unite the same to the vicarages, perpetual or other curacies, or such parishes respectively, so as to form a distinct parish or benefice; be it enacted, that the said provision shall extend to parishes in towns where ministers' money is paid, whether there be any tithe or glebe belonging thereto or not; and that it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland, with the privy council there, in case of a vacancy, or with the consent of the dignitary, prebendary, canon, or other ecclesiastical person having the cure of souls in any such parish in right of or appointment to his said dignity, prebend, or canonry, to

Stat. 4 & 5
Gul. 4, c. 90.
[In.]

Perpetual
curate of any
parish dis-
united from
benefice to
become rector
of such parish.

Lord lieutenant
may unite to
any adjoining
or neighbour-
ing parish any
rectory, &c.
disappropri-
ated from any
dignity.

The provisions
of 3 & 4 Gul.
4, c. 37, s.
124, extended
to ministers'
money.

STATUTA GULIELMI IV. A.D. 1830—1837.

appropriate, and separate such parish, and the cure of souls therein, and the tithes and other revenues belonging thereto, whether consisting of glebe, tithes, minister's stipend, or other payment, from the said dignity, prebend, or canonry, so as to leave each parish for ever a separate and distinct benefice, to be presented to in the like manner as the said dignity, prebend, or canonry to which it shall be annexed before such separation.

vided always, and be it further enacted, that whenever after the
ia act any deanery, archdeaconry, dignity, prebend, or canonry, or
ctory, vicarage, tithe, or glebe, or any part or parts, portion or por-
respectively, or ministers' money, or other payment or emolument as
all be appropriated or united, and not being in the gift or disposi-
y, shall become void, and whenever after the passing of this act any
roof the patronage or right of presentation or collation shall be in any
ishop, or other dignitary, and in which benefice divine worship shall
n celebrated for the three years next preceding the first day of Febru-
usand eight hundred and thirty-three, shall become void, then and in
h cases it shall not be lawful to fill up such vacancy or to appoint any
successors in such deanery, archdeaconry, dignity, prebend, or canonry,
until the expiration of one calendar month after notice in writing shall
iven to the said ecclesiastical commissioners by the corporation or
g the patronage or right of appointment or election thereunto, of such
voidance having occurred; and any election, appointment, presenta-
n, institution, or induction, which shall be made contrary to the true
eaning of the said recited act or of this act shall be null and void to
nd purposes whatsoever; and it shall and may be lawful for the said
nd and council, and for the said ecclesiastical commissioners respec-
arcise all powers with which they are respectively invested, in relation
ery, archdeaconry, dignity, prebend, or canonry or benefice, by the
ct or this act, in such manner as if the same were absolutely void-
ays, that the certificate of the ordinary that divine service has not
ed in any such benefice for three years next preceding the first day of
e thousand eight hundred and thirty-three, shall be conclusive evi-
fact for all the purposes of this act, and of the said recited act.

It be it further enacted, that it shall and may be lawful to and for the tenant or other chief governor or governors and council, whenever y virtue of the powers in that behalf in them vested, have disapproprionalities or any part of the temporalities of any dignity, or shall old parishes, or separated any parish or part of a parish heretofore ke such order as to them shall seem expedient for the extinguishment of any charge or charges or of any part thereof to which such dignity benefice, or the person or persons succeeding to the same, are or may ble, and to direct to whom, and by whom, and out of what funds, sums and proportions, and at what time or times, such charges or he same as are to be payable are thereafter to be paid, and by what proceedings, and by and against whom the same are thereafter to be

And be it further enacted, that in case the lord lieutenant or other chief governors of Ireland shall, pursuant to the provisions of the said recited act, or of either of them, have disappropriated, disunited, or diverted archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or rectory, vicarage, tithes or portions of tithes, or gl; and in case the person or the representatives of the same, or of any of them, shall, by virtue of any law or statute, be entitled to the reversion or succession of such person in such archbishopric, bishopric, deanery, prebend, or canonry, any sum or sums of money, or of addition to glebes, or of any buildings or lands, or of any such person to his immediate predecessor on such

tively, then and in every such case it shall and may be lawful for such lord lieutenant or other chief governor or governors and privy council to order and direct that such sum or sums of money shall be charged and chargeable in such shares and proportions as they shall think just and reasonable upon the several parishes, tithes or portions of tithes, or glebes, or part or parts thereof respectively theretofore united and appropriated to such archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry; and such shares and proportions shall be paid and payable by the several incumbents of such parishes respectively, or by the person or persons thereafter to be entitled to such tithes or portions of tithes, and glebes, or part or parts thereof respectively, to such person and at such times and in such manner as the whole of such sum or sums of money would have been payable by virtue of any law or statute in force in Ireland in case such disappropriation, disunion, or divestiture had not taken place: provided always, that it shall and may be lawful for every such incumbent or other person, or his representative, having paid any such share or proportion in manner aforesaid, to receive and recover from his next and immediate successor, such part of such share and proportion at such time and by such ways and means as if such share or proportion had been paid by him to his next and immediate predecessor by virtue of any law or statute in force in Ireland.

“XII. And whereas it is by the said recited act provided, that the said ecclesiastical commissioners shall within a certain period pay to the executors or administrators of Doctor Richard Bourke, late Bishop of Waterford, all and every such sum of money as, pursuant to any statute or law in force in Ireland, could or might have been recovered by such executors or administrators against the successor of the said late bishop in case such act had not been made; and it is also by the said act further provided, that the said commissioners shall at certain periods, from and after the respective vacancies of the other bishoprics (save and except the bishoprics of Ossory and of Cork and Ross) named in the first column of the schedule (B) to the said act annexed, or the annexation thereof to any bishopric in the second column of the said schedule named, pay to the person or his representatives, as the case may be, by whose promotion or death such vacancy shall have been occasioned, or who shall become a bishop of any such united bishoprics, all such sums of money as would have been payable by or recoverable against any successor in such bishoprics in such first column named in case the said act had not been made; but no provision is made by the said act enabling the said ecclesiastical commissioners to recover for dilapidations suffered or committed by the said Doctor Richard Bourke, or other bishops as aforesaid; be it therefore enacted, that the said ecclesiastical commissioners shall and may recover from the representatives of the said Doctor Richard Bourke, and from the bishop of each and every bishopric in the first column of the said schedule named, (save and except the bishoprics of Ossory and of Cork and Ross aforesaid,) being or becoming void or united to any other bishopric under the provisions of the said act, or from the representatives of such bishop, all and every such sums or sum of money as the successor or successors of such Bishop of Waterford, or other bishop, (if such had been appointed,) might or could have recovered under any law or statute in force in Ireland from the representatives of the said Doctor Richard Bourke, or from such other bishop or his representatives, for or on account of dilapidations, in case the said recited act had not been passed; and that the said ecclesiastical commissioners shall have, for ascertaining the extent of such dilapidations, and for the recovery of such money as may be due on account thereof, all such remedies as the successor or successors of any such bishop could or might have used if the said recited act had not been passed; and it shall be lawful for the said ecclesiastical commissioners to deduct from and out of any money which they are or may be liable under the provisions of the said recited act to pay to the representatives of the said Doctor Richard Bourke, or any other such bishop, his executors or administrators, such sums as are or shall be respectively payable by or recoverable from the representatives of the said Doctor Richard Bourke, or such other bishop, his executors or administrators, for or on account of such dilapidations, in like manner as the

STAT. 4 & 5
GUL. 4, c. 90
[1x.]

Ecclesiastical commissioners may recover dilapidations from bishops in the first column of schedule (B) annexed to the 3rd & 4th Geo 4, c. 37, or from their representatives, in like manner as a successor

Commissioners to have such means for ascertaining and recovering amount of dilapidations as successor would have had.

STAT. 4 & 5
GUL. 4, c. 90.
[In.]

Proceedings
already taken
for ascertaining
or recovery of
dilapidations to
be valid.

Commissioners
may recover
for dilapida-
tions com-
mitted in Ferns
and Leighlin
and Cloyne.

See houses of
bishoprics in
the first column
of the said sched-
ule (B) shall
vest in bishops
of united
bishoprics
electing trans-
ferred to such
see houses.

The title to
lands, &c. now
vesting in board
of first-fruits
shall vest in
ecclesiastical
commissioners.

Declaring the
meaning of the
clause of re-
cited act em-
powering the
Archbishops of
Armagh and
Dublin to
present a fel-
low of Trinity
college to cer-
tain selected
benefices;

successor or successors of the said Doctor Richard Bourke, or any other such bishop, might have deducted the same under any law or statute in force in Ireland if the said recited act had not been passed.

“XIII. And be it further enacted, that all such proceedings as may already have been taken by or on behalf of the said ecclesiastical commissioners for the ascertaining or recovery of any money on account of dilapidations in or upon the see house, offices, lands, or improvements of the said bishopric of Waterford, or of any other bishopric named in the first column of the schedule (B) to the said recited act annexed, which may be or have become vacant or united to any other bishopric under the provisions of the said recited act, are and shall be and be deemed to have been as valid and effectual to all intents and purposes as if the same had been taken by or on behalf of the immediate successor or successors, lawfully appointed and invested, of the bishop by whom such dilapidations may have been committed or suffered.

“XIV. And be it enacted, that when and as the bishoprics of Ferns and Leighlin and of Cloyne respectively shall be united to the bishoprics of Ossory and of Cork and Ross, the said ecclesiastical commissioners shall and may in like manner, and by all such and the like means, recover from the persons or their representatives by whose promotion or death such vacancy shall have occurred or been occasioned, or who shall become the bishops of such united sees, all such sums as the successors in such bishoprics of Ferns and Leighlin and Cloyne respectively would have been entitled to recover for dilapidations in case this act had not been made.

“XV. And be it further enacted, that whenever pursuant to the provisions of the said recited act, and with such consent as therein required, the see house of any bishopric in the first column of the schedule (B) to the said act annexed shall be or have been chosen to be the see house of any united bishopric, such see house, and the offices, and the whole or a part only of the menal or demesne lands thereto belonging, which are set out as a fair equivalent for the whole or a part only of the surrendered menal or demesne lands belonging to the bishopric in the second column of the schedule (B), as the case may be, shall without any grant or conveyance whatsoever be divested out of the said ecclesiastical commissioners, and become vested in the bishop of such united bishopric, and annexed thereto, and thereafter continue to be to all intents and purposes the see house, offices, and menal or demesne lands of such united bishopric.

“XVI. And be it enacted, that all lands, tenements, and all estates, terms, and interests therein, whether legal or equitable, and all benefit and right of removal of or in the same, which at the time of the passing of the said recited act were or now are vested in the trustees and commissioners of first-fruits in Ireland, shall be and the same are hereby absolutely transferred to and vested in the said ecclesiastical commissioners and their successors, in like manner, and upon and for the like trusts, intents, and purposes, as the same were heretofore vested in the said trustees and commissioners of first-fruits.

“XVII. And whereas it is by the said act provided, that upon each and every avoidance happening after the period in the said act mentioned of certain benefices to be selected from and out of the benefices belonging to each of the bishoprics mentioned in the first column of the schedule (B) to the said act annexed, it shall and may be lawful for the Archbishop of Armagh and Archbishop of Dublin to nominate and present to each such benefice one of the fellows or ex-fellows of the college of the Holy and Undivided Trinity, near Dublin, being in holy orders; provided always, that in case the said two archbishops shall not be able to agree in such nomination and appointment, or shall decide upon the person to be appointed to the said vacant benefice, the first turn therein to be exercised by the Archbishop of Armagh; and if on the vacancy of any of the said benefices so selected as aforesaid the said archbishop shall not present thereto some such fellow or ex-fellow within such period as any patron ought to present to a benefice in his gift or presentation, then and in such case the right of presentation or collation to such benefice shall for that turn devolve to the bishop of the diocese and be

STATUTA GULIELMI IV. A.D. 1830—1837.

in all respects subject to the ordinary law of lapses: and whereas it is necessary to explain and amend the said hereinbefore recited provision; be it therefore enacted and declared to be the meaning of the said recited provision, that upon each and every avoidance of the benefices selected as aforesaid, happening after the time in the said act mentioned, it shall and may be lawful for the said Archbishop of Armagh and Archbishop of Dublin to nominate and present to each such benefice one of the fellows or ex-fellows of the college of the Holy and Undivided Trinity, near Dublin, being in holy orders; and that if on the vacancy of any of the said benefices, so selected as aforesaid, the said archbishops shall not present thereto some such fellow or ex-fellow within such period as any patron ought to present to a benefice in his gift or presentation, then and in such case the right of presentation or collation to such benefice shall for that turn devolve to the bishop of the diocese, and be in all respects subject to the ordinary law of lapses.

"XVIII. And whereas it is necessary to explain and amend certain provisions of the said recited act in respect of the bishoprics of Ferns and Leighlin and Ossory, and of Cloyne and Cork and Ross; be it therefore enacted and declared to be the meaning of the said recited act, that the said ecclesiastical commissioners shall, by such instalments, to be made in such manner and at such periods from and after the respective periods when the bishopric of Ferns and Leighlin shall become united to the bishopric of Ossory, and the bishopric of Cloyne united to that of Cork and Ross, as any successors thereto would have been respectively bound or liable if such successors had been appointed, pay to the persons or their representatives by whose promotion or death such vacancies shall have occurred occasioned, or who shall become the bishops respectively of such united dioceses, all and every such sum or sums of money as would have been payable recoverable against the several successors in the said bishopric of Ferns and Leighlin and the said bishopric of Cloyne respectively, in case the said act had not been passed; and that the bishops of such united bishoprics of Ferns and Leighlin and of Cloyne and of Cork and Ross shall be and become liable to the payment of all such like sum or sums as any successor or successors in the said bishopric of Ossory would have been liable to the payment of, in case the said act had not been passed; and the bishops of such united bishoprics of Ferns and Leighlin and of Cloyne and of Cork and Ross shall be and become liable to the payment of all such like sum or sums of money as any successor or successors in the said bishopric of Cork and Ross would have been liable to the payment of, in case the said act had not been passed: provided that nothing herein contained shall, in the event of the now Bishops of Ossory and of Cork and of Ross becoming respectively bishops of such united bishoprics, alter or affect the liabilities to them respectively of their successors.

"XIX. And be it further enacted, that if the now Bishop of Ferns and Leighlin or the now Bishop of Cloyne shall become bishops respectively of such united bishoprics respectively, they shall be entitled to recover as successors for any dilapidations; and if they shall pay to the Bishop of Ossory, or the Bishop of Cork and Ross, or to his or their respective representatives, as the case may be, any money which would have been payable by or recoverable against the said bishoprics, then and in such case it shall and may be lawful for either of such united bishoprics respectively to recover from the immediate successor the whole of such sum of money so by him next immediate successor, and his successor or successors respectively may recover, each against his successor, such proportion of such sum as would have been recoverable in each case respectively, if such successor of the now Bishop of Ferns and Leighlin or of Cloyne or of Cork and Ross or of Cork and Ross immediately appointed and invested of the bishopric of Ferns and Leighlin or of Cloyne or of Cork and Ross.

And be it further enacted, that in case any such wanton and malicious injuries as in the said recited act mentioned shall be committed in or to any church or other building used for religious worship according to the rites of the church of England and Ireland, it shall and may be lawful for the ecclesiastical commissioners, or any person or persons to be by them appointed, to recover the same from the person or persons so committing the same, either at

STAT. 4
GUL. 4,
[18.]

as also (clause providing liabilities to the bishop of Ferns and Cloyne.

The Bishops of Ferns and Cloyne recover dilapidations from the predecessors and for the same paid by the successors.

Compensation for malicious injuries to churches may be recovered either at

STATUTA GULIELMI IV. A.D. 1230—1237.

that behalf, by writing under their common seal, to sue for and recover and amends, pursuant to the provisions of the said recited act, for such malicious injury or damage, either at such period or periods as in and by the said recited act for that purpose provided, or at the second assizes to be held in the county in which such injury or damage for the county in which such injury or damage may be situated; or if in the county of Dublin, at the next assizes, presenting term; or if in the city of Dublin, at the second quarter sessions, presenting term, or quarter sessions respectively after the commission of such injury, and that all powers and authorities contained in the said recited act, applicable to the suing for or recovery of such satisfaction at the next assizes, presenting term, or quarter sessions respectively, shall extend and be applicable to the suing for and recovery of such satisfaction at such second assizes, presenting term, or quarter sessions.

And be it further enacted, that in case any tenant or lessee, who under the provisions of the said recited act is or shall be entitled to apply and agree to have applied and agreed for, the purchase of a perpetual estate in any lands, tenements, or hereditaments, shall hold such lands, tenements, or hereditaments, by lease for the term of twenty-one years, whereof less than thirty-nine years shall be to come and unexpired, or for the term of forty years, whereof less than thirty-nine years shall be to come and unexpired, or for three lives, or for the lives named in such lease shall not be in being, then and in every such case it shall and may be lawful for every such tenant or lessee to tender to the archbishop, bishop, or other sole ecclesiastical corporation, under whom he shall hold such lands, tenements, or hereditaments, or to his or their known agent or attorney, such sum or sums as he shall consider to be the true and just amount of the fine or fines and fees customarily paid or payable for or upon the purchase of such perpetual estate in such lands, tenements, or hereditaments, and in case such archbishop, bishop, or other sole ecclesiastical corporation refuse or neglect within a reasonable time after such tender to accept of such sum or sums of money and execute such renewal, then and in every such case it shall and may be lawful for the said ecclesiastical commissioners, and they are authorized and required, at the requisition in writing of such tenant or lessee, to ascertain by the issuing of a commission or by such other ways and means as they shall deem fit and expedient, the amount of the renewal fines usually or customarily paid or payable on or for the renewal of such lease, and the sum which, according to the usual and accustomed mode of renewing the same, ought to be paid on the renewal thereof, up to the day upon and from which the rent to be reserved by the deed or deeds of conveyance of such lands and premises is to begin; and such tenant or lessee shall, upon payment to the said ecclesiastical commissioners, to and for the use of such archbishop, bishop, or other sole ecclesiastical corporation respectively, of such sum so ascertained as aforesaid, and of the interest and arrears of rent due upon such lease, be entitled to have a conveyance made of the fee-simple and inheritance of and in the said lands, tenements, or hereditaments, in like manner as if such lease had been fully renewed for such term or lives respectively as in and by the said recited act is required: and in case no tenant or lessee holding any lands or premises by lease for the term of twenty-one years or of forty years, whereof less than one year shall be to come and unexpired, shall be entitled to have any deeds of conveyance of such lands and premises made or granted to him or her by virtue of the said recited act and of the provisions thereof, unless, in addition to all rents and arrears of rent due and reserved by such lease, he or she shall have paid and satisfied to the archbishop, bishop, or other ecclesiastical person under whom he or she shall hold such lands and premises, or to the said ecclesiastical commissioners, a proper proportion of the fine or fines and fees usually and customarily paid and payable on the renewal of such lease, up to and for such day upon and from which the rent to be reserved in and by such deed of conveyance is to begin to be paid.

And be it enacted, that whenever upon any application for the purchase of such perpetual estate in any lands, tenements, or hereditaments, the said ecclesiastical commissioners shall be satisfied that the sum or sums of money tendered by the applicant is or are the true and just amount of the fine or fines and fees customarily paid or payable for or upon the purchase of such perpetual estate in such lands, tenements, or hereditaments, and that the applicant is entitled to the purchase of such perpetual estate in such lands, tenements, or hereditaments, then and in every such case it shall and may be lawful for the said ecclesiastical commissioners, and they are authorized and required, to execute such renewal, and to make such conveyance of the fee-simple and inheritance of and in the said lands, tenements, or hereditaments, in like manner as if such lease had been fully renewed for such term or lives respectively as in and by the said recited act is required.

chase of the fee-simple and inheritance in any lands under the provisions of the said recited act or this act, or for the renewal of any lease, or the making a new lease or demise of any lands held under the said ecclesiastical commissioners, such commissioners may be authorized and required to ascertain the amount of any fine or fines and fees theretofore paid or agreed to be paid or customarily paid or payable for renewal of such lease, and that such commissioners shall find that the fine or fines and fees paid during any such period as in the said act mentioned, or agreed to be paid or payable for the renewal of such lease, have been greatly inadequate as compared with the fine or fines and fees usually paid according to the custom of the same diocese or other spiritual promotion for or upon the renewal of leases or interests in other lands within such diocese or other spiritual promotion held by like tenure and demise, and that such commissioners shall have reasonable cause to conclude that such inadequacy arose out of any favour or community of interest between the lessor and lessee, then and in such case the matter shall be referred to three arbitrators, to be appointed in manner by the said recited act provided for the appointment of arbitrators to adjust differences between the said commissioners and parties applying for the purchase of perpetuities under the said act; and the expense of such arbitration shall be borne by the said commissioners, or by the other party, or by both, in such proportions as such arbitrators shall direct; and if such arbitrators shall decide that the fine or fines and fees aforesaid were not greatly inadequate, or that such inadequacy did not arise out of any favour or community of interest between the lessor and lessee, the said commissioners shall proceed to make their calculation as by the said act required upon such fine or fines and fees so paid or agreed to be paid or payable, and in all respects as if no inadequacy had been alleged to exist; but if the said arbitrators shall decide that such fine or fines and fees were greatly inadequate, and that such inadequacy arose out of any favour or community of interest between the lessor and lessee, then and in such case the said arbitrators, or any two of them, shall and are hereby authorized and empowered to inquire and ascertain, by actual survey and valuation, or by the examination of witnesses upon oath, (which oath the said arbitrators are hereby authorized to administer,) or by such other ways and means as they shall deem fit and expedient, the yearly value of the lands, tenements, and hereditaments, the tenant or lessee whereof shall so have applied for such renewal or purchase, and the fine or fines and fees which ought reasonably to have been paid for the renewal of such lease or interest in such lands in proportion to the yearly value thereof, according to the custom of the same diocese or other spiritual promotion, upon the renewal of leases or interests in other lands and tenements situate within the same respectively, and held upon the like tenure and demise; and the determination of such arbitrators, as to the amount of such fine or fines and fees, shall be conclusive and binding upon all persons whomsoever; and the fine or fines and fees so ascertained shall be deemed and taken to be for all purposes of the said recited act and of this act the renewal fine or fines and fees respectively theretofore paid, agreed to be paid or payable, or which ought to have been paid upon the renewal of the said lease or interest in such lands, tenements, and hereditaments, the tenant or lessee whereof shall so have applied for such renewal or purchase as aforesaid.

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“XXIII. And be it further enacted, that every commission to be issued by the ecclesiastical commissioners for the purposes of this act shall issue in the same manner, and shall be subject to the like rules and regulations, and shall have and exercise the like powers, as in and by the said recited act is provided with respect to commissions directed to be issued for inquiring into the value of ecclesiastical benefices.

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“XXIV. And whereas it is by the said recited act amongst other things enacted, that upon such notification in writing being given by any such tenant or lessee as therein mentioned, that he is ready and willing to purchase the fee-simple and inheritance of and in any lands, premises, or hereditaments held by him by virtue of such lease or contract as therein mentioned immediately from and under any archbishopric, bishopric, or other spiritual promotion or dignity pursuant to the

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STAT. 4 & 5
GUL. 4, c. 90.
[1a.]

provisions of the said recited act, it shall and may be lawful for the said ecclesiastical commissioners, and they are thereby authorized and required, to ascertain the amount of the sum or sums of money theretofore paid or agreed to be paid as and for the fine or fines and fees for renewal of any such lease or interest of and in the said lands and premises in case of leases for lives for and during such period as shall include the three last previous occasions of such renewal; and it is in and by the said recited act further enacted, that in the case of leases for lives the said commissioners under the said recited act shall compute the yearly average of the renewal fines and fees in such manner as to them shall seem just with reference to the average duration of lives and beneficial interest; be it enacted, that from and after the passing of this act the said recited provisions, so far as the same relate to the purchase of perpetual estates or interests in any lands, premises, or hereditaments held by virtue of any lease or leases for lives, be and the same are hereby repealed.

In case a tenant or lessee shall apply for the purchase of a perpetual estate in lands, &c. under a lease for lives, value to be ascertained by ecclesiastical commissioners.

“XXV. And be it further enacted, that in every case in which any tenant or lessee who under the provisions of the said recited act shall be entitled to apply and agree and shall have applied for the purchase of a perpetual estate or interest in any lands, premises, or hereditaments, shall hold such lands, premises, or hereditaments under or by virtue of any lease for lives, it shall and may be lawful to and for the said ecclesiastical commissioners to ascertain by calculation a term for years of equal value to the subsisting interest or term for lives then in being under such lease, and thereupon to compute and ascertain in such manner as to them shall seem just, with reference to the custom of the archbishopric, bishopric, or other spiritual promotion in which such lands, tenements, and hereditaments shall be situate, the annual sum or sums of money which ought to be paid or payable as and for the fine or fines and fees for renewal of a lease of the said lands, premises, and hereditaments held for such a term of years aforesaid; which sum or sums so ascertained, together with and in addition to the annual rent or rents theretofore reserved and payable out of the said lands and premises under and by virtue of such lease for lives, shall be the amount of the annual rent to be reserved and made payable in and by the deed of conveyance of the said lands and premises, to be executed pursuant to the provisions of the said recited act and of this act or of either of them, subject, however, to such variation, according to the price of wheat or oats, as in and by the said recited act and this act provided; and such amount or sum so ascertained shall in all cases of leases for lives be inserted in any certificate to be given, granted, registered, or enrolled, pursuant to the provisions of the said recited act, instead of the average renewal fine theretofore paid or payable on the several occasions of renewing any such lease for lives.

Limiting costs to solicitors employed by commissioners under this act.

“XXVI. And whereas under and by virtue of the said recited act it is enacted, that it shall and may be lawful for the said commissioners, out of the said funds therein mentioned, to defray all such incidental charges and expenses as shall become necessary in the execution of the several powers and trusts by the said act, or any act thereafter to be passed, reposed in them: and whereas it is expedient that the sum to be paid for costs to the solicitor or attorney employed by the said commissioners should be limited in amount, be it therefore enacted, that no sum shall be paid by said commissioners to any attorney or solicitor as and for costs, charges, or expenses, unless the amount of such payment shall first have been approved of by the lords of the treasury: provided always, that no sum exceeding one thousand pounds shall be allowed in any one year by the said lords of the treasury as and for the costs, charges, or expenses of any such attorney or solicitor; and before any such sum shall be allowed by the said lords commissioners of the treasury on such account as aforesaid, the particulars of all such costs, charges, and expenses, shall be laid before them.

Commissioners, with sanction of the treasury, may contribute towards such

“XXVII. And be it enacted, that it shall and may be lawful for the said ecclesiastical commissioners, with the consent and approbation of the lords commissioners of his majesty's treasury, to bestow and apply out of any surplus or balance which may arise in any year, after due provision made for the several objects and purposes to which the funds accruing to the said ecclesiastical commissioners under the pro-

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visions of the said act of the last session of parliament are primarily applicable, such sums as they shall think proper for and to such charitable purposes as the bishops of the several bishoprics, the temporalities whereof may now be or hereafter become vested in the said ecclesiastical commissioners, may have usually subscribed or contributed towards.

"XXVIII. And whereas it is expedient that provision should be made for facilitating the execution of the deed or deeds of conveyance of lands and premises to be purchased pursuant to the said recited act, where such lands and premises are or shall be held under any archbishop, bishop, or other sole ecclesiastical corporation; be it therefore enacted, that from and after the passing of this act, so much of the said recited act shall be repealed, as provides that if such lands so to be purchased shall, at the time of such purchase, belong to or be held under any archbishop or bishop, or other ecclesiastical person, then and in such case, on the production by tenant or lessee, as therein mentioned, to the said archbishop, bishop, or other ecclesiastical person, of such notice or certificate, and of such receipt of the cashier or cashiers of the bank of Ireland as therein mentioned, such archbishop, bishop, or other ecclesiastical person shall and he and they is and are hereby required and directed to execute, seal, and deliver a deed of conveyance of the fee-simple and inheritance of the said lands and premises to such tenant or lessee, when the same shall be tendered for execution, subject to such annual rent as therein mentioned; and that if such archbishop, bishop, or other ecclesiastical person shall, on the production of such notice or certificate and receipt as aforesaid, refuse or neglect to execute such deed of conveyance, when tendered for execution as aforesaid, for the space of two calendar months after such tender shall have been made as aforesaid, then, upon such proof being made to the said commissioners by affidavit to be sworn before such persons as therein mentioned, (which affidavit they are thereby respectively empowered to administer,) or upon oath of a credible witness to be examined by the said commissioners, it shall and may be lawful for the said commissioners and they are thereby empowered and required to execute, seal, and deliver the said deed or deeds of conveyance in the name of and on behalf of the said archbishop or bishop, or other ecclesiastical person so refusing or neglecting to execute the same as aforesaid, and to affix the corporate seal of the said commissioners to such deed or deeds; and to certify the cause of their so executing the same by writing at the foot of or on the back of the said deed or deeds; and that such execution of the said deed or deeds by the said commissioners shall be as valid and effectual to all intents and purposes whatsoever as if the said deed or deeds had been duly executed by the said archbishop or bishop or other ecclesiastical person, in pursuance of the said recited act; and so much and such parts of the said recited act is and are hereby repealed accordingly.

"XXIX. And be it further enacted, that in case any lands, premises, or hereditaments, purchased or to be purchased pursuant to the provisions of the said recited act and of this act or either of them, shall at the time of such purchase be held under any archbishop, bishop, or other ecclesiastical person, it shall and may be lawful for the said ecclesiastical commissioners, on production to them of the receipt of the cashier or cashiers of the bank of Ireland for the amount of the purchase money ascertained and payable in respect of such lands, premises, or hereditaments, pursuant to the said recited act and of this act, to execute, seal, and deliver, in the name and in behalf of such archbishop, bishop, or other ecclesiastical person, a deed of conveyance of the fee-simple and inheritance of the said lands, premises, and hereditaments, to the tenant or lessee thereof, unto and to the use of such tenant or lessee, his heirs and assigns, or as he or they shall appoint, subject to such annual rent as in and by the said recited act is provided; and the said ecclesiastical commissioners shall affix to such deed or deeds of conveyance their corporate seal, and shall give at the foot or on the back of such deed or deeds respectively a certificate or certificates, which shall be conclusive evidence of the truth of the matter thereby certified, that such deed or deeds has or have been executed pursuant to the provisions of the said recited act and of this act; and such deed or deeds shall be in like form, and shall, when so executed, be as valid

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Sub-tenants
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purchase per-
petuities in
bishops' lands
on default of
superior
tenants.

Purchases by
sub-tenants
subject to
rents-charge
to superior
tenants.

and effectual to all intents and purposes as if the same had been duly executed pursuant to the said recited act by such archbishop, bishop, or other ecclesiastical person, in case this act had not been passed: provided always, that the said ecclesiastical commissioners shall, one calendar month at least before the execution of such conveyance, notify, by such notice in writing as in and by the said recited act for that purpose is directed, to the archbishop, bishop, or other ecclesiastical person under whom the said lands and premises are or shall be held as aforesaid, the amount of the annual rent to be thereafter reserved and payable out of the said lands and premises, and of the purchase money to be paid for the conveyance thereof, pursuant to the provisions of the said recited act.

“XXX. And whereas in many cases the lands, tenements, and hereditaments held under leases from archbishops, bishops, or other ecclesiastical corporations sole in Ireland have been sub-let to under-tenants, who are entitled, under covenants or contracts, to the renewal of their leases from time to time as often as the first or immediate tenants thereof shall obtain renewals of their leases from any such archbishop, bishop, or other ecclesiastical corporation sole, and by reason of the small interest of the first or immediate tenants in such lands, tenements, and hereditaments, or for other reasons, they may not be desirous to purchase the fee-simple and inheritance therein, and it is expedient that in such cases the under-tenants thereof should be authorized to purchase the same, subject to the provisions and regulations hereinafter contained; be it therefore enacted, that it shall and may be lawful to and for any under-tenant, having any derivative estate or interest in any such lands, tenements, and hereditaments by virtue of any lease containing any such covenant or contract for the renewal thereof as aforesaid, either mediately or immediately through or under the first or immediate tenant thereof, to apply (in the manner prescribed by the said act in reference to first or immediate tenants) for the purchase of the fee-simple and inheritance of and in the lands, tenements, and hereditaments held by such under-tenant under any such lease, giving notice, nevertheless, in writing of such application to the first or immediate tenant of such lands, tenements, and hereditaments, and to all other tenants thereof (if any) intervening between such archbishop, bishop, or other ecclesiastical corporation sole and the under-tenant making such application, or to the known agent or receiver, agents or receivers of such first and other intervening tenants; and upon the receipt of such notice, or at any time within twelve calendar months thereafter, it shall be lawful as well for such first or immediate as for any other of such intervening tenants to apply in like manner for the purchase of the fee-simple and inheritance of and in the same lands, tenements, and hereditaments, and the first or immediate tenant of such lands, tenements, and hereditaments is hereby empowered to contract or agree for the purchase thereof accordingly, in the manner provided by the said act, or as near thereto as circumstances will admit, notwithstanding such lands, tenements, and hereditaments shall not constitute the whole of the lands, tenements, and hereditaments held by him under any lease from any such archbishop, bishop, or other ecclesiastical corporation sole; and in case such first or immediate tenant shall neglect or omit to make application in manner by the said act directed for the purchase of the fee-simple and inheritance of and in such lands, tenements, and hereditaments for the space of twelve calendar months after such notice in writing shall have been given to him, or to his known agent or receiver, it shall be lawful for the said commissioners to treat, contract, or agree with such under-tenant who may have given such notice as aforesaid, or with any intervening tenant who may have made application within the said period of twelve months, for the absolute purchase by him of the fee-simple and inheritance of and in the same lands, tenements, and hereditaments, upon such and the same terms and in the same manner as in the said act is prescribed for the purchase of perpetuities by any first or immediate tenant, but subject nevertheless (in addition to the rent thereby directed to be reserved and made payable to the archbishop, bishop, or other ecclesiastical corporation sole under whom the same are immediately held) to a perpetual rent-charge, or as many perpetual rents-charge as there are tenants intervening between such archbishop, bishop, or other ecclesiastical

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corporation sole, and the under-tenant entering into such contract for purchase, such rent-charge or rents-charge to be ascertained in manner hereinafter mentioned, and to be issuing out of the same lands, tenements, and hereditaments, and to be reserved and made payable to such intervening tenant or tenants, his or their heirs and assigns for ever: provided always, that in case more than one of such under-tenants shall make application for such purchase, the application of the under-tenant holding directly under such first or immediate tenant shall be preferred to that of the one next below, and so on, according to priority of holding down to the under-tenant so giving notice as aforesaid; and the said commissioners shall convey the said lands, tenements, and hereditaments, so contracted to be purchased, to the purchaser thereof accordingly, in the manner and under the regulations by the said act provided in relation to the purchases thereby authorized to be made, subject nevertheless to the additional perpetual rent-charge or rents-charge hereinbefore mentioned; and immediately upon the execution of such conveyance the reversion or respective reversions then vested in such intervening tenant or tenants shall, so far only as respects such lands, tenements, and hereditaments, be absolutely merged and extinguished in the freehold and inheritance thereby conveyed to such purchaser, and the said perpetual rent-charge or rents-charge, and the estate or interest therein, shall be considered as a substitute or substitutes for the rent and reversion so merged and extinguished as aforesaid.

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"XXXI. Provided always, and be it further enacted, that the amount of the perpetual rent-charge so to be reserved and made payable to every such intervening tenant shall be equal to the net annual income or profit rent for the time being derived by him from the lands, tenements, and hereditaments so purchased by such under-tenant as aforesaid, such net annual income or profit rent to be ascertained by deducting the amount or proportional amount of the annual rents, fines, and other outgoings and expenses payable by such intervening tenant in respect of such lands, tenements, and hereditaments from the amount or proportional amount of the annual rents, fines, and other outgoings and expenses payable to him in respect of such lands, tenements, and hereditaments by the under-tenant holding the same directly under him; and for the purpose of ascertaining the said several particulars the said commissioners shall have all such powers and authorities, and shall take all such measures, as are respectively given to and directed to be taken by them for the purpose of ascertaining the several particulars directed to be inquired into by the said act; and every such perpetual rent-charge shall be payable by equal half-yearly payments on the first day of May and the first day of November in each year, and shall be recoverable by all the ways and means used for the recovery of rents in Ireland.

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"XXXII. Provided always, and be it further enacted, that where any such intervening tenant shall not be absolutely entitled to the leasehold interest under the lease by virtue of which he holds, then and in every such case, notwithstanding the reservation of the said perpetual rent-charge to such intervening tenant, his heirs and assigns for ever, the same shall nevertheless inure to such uses, and upon and for such trusts, intents, and purposes, as will best correspond with the uses, trusts, intents, and purposes which for the time being shall be subsisting concerning the said leasehold interest, or would be subsisting concerning the same if such leasehold interest were still in existence, or as near thereto as the difference in the nature of the interests respectively will permit: provided always, that every such perpetual rent-charge shall be subject to such or the like provisions for apportionment in the event of a division of the lands, tenements, and hereditaments for the time being subject thereto, or to any part thereof, as are in the said act provided in relation to the new rents to be reserved under the said act, such apportionment to be applied for and ascertained in the manner and subject to the regulations prescribed by the said act, so far as the same are respectively applicable, or as near thereto as circumstances will admit.

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"XXXIII. And for the prevention of doubts as to the consequences of the purchase of the fee-simple and inheritance in lands, under the provisions of the said recited act and this act, by any immediate or mesne tenant, be it hereby

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GUL. 4, c. 90.
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declared and enacted to be the intent and meaning of the said act and this act, that any such immediate or meane tenant shall, notwithstanding his acquisition of the fee-simple and inheritance of such lands, and the merger of any previously subsisting term, estate, or interest therein, have all such and the like remedies, by distress, re-entry, action, or otherwise, for the recovery of the rents and duties reserved in any under-lease by him theretofore made, which he might or would have had in case he had not so acquired such fee-simple and inheritance, and as would have been incident to his reversion in such previously subsisting term, estate, or interest.

“XXXIV. And whereas such purchase of the fee-simple and inheritance of and in such lands, tenements, and hereditaments, by any such under-tenant will be beneficial to the first and all other tenants thereof intervening between such archbishop, bishop, or other ecclesiastical corporation sole and the under-tenant or under-tenants making such purchase; be it therefore enacted, that whenever such under-tenant of any lands, tenements, and hereditaments shall have contracted for the purchase of the fee-simple and inheritance thereof in manner aforesaid the said commissioners are hereby required to ascertain whether any and what proportion of the purchase money on any such purchase ought to be contributed by such first and other intervening tenants thereof as aforesaid; and when the said commissioners shall have ascertained the proportion or respective proportions of the purchase money to be contributed by such first and other intervening tenants as aforesaid respectively, it shall and may be lawful to and for the under-tenant so contracting to purchase as aforesaid, his heirs, executors, or administrators, by notice in writing to be given to such first and other intervening tenant or tenants, or his or their known agent or receiver, agents or receivers, to call upon and require such first and other intervening tenant or tenants to contribute his or their said proportion or respective proportions of such purchase money accordingly; and in case any such first or other intervening tenant shall refuse or neglect to contribute such his proportion of the said purchase money for the space of six calendar months after such notice shall have been given to him or his known agent or receiver, then and in such case the said commissioners shall make a corresponding deduction from the said perpetual rent-charge so directed to be reserved to him as aforesaid, such deduction to be equal to six pounds per centum per annum on the proportion of the said purchase money which he shall be so required to contribute as aforesaid; and the said commissioners shall cause the amount of every rent-charge so reduced to be inserted in or indorsed upon the conveyance of the said lands, tenements, and hereditaments to such under-tenant accordingly; and such reduced perpetual rent-charge shall thenceforth for ever be payable in lieu of the rent-charge hereinbefore directed to be reserved to such intervening tenant respectively, his heirs or assigns, as aforesaid; provided always, that in case any such tenant or lessee shall be dissatisfied with the amount of the rent-charge or proportion of the purchase money adjudged payable in manner aforesaid to or by him, the matter shall be referred to three arbitrators, one to be appointed by the tenant to whom the same is adjudged to be payable, and the other by the tenant proposing to purchase as aforesaid, and the third by the two arbitrators so appointed as aforesaid, in manner provided in the said act for the appointment of arbitrators to adjust differences between the said commissioners and tenants or lessees applying for the purchase of perpetuities under that act, and with the like powers and authorities, so far as the same are applicable; and the determination of such arbitrators as to the amount of such rent-charge or proportion of such purchase money shall be conclusive and binding upon all persons whomsoever, and the expense of such arbitration shall be borne by such party as the arbitrators shall direct.

“XXXV. And be it further enacted, that in case the lands, tenements, and hereditaments proposed to be purchased by any such first or immediate tenant or by any under-tenant respectively, as the case may be, shall be and constitute part only of the lands, tenements, and hereditaments held under lease from any archbishop, bishop, or other ecclesiastical corporation sole, or under any intermediate lease, it shall and may be lawful to and for the said commissioners to ascertain the

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annual payment which ought according to the provisions of the said act to have been reserved upon the conveyance of the fee-simple and inheritance in the whole of the lands held under such archbishop, bishop, or other ecclesiastical corporation sole in Ireland by such lease in case the whole of the said lands had been proposed to be purchased, and having ascertained the amount thereof the said ecclesiastical commissioners shall apportion the amount of the annual payment to be reserved to such archbishop, bishop, or other ecclesiastical corporation sole for or in respect of the lands, tenements, and hereditaments so proposed to be purchased; and the said commissioners shall in like manner ascertain the net annual income derived by each of the intervening tenants from the lands, tenements, and hereditaments held by him or them respectively under their respective leases, and shall apportion with reference thereto the amount of the annual rent-charge to be reserved to each of such intervening tenants for or in respect of the lands, tenements, and hereditaments so proposed to be purchased; and the said commissioners shall in like manner ascertain and apportion, with reference to the annual rents reserved and made payable under and by virtue of such leases respectively, the annual payments to be thenceforth made to such archbishop, bishop, or other ecclesiastical corporation sole, and to such intervening tenants or tenant respectively for and in respect of the residue and remainder of the lands, tenements, and hereditaments included in the same leases respectively; and the said commissioners shall convey the fee-simple and inheritance of and in the said lands, tenements, and hereditaments so proposed to be purchased to the purchaser thereof, subject only to such annual payment as shall be so apportioned to be reserved in respect of the lands, tenements, and hereditaments so proposed to be purchased, (and in the case of a purchase by an under-tenant,) to the aforesaid perpetual rent-charge or rents-charge to the intervening tenant or tenants, and to make all and such other apportionments as the circumstances of the case shall in their judgment require; all which apportionments shall be conclusive and binding on all parties, and the payments so apportioned on the residue and remainder of the lands not purchased shall alone be recoverable in lieu of the whole rents previously reserved by existing leases, and exactly as if such apportioned rents had been the reserved rents for and in respect of such residue and remainder of the lands not purchased.

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"XXXVI. And be it further enacted, that the provisions herein contained applicable to lands, tenements, and hereditaments held under any archbishop, bishop, or other ecclesiastical corporation sole in Ireland, shall extend and be applied to all lands, tenements, and hereditaments now held or hereafter to be held under the commissioners in the said act named, by reason of the suppression of the sees therein mentioned; and in all cases in which any purchase shall be made of lands, tenements, and hereditaments held under the said commissioners, being part only of the lands, tenements, and hereditaments included in one lease, the said commissioners shall ascertain what portion of the fine theretofore payable for the renewal of such lease should be paid for or in respect of the lands not included in such purchase, and in case any difference shall arise in regard thereto the same shall be decided by arbitrators in the manner in the said act provided for deciding questions between the commissioners and tenants and lessees applying for the purchase of perpetuities, and the sum so ascertained shall be thenceforth deemed and taken to be the amount of fine payable for renewal of such lands, tenements, and hereditaments; and the said commissioners shall thenceforth from time to time grant renewed leases of such lands, tenements, and hereditaments, on payment of the amount so ascertained in manner in the said act provided for the entire lease, subject nevertheless to be varied in such manner and under the circumstances in the said act mentioned: provided that the payments to be reserved to the archbishop, bishop, or other ecclesiastical corporation sole in Ireland shall in all cases be deemed prior in order of charge to the rent-charges hereby authorized to be granted; and where in any case there shall be more than one rent-charge reserved for or in respect of the same lands, by virtue and in pursuance hereof, the said commissioners shall state in the conveyance to be executed upon any such purchase the order and priority of the same charges, which shall be according to the

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GUL. 4, c. 90.
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Where sub-tenant shall purchase part of lands, lease granted of remainder to be valid.

Purchases made under this act not to be impeached by reason of imperfection of notices.

Purchases made under provisions of recited act to extend to this act.

Church estimates to be prepared and transmitted at such times, and calculated for such periods, as the commissioners shall think fit to direct.

priority of the several tenants at the date of such purchase, and in case at any time thereafter any of the said rents-charge shall be in arrear the same shall have priority and be paid in the order so ascertained.

"XXXVII. Provided always, and be it enacted, that when and so often as any tenant or sub-tenant shall have purchased the fee and inheritance of part of the lands, tenements, and hereditaments included in any lease from any such archbishop, bishop, or other ecclesiastical corporation sole in Ireland, or the said ecclesiastical commissioners, or in any intermediate lease, any lease to be thereafter granted by any such archbishop, bishop, or other ecclesiastical corporation sole, or the said ecclesiastical commissioners, or by any intervening tenant or tenants as the case may be, of the residue and remainder of the same lands, tenements, and hereditaments, reserving only the proportion of the rent payable for or in respect of such residue and remainder, to be ascertained as aforesaid, shall be as valid in all respects in reference to the lands included in such lease as a lease of the entirety at the entire rent would have been, and in all respects have the same operation, as far as the lands, tenements, and hereditaments comprised therein are concerned, as if a lease of the entirety had been made, and all the statutes applicable to the renewals of the whole lease shall apply to such renewals of the part only; any law, custom, or statute to the contrary in anywise notwithstanding.

"XXXVIII. Provided always, and be it further enacted, that before the execution of any conveyance to any under-tenant or under-tenants under the provisions of this act, he or they shall prove to the satisfaction of the said ecclesiastical commissioners that the notice or notices required by this act have been duly given; and that after the expiration of one year from the completion of any purchase by any under-tenant or under-tenants, under the provisions of this act, the same shall not afterwards be impeached or called in question by reason of any such notice or notices not having been given as aforesaid, nor by reason of any imperfection in any such notice or notices.

"XXXIX. And be it further enacted, that all the provisions in the said recited act contained, in relation to the purchases thereby authorized, and to the consequences thereof, as well with reference to the parties immediately interested, and their rights and liabilities, as to those having derivative and other interests, and their rights and liabilities, in all other respects whatsoever, shall, so far as the nature of the case will admit, extend and be applicable to the purchases by this act authorized to be made, and to the consequences thereof.

"XL. And whereas it is by the said recited act amongst other things enacted, that the officiating curate or minister officiating as curate of every parish, union, chapelry, or perpetual curacy in Ireland, and the dean and chapter or chapter of every such cathedral and parochial church or cathedral used as a parish church in Ireland, shall, on or before the first day of June in each and every year succeeding the year one thousand eight hundred and thirty-three, prepare or cause to be prepared such estimate containing such items and particulars as are in the said act mentioned, and that such estimate shall be transmitted by such person or persons whose duty it is to prepare the same to the ordinary of the diocese on or before the first day of July in each and every year succeeding the said year one thousand eight hundred and thirty-three; and it is by the said recited act further enacted, that the said ecclesiastical commissioners shall pay or cause to be paid on the first day of September in each year, for the maintenance of all and every the person or persons who at the passing of the said act was or were or should thereafter be appointed clerk or clerks of such parish, union, or chapelry, or chapel of ease, as therein mentioned, certain salaries or to grant certain allowances in the said act mentioned: and whereas it is expedient that the respective periods for preparing and transmitting such estimate and for paying such sums as aforesaid should be left to the discretion of the said ecclesiastical commissioners; be it therefore enacted, that the said estimates shall be prepared and transmitted at such convenient times, and shall be made and calculated for such period, commencing on such day and ending on such day in each year, as the said ecclesiastical commissioners shall from time to time think fit to direct and signify by writing under

their corporate seal to the person or persons whose duty it may be from time to time to prepare and transmit the same; and that such payments on account of salaries or maintenance to clerks heretofore or hereafter to be appointed shall be made at such convenient time in each year as the said commissioners shall appoint and direct; any thing in the said recited act contained to the contrary hereof notwithstanding.

“XLI. And whereas it was by the said recited act provided, that all rates or assessments upon any parish, union, chapelry, or place, or the inhabitants thereof, or any of them, for certain purposes in the said act mentioned, and all proceedings for the making, assessing, applotting, or levying the same, should from and after the commencement of the said act wholly cease and determine, and that every rate, assessment, or applotment, for any church purpose whatsoever should be and be deemed to be by all courts of justice totally void as to so much thereof as provides for the church purposes, or any of them, in such act mentioned; and it was also by the said act provided, that in all parishes and places where by virtue of any law, statute, or custom, provision may have been theretofore made by vestry or other assessment for the maintenance of any curate, lecturer, clerk, or other minister or assistant, in the celebration of divine worship, or attendant or sexton, such provision by vestry or other assessment should from and after the passing of the said act wholly cease and determine, and future provision for such church and other purposes was made by the said act from and after the commencement thereof: and whereas it is necessary, by reason of the said enactments, that provision should be made for the purposes aforesaid for the period of the year one thousand eight hundred and thirty three, intervening between the commencement of the said act and the Easter week next preceding, and also for all such charges and expenses incurred previous to the commencement of the said act as would or ought to have been defrayed by vestry assessment in case the said act had not been made; be it therefore enacted, that so much of the said recited act as disables any vestry called or holden in or for any parish, union, chapelry, or place, or any person or persons, from making, assessing, applotting, or levying any rate or assessment for any of the purposes in the said act mentioned, and so much of the said act as authorizes and requires the said ecclesiastical commissioners to issue and pay the sums required for the several matters and things by such act directed to be included in the estimates to be annually transmitted to the said commissioners, or as authorized the said commissioners to make provision for the maintenance of any curate, lecturer, clerk, or other minister or assistant in the celebration of divine worship, or attendant or sexton, in lieu of any provision by vestry assessment or otherwise theretofore made for such purposes by any law, statute, or custom, shall take effect and be deemed to have taken effect from the commencement of the Easter week in the said year one thousand eight hundred and thirty-three, and that any such rate or assessment made in such week, or at any time after and previous to the commencement of the said act, shall be utterly null and void in so far as respects any of the church purposes in the said act mentioned, but no further; and that supplementary estimates for the said period intervening between Easter week in the said year one thousand eight hundred and thirty-three, and the commencement of the said act shall with all convenient speed be prepared, certified, and transmitted to the said commissioners in manner and form by the said act prescribed in respect of the annual estimates to be transmitted to the said commissioners.

“XLII. And whereas it was by the said recited act provided, that certain parts of an act made in the parliament of the United Kingdom, in the seventh year of his late majesty King George the Fourth, intituled, ‘An Act to consolidate and amend the Laws which regulate the Levy and Application of Church Rates and Parish Rates, and the Election of Churchwardens, and the Maintenance of Parish Clerks, in Ireland,’ should be and the same were thereby repealed, but doubts and difficulties have arisen as to the mode of obtaining relief against such rates and assessments as have been rendered illegal by such repeal, by reason of the recognizances, notices, and other formalities made necessary by the said act of the seventh year of his late majesty King George the Fourth, in order to constitute an effectual

STAT. 4 & 5
GUL. 4, c. 90.
[1a.]

Ecclesiastical
commissioners
empowered to
provide for
the purposes
heretofore
defrayed by
vestry assess-
ment for part
of the year
1833.

Upon proof
that notice
of appeal
against rates
rendered illegal
by 7 Geo. 4,
c. 72, has been
given, justices
may proceed
to hear the
same without
recognizances

STAT. 4 & 5
GUL. 4, c. 90.
[1a.]

having been
entered into.

appeal against any assessment or applotment under the said last-mentioned act, and it is expedient to obviate all such doubts and difficulties, and to facilitate the trial of every such appeal upon the merits; be it therefore enacted, that it shall not be necessary for any person who shall appeal to the justices of the peace at the general or quarter sessions of the peace to enter into any recognizance whatsoever, either by himself or with any security or securities, but that the justices before whom such appeal shall come on to be tried shall, upon proof that a notice in writing of such appeal was given to the incumbent or curate, or to both, or one of the churchwardens and three householders of the parish, chapelry, or union, six clear days at the least before such general or quarter sessions, proceed to hear and determine such appeal upon the merits, and to award costs not exceeding five pounds, against either party, as to them shall appear just.

Every parishioner to vote at vestries without distinction.

“XLIII. And be it further declared and enacted, that at every vestry to be hereafter at any time called or holden in any parish, union, or chapelry, for the purpose of making any cess, rate, assessment, or applotment whatsoever, it shall be lawful for every parishioner, of whatever religious persuasion he may be, who shall be chargeable to such cess, rate, assessment, or applotment in such parish, union, or chapelry, to vote at such vestry respecting every matter or business therein brought forward.

Commissioners enabled to ascertain the amount of existing charges on parishes for purposes for which vestry assessments are now prohibited, and to pay them off.

“XLIV. And be it enacted, that it shall be lawful for the said ecclesiastical commissioners to inquire into and ascertain the amount of all such sums as may have been, at or previous to Easter week in the said year one thousand eight hundred and thirty-three, charged or chargeable upon any parish, union, or chapelry, for or on account of any balance of account, costs, damages, or expenses due to any churchwarden, or to any clerk or sexton for his maintenance, and also the amount of any arrears of vestry cess accrued due and not collected for the years one thousand eight hundred and thirty-one or one thousand eight hundred and thirty-two with which any churchwarden may have been charged in his account, and which he may have paid and cannot recover, and also the amount of all sums which any churchwarden or person may have paid or for which he may be liable on behalf of any parish, union, or chapelry, for any purpose now executed, and for which a vestry assessment may have been made in the year one thousand eight hundred and thirty-one or one thousand eight hundred and thirty-two or one thousand eight hundred and thirty-three, not exceeding the arrears due upon such assessment; and the said commissioners, having satisfied themselves of the amount of all such sums as aforesaid, shall, in such manner and to such extent, and subject to such regulations as they in their discretion shall think just and necessary, pay the said sums to the persons respectively entitled thereto.

Commissioners of public works in Ireland may lend the ecclesiastical commissioners a sum not exceeding 100,000*l*.

“XLV. And whereas it is necessary, in order to enable the said ecclesiastical commissioners to provide for the purposes heretofore defrayed by vestry assessment according to the provisions of the said recited act and this act, that such commissioners should be empowered to borrow a sum of money by way of mortgage or loan on the credit of the funds accruing to them under the provisions of the said act; be it therefore enacted, that it shall and may be lawful for the commissioners acting under and in execution of an act made in the second and third years of the reign of his present majesty, intituled, ‘An Act for the Extension and Promotion of Public Works in Ireland,’ by and with the consent and approbation of the lords commissioners of his majesty’s treasury, to lend and advance to the said ecclesiastical commissioners such sum or sums of money, not exceeding in the whole one hundred thousand pounds, as they shall think proper, to be repaid to the said commissioners for the extension and promotion of public works in Ireland, in such manner and at such times, with interest for the same, at and after such rate, not exceeding four pounds per centum per annum on the sum or sums so advanced, as the said commissioners of the treasury shall direct and require; and all sums so lent and advanced shall, with the interest from time to time accruing due thereon, be and the same are hereby charged upon all and every the rents, issues, and profits of all lands, tenements, or hereditaments, and the annual tax and the proceeds thereof, and all and every sum or sums of money, or

STATUTA GULIELMI IV. A.D. 1830—1837.

securities for money, vested in or which shall accrue to the said ecclesiastical commissioners and their successors under and by virtue of the said act, and all interest, dividends, profits, and proceeds thereof; and the said ecclesiastical commissioners are hereby authorized and required to pay such sums of money, and such interest from time to time accruing due thereon, when and as the same shall become due and payable respectively, pursuant to the order and direction of the said commissioners of the treasury, from and out of the produce of the said rents, issues, and profits, and the said tax, and the other funds vested in or accruing to such ecclesiastical commissioners under the said act, prior and in preference to any other application thereof.

"XLVI. And be it enacted, that the said recited act of the last session of parliament for altering and amending the laws relating to the temporalities of the church in Ireland shall continue in full force and effect, save and except so far as the same is expressly repealed or altered by this present act; and that the said recited act and this act shall be construed together as one act to all intents and purposes whatsoever.

"XLVII. And be it further enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in the present session of parliament."

CI. STAT. 5 & 6 GULIELMI 4, cap. xvi. A.D. 1835.

"An Act to enable the Prebendary of the Prebend of Highleigh, founded in the Cathedral Church of the Holy Trinity of Chichester, to accept Surrenders of the existing Lease of any part of the said Prebend, and to grant new Leases thereof."

CII. STAT. 5 & 6 GULIELMI 4, cap. xvii. A.D. 1835.

"An Act for building a new Parish Church in the Town of Honiton, in the County of Devon."

CIII. STAT. 5 & 6 GULIELMI 4, cap. xxi. A.D. 1835.

"An Act for uniting the Rectory and Parish Church of Stanmer, in the County of Sussex, with the adjoining Vicarage and Parish Church of Fulmer, and for exchanging the Parsonage House and Glebe Land of Stanmer, and the Vicarage House of Fulmer, for certain Pieces of Land at Fulmer, being part of the titled Estates of the Right Honourable Henry Thomas, Earl of Chichester, on which a new Parsonage House has been built at the Expense of the said Earl."

CIV. STAT. 5 & 6 GULIELMI 4, cap. xxv. A.D. 1835.

"An Act to authorize the making of Grants or Leases of Mines within and under Parts of the Lands belonging to the Perpetual Curacy of the Parish of Wolverhampton, in the County of Stafford."

CV. STAT. 5 & 6 GULIELMI 4, c. 30(1). A.D. 1835.

"An Act for protecting the Revenues of Vacant Ecclesiastical Dignities, Prebends, Canonries, and Benefices without Cure of Souls, and for preventing the Lapses thereof, during the pending Inquiries respecting the State of the Established Church in England and Wales."

"Whereas his majesty was pleased, on the fourth day of February last, to issue a commission to certain persons therein named for considering the state of the established church in England and Wales with reference to ecclesiastical duties and revenues, which commission has since been renewed, and such renewed commission is now in force, and the inquiries thereby directed are now in progress,

(1) Vide Stat. 6 & 7 Gul. 4, c. 67; Stat. 3 & 4 Vict. c. 113, s. 66; Stat. 4 & 5 6 & 7 Gul. 4, c. 77; Stat. 7 Gul. 4 & 1 Vict. c. 39, s. 28; Stat. 5 & 6 Vict. c. 58; Vict. c. 71; Stat. 1 & 2 Vict. c. 106; Stat. 5 & 6 Vict. c. 112; Stat. 6 & 7 Vict. 1 & 2 Vict. c. 108; Stat. 2 & 3 Vict. c. 55; c. 60; and Stat. 6 & 7 Vict. c. 77.

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must elapse before the same can be brought to a termination: and His Majesty has been graciously pleased to signify, that, in order to promote the objects of the said commission, it is His Majesty's intention to defer to any vacant dignity, prebend, canonry, or benefice without cure, which may be in the patronage of the crown, until the circumstances connected with it shall have undergone the consideration of the said commissioners: and the archbishops, and divers of the bishops of England and Wales, have intimated their intention of pursuing the same course with regard to similar preferments in their respective patronage, (excepting only the dignity of archdeacon,) and a declaration has been made by certain other patrons: and whereas, by the said act, prebends, canonries, and benefices without cure of souls have since the said fourth day of February last, and others may become vacant during the said inquiries now in progress; and it is expedient that the said vacancies should not remain vacant until it shall be decided in what mode they can be most advantageously filled, so as to be made most conducive to the efficiency of the established system, and with that view it is necessary to provide that due care be taken of such dignities, prebends, canonries, and benefices, and that the election or collation thereto shall not lapse by reason of delay in such collation: be it therefore enacted by the king's most excellent Majesty, with the advice and consent of the lords spiritual and temporal, in this present parliament assembled, and by the authority of the same, that, if any dignity, prebend, canonry, or benefice without cure of souls, which has been in the patronage of His Majesty, or of any archbishop, bishop, or other patron of England or Wales, has become vacant since the said fourth day of February last, and remains vacant during the existence of the said commission now in force, all the profits and emoluments which have arisen or accrued, and shall arise and accrue, from every such vacant dignity, prebend, canonry, or benefice, until a successor shall have been appointed thereto, whether from the crown, or hereditaments to the same belonging, or from rents, fines, advowsons, or other emoluments belonging to any chapter or other ecclesiastical corporation, of which the dignitary, prebendary, canon, or incumbent last in possession, or who was a member, shall be paid to the treasurer for the time being of the said bounty of Queen Anne, in as full and ample manner as such dignitary, canon, or incumbent, if he had remained in possession, or had been duly appointed, inducted, or installed, would be entitled to receive: and the said treasurer shall, for the purpose of enforcing payment of all such emoluments, have and enjoy all legal rights, powers, and remedies, in law, or in equity, or by way of action, suit, or distress, as the case may be, which would belong to the said dignitary, canon, or incumbent, if he had remained in possession, or had been duly appointed, inducted, or installed, provided always, that such treasurer shall not have the power of presenting to any benefice with cure of souls: provided also, that the said treasurer shall not be answerable or accountable for any monies received by him under this act which shall not have been actually received by him: and be it further enacted, that such treasurer shall keep an account of the monies received by him under this act separate from all other funds in his hands, and shall, in respect whereof the same shall be paid, allow all costs, expenses, and outgoings which would have been incurred by the said dignitary, canon, or incumbent, if he had remained in possession, or had been duly appointed, inducted, or installed, or may be reasonably incurred in the receipt of the said monies, and the payment of the sums received, the amount thereof being allowed to the said treasurer for the time being, and shall retain the said monies until he shall be otherwise ordered by competent authority: provided always, and be it enacted, that nothing in this act contained shall affect any profits or emoluments of any dignity, prebend, canonry, or benefice without cure of souls, which shall have been already divided or carried to any other use, according to the statutes, customs, or usages of the cathedral or church in which such dignity may be founded: provided also, and be it enacted, that nothing in this act contained shall affect the right of any archbishop, bishop, or other patron of any dignity, prebend, canonry, or benefice without cure of souls, which may have or hereafter

shall become vacant, from appointing a successor thereto in case he shall think proper to do so.

"V. And be it further enacted, that where any benefice with cure of souls, being in the patronage of the holder or incumbent of any such dignity, prebend, canonry, or benefice as aforesaid without cure of souls, shall have become or shall become vacant during the vacancy of such last-mentioned dignity, prebend, canonry, or benefice, the patron of such last-mentioned dignity, prebend, canonry, or benefice, shall be entitled to present to such benefice with cure of souls.

"VI. And be it further enacted, that the right of presentation or collation to any dignity, prebend, canonry, or benefice without cure of souls so become or becoming vacant as aforesaid shall not, by reason of any delay in presenting or collating thereto, lapse to any bishop or archbishop, or to the king's majesty; any law or custom to the contrary notwithstanding: provided always, that the patron of such vacant dignity, prebend, canonry, or benefice, shall within six months after the vacancy give notice thereof in writing to the commissioners hereinbefore mentioned, who shall transmit a copy of such notice to the said treasurer; and the said treasurer shall, upon receipt thereof, forthwith proceed to demand, collect, and receive, and shall, during the time that such dignity or benefice shall remain liable to the provisions of this act, continue from time to time to demand, collect, and receive the profits and emoluments as they shall respectively become due and payable, and shall diligently use and exercise all the powers and authorities hereby to him given for duly and regularly enforcing the payment thereof."

STAT. 5 & 6
GUL. 4, c. 30.

proper to do so.

Providing for the presentation to benefices in the patronage of such vacant dignity, &c.

Right of presentation to vacant dignity or benefice not to lapse.

Treasurer of Queen Anne's bounty to collect the profits of the vacant benefice, &c.

CVI. STAT. 5 & 6 GULIELMI 4, c. 50. A.D. 1835.

"An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England."

"CXI. And be it further enacted, that if the inhabitants of any parish shall agree at a vestry to defend any indictment found against any such parish, or to appeal against any order made by or proceeding of any justice of the peace in the execution of any powers given by this act, or to defend any appeal, it shall and may be lawful for the surveyor of such parish to charge in his account the reasonable expenses incurred in defending such prosecution, or prosecuting or defending such appeal: after the same shall have been agreed to by such inhabitants at a vestry or public meeting as aforesaid, and allowed by two justices of the peace within the division where such highway shall be; which expenses, when so agreed to or allowed, shall be paid by such parish out of the fines, forfeitures, payments, and rates authorized to be collected and raised by virtue of this act: provided nevertheless, that if the money so collected and raised is not sufficient to defray the expenses of repairing the highways in the said parish, as well as of defending such prosecution, or prosecuting or defending such appeal as aforesaid, the said surveyor is hereby authorized to make, collect, and levy an additional rate in the same manner as the rate by this act is authorized to be made for the repair of the highway."

STAT. 5 & 6
GUL. 4, c. 50.

Expenses for defending prosecutions agreed upon at a vestry meeting, how to be paid.

CVII. STAT. 5 & 6 GULIELMI 4, c. 54. A.D. 1835.

"An Act to render certain Marriages valid, and to alter the Law with respect to certain Voidable Marriages."

"Whereas marriages between persons within the prohibited degrees are voidable only by sentence of the ecclesiastical court pronounced during the lifetime of both the parties thereto, and it is unreasonable that the state and condition of the children (1) of marriages between persons within the prohibited degrees of

STAT. 5 & 6
GUL. 4, c. 54.

(1) *State and condition of the children*:—In *Rey v. Sherwood*, (1 Curt. 227; vide etiam 1 Moore P. C. 353,) it was held, that a father has a sufficient interest to enable him to a suit in the civil form, for the purpose of annulling the marriage of his daughter when of age: Sir Herbert Jenner observing, "The

question then comes to this: is the interest of a father in the marriage of a daughter or of a son, who has attained majority, and especially in the case of a daughter, is the interest of a father in respect to such daughter, who is still an inmate of his house, and a part of his family, sufficient to entitle him

in unsettled during so long a period, and it is fitting that all y hereafter be celebrated between persons within the *prohibitions* (2) or affinity should be ipso facto void, and not

o have the marriage of declared void? What which apply to cases Does it follow, because as attained majority, obligations which ex- ve ceased? Did they inority? Are all the obligations, and duties rties—all the power, of a father over such an end the day they think clearly and on- g as a son or daughter r's roof, though major, of the family; and he, ly, has the care of the to exercise a parental us. I do not conceive from the obligation of g, protecting, and ad- reumstanced: the mu- ties remain the same— advice from the parent, sence from the child." tty, 446-466. *Dur- linge Berkeley*, 6 Ves. *rest (Inhabitants of)*. *Bowerby (Inhabitants v. Roach (Inhabitants v. Everton (Inhabi- Res v. Blesby (In- A. 377. Res v. Wil- of)*, 5 B. & A. 525. *itants of)*, 8 B. & C.

was:—A marriage with wife's mother is null 5 & 6 Gul. 4, c. 54; a marry A., and after the sister of A.'s mo- g the lifetime of B., so cannot be convicted a marriage to B. was in *Regina v. Madden*, 1,) it appeared in evi- ar 1827, the prisoner ad Mary Duncan, who

In the month of No- soner was again mar- haire, by the Rev. Mr. ho had been a Roman ho at this time pro- religion, and was of- of that religion. The an catholic, and Anne tar of the mother of soner's former wife. performed according in the Roman catholic to the presbyterian ad that Mr. Crotty, at his ceremony, had not to the rules of the , to perform the mar- September, 1842, the ried to one Mary Fitz- atholics, by a Roman

catholic clergyman; Anne Mullhaire being still alive.

On behalf of the prisoner, it was submitted that the prisoner must be acquitted. That in an indictment for bigamy, it was essen- tial to prove two valid, legal, and binding marriages in the lifetime of the person. That the marriage in 1827 was out of the question, except so far as the relationship that existed between the person, the prisoner then married, and Anne Mullhaire; and that the marriage with Anne Mullhaire was an invalid marriage, having been a ceremony performed between two Roman catholics, not according to the ritual of their church, and by a person who had at the time no jurisdic- tion or authority to perform such a cere- mony, save as a presbyterian minister, and as such his marriage was invalid. *Regina v. Mills*, 1 Jebb & Bourke (Irish), 219. Upon another ground, also, that marriage was wholly void; the second section of Stat. 5 & 6 Gul. 4, c. 54, having enacted, "that al marriages which shall hereafter be celebrated between persons within the prohibited de- grees of consanguinity or affinity, shall be absolutely null and void to all intents and purposes whatsoever." That statute was passed in August, 1835, prior to the marriage with Anne Mullhaire, and one of the degrees of affinity in the list of prohibited degrees, is the Book of Common Prayer, is the "wife's mother's sister," which was the precise de- gree of affinity subsisting between Anne Mullhaire and the prisoner. That the mar- riage with Anne Mullhaire, being therefore upon such grounds null and void, the prisoner had not committed the crime of bigamy.

To these arguments, the counsel for the crown replied, that the Rev. Mr. Crotty was an ordained priest of the Roman catholic church, and not the less a priest, because he abjured the tenets of that church, or by the decrees of that church had been forbidden to perform the marriage ceremony. This, there- fore, distinguished the case from *Regina v. Mills*, (Ibid.) and *Regina v. Smith*, (2 Cruse- ford & Dix (Irish), 318,) which turned upon the fact that the person celebrating the mar- riage was not in holy orders. But that the matter was put beyond doubt by Stat. 5 & 6 Vict. c. 113, which passed on the 12th of August, 1842, and confirmed all marriages theretofore celebrated in Ireland, by pres- byterian or other dissenting ministers or teachers.

As to the second objection. That this marriage was not within the "prohibited de- grees" referred to in Stat. 5 & 6 Gul. 4, c. 54. Those words must be understood as referring to degrees prohibited by the common or sta- tute law, and not by the canons; for the canons, though the violation of them might subject a clergyman to ecclesiastical cre- sures, could not be held binding on the laity. *Middleton v. Croft*, 2 Str. 1846. That the prohibited degrees as known to and recog- nized by our law, were precisely detailed in

merely voidable: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and com-

STAT. 5
GUL. 4,
passing
act, of p

Stat. 28 Hen. 8, c. 2, s. 2 (*and* 202), and were afterwards generally referred to in Stat.

plied by the law to a marriage where there has not been a due publication of banns, and I am not at liberty to enter into that question; but, morally speaking, and using the common acceptation of the term, it is a secret and clandestine marriage, purposely and studiously concealed from the knowledge of those who were directly interested to prevent one of the parties from entering into the unhallowed contract. Lastly, it is a case calling for the interference of the court; because, as I collect from the libel, there has been no cohabitation of the parties since the marriage, so that it is not too late now for the court to prevent the consummation of the offence, if the law has not placed an insuperable barrier to any proceeding for that salutary purpose.

"That this court would and ought to lend its aid and assistance towards the accomplishment of so desirable an object, cannot be doubted; and I have myself no hesitation in saying, that I should feel great regret if I were to find myself placed in such a situation as to be obliged to reject this libel, and thereby in effect to pronounce that the validity of this marriage could not be questioned. What would be the condition of the parties and of the court, if such should be its present decision? Mr. Sherwood would have a right to claim the *consortium* of his wife; and if she refused to cohabit with him, he would be entitled to institute a suit in these courts, not for the purpose of compelling her to return to cohabitation in his house, (for into it she has never entered as his wife,) but to afford him the *consortium viæ*, which she has withheld from him by his own consent from the date of the marriage to the present time. The court would thus be accessory to the commission of that offence, of which there is every reason to believe she is at the present moment innocent. And when the court has issued its *fiat* to compel her to cohabit with her husband, it may the next day, in another branch of its jurisdiction, be called upon to punish her for the very crime, to the commission of which the court itself has been an instrument; for, looking at the words of the act of parliament, I am by no means prepared to say that, in prohibiting the ecclesiastical courts from annulling marriages of this kind, subsisting at the time of the passing of the act, the legislature has altered the law in any other respect.

"I am not prepared to say, that the parties may not be punished by the ecclesiastical law for the incest, though the validity of the marriage cannot be called in question. How stood the law before this act of parliament? Originally, as now, these marriages were void *ab initio*, when sentence was pronounced by the ecclesiastical court: and it appears that the ecclesiastical courts were in the habit of annulling these marriages, even after the death of the parties, after the death of both, or of one only. And this seems to have been the practice antecedent to the canon of 1603, as will be evident from a reference to the *Articuli Cleri*, (2 Inst. 614,) by Archbishop

STAT. 5 & 6
GUL. 4, c. 54.
within the
prohibited

mons, in this present parliament assembled, and by the authority of the same, that all marriages which shall have been celebrated before the passing of this act

Bancroft, in the 3rd James the First, (in the year 1606,) whence it appears that the practice had existed for a long time before, and that the ecclesiastical courts complained of the interference of the temporal courts in cases of ecclesiastical cognisance; and amongst others, (in the 20th article,) 'that a prohibition had been awarded in a case of an incestuous marriage, suggesting, under pretence of a statute of Henry the Eighth, that it appertained to the temporal courts, and not to the ecclesiastical, to determine what marriages are lawful, and what incestuous, by the word of God.' To which the answer of the twelve judges was, 'That these were cases that we (the temporal courts) may deal with, both with marriages and deprivations; as where they (the ecclesiastical courts) will call the marriage in question after the death of any of the parties; the marriage may not then be called in question, because it is to bastardize and disinherit the issue, who cannot so well defend the marriage as the parties, both living, might themselves have done.' The practice, then, clearly existed at that time of declaring these marriages void after the death of the parties, and the temporal courts interfered for the purpose of protecting the interest of the issue of such marriages, and not that of the guilty parties; for, as it appears from the case of *Harris v. Hicks*, (2 Salk. 548,) in the 4th and 5th of William and Mary, where a man had married the sister of his deceased wife, and it was suggested that the second wife was dead, and a son, the issue of the second marriage, would be entitled to lands; the temporal court in that case issued a prohibition against these courts proceeding to annul the marriage between the parties after the death of one of them, but it did not prohibit them from punishing the survivor for the incest committed during cohabitation.

"If this, then, was the state of the law at that period, what has occurred to alter it since? Nothing but this act of parliament, passed on the 31st August, 1835, the 5th and 6th of William the Fourth, so often adverted to in the course of these proceedings. What did this act of parliament do? The title of it is, 'An Act to render certain Marriages valid, and to alter the Law with respect to certain voidable Marriages.' And if the object of the act had been to declare all such marriages existing at the time of the passing of the act, notwithstanding they were originally illegal, good and valid marriages to all intents and purposes, (as has been contended it does by the learned counsel for Mr. Sherwood,) it might admit of a question, whether under such circumstances, this court could punish the parties for incestuous cohabitation; but the enacting part of the act does not declare any such thing. After declaring in the preamble, 'Whereas, marriages between persons within the prohibited degrees are voidable only by sentence of the ecclesiastical court, pronounced during the lifetime of both the parties thereto, and it is unreasonable that the state and condition of the

children of marriages between persons within the prohibited degrees of affinity should remain unsettled during so long a period, and it is fitting that all marriages which may hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity should be *ipso facto* void, and not merely voidable;' then, in the enacting part of the act, I find these words: 'Be it therefore enacted, that all marriages which shall have been celebrated before the passing of this act between persons being within the prohibited degrees of affinity, shall not be good and valid to all intents and purposes, but 'not hereafter be annulled for that cause by any sentence of the ecclesiastical court, unless pronounced in a suit which shall be depending at the time of the passing of this act;' and the act has nothing to do with marriages within the prohibited degrees of consanguinity.

"The enacting part of the act does not declare these marriages to be good and valid to all intents and purposes, as might be supposed from the title of the act; and although the title, as well as the preamble, may be important where there is any doubt or ambiguity in the enacting part of a statute, when a reference may be made to the title and preamble for the purpose of explaining such doubt and ambiguity; but the title can give no effect to the enacting words of a statute, where those words are plain and unambiguous. I apprehend that they are independent of the title, which can have effect only so far as to obviate and explain doubt or ambiguity in the enacting part of a statute. I do not think, where the enacting part of the statute is to the effect 'that all marriages which shall have been celebrated before the passing of this act between persons being within the prohibited degrees of affinity, shall not hereafter be annulled for that cause by any sentence of the ecclesiastical court,' that this amounts to a prohibition to the ecclesiastical court to punish the parties under another branch of the law for incestuous cohabitation. I apprehend the law is not altered in this respect, and that the court is not prohibited by this act from punishing parties for such cohabitation, although it cannot declare the marriage null and void.

"Again, if we look to the preamble of the act, it is not for the protection of the parties who have been guilty of the offence, for such it is by the ecclesiastical law and by the law of God, but for the protection of the children, for that is the purpose and object of the act, to settle the estate and condition of the innocent issue of such marriages, not to screen the delinquent parties. But whatever may have been the intention of the legislature, and whatever may be the effect of the act of parliament, the marriage had between the two parties, Thomas Moulden Sherwood and Emma Sarah Ray, is an incestuous marriage, and must ever so remain. The law of God cannot be altered by man. The legislature may exempt the parties from punish-

between persons being within the prohibited degrees of affinity, shall not hereafter be annulled for that cause by any sentence of the ecclesiastical court, unless pronounced in a suit which shall be depending at the time of the passing of this act(1):

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degrees,
be annull

ment; it may legalize, humanly speaking, every prohibited act, and give effect to any contract, however inconsistent with the divine law, but it cannot change the character of the act itself, which remains as it was, and must always so remain, whatever be the effect of the act of parliament."

be depending at his act.—In *Ray* 7,) it was held, was sufficient to L. Sir *Herbert* 1, "I find a case same complexion cited in the court e in this chair—*rpenter*, (1 Phill. a the Consistorial ter, from the re- n a suit of nullity he licence having ho had no autho- of the libel was ection an appeal I find the appeal as a business of illiam Balfour, of ibel of appeal is depending in the court of Exeter, of marriage," in xurt had rejected el, and from such ight to the court ore me the origi- ad I find that the ated, that it was ding' in the court words—'a cause iding in the Com- t of Exeter,' and of proceeding in customary form, form,) and it is which I have re- me might be pre- same in all cases easion is 'a suit nding,' in respect appeal is brought, iar to this court. urses of informa- astomed to derive practice of these n stating 'a cause y that, in an ap- ecount of the re- an have been no eently, according ured counsel for ave been no suit ll these cases, a nding' before the

from experience; and there is one authority which I will advert to, and only one, which supports the view I have taken, and which is in opposition to the argument used against the admission of the libel. I mean Oughton, in his *Ordo Judiciorum*, not that part in which he sets forth the different stages of a suit, or parts of the *judicium*, (for writers differ from each other, and there is some confusion between the *causa* and the *judicium*, even the authorities so much adverted to in the argument, and which, though foreign writers, are said to be guides as to our practice,) but in that part where he treats of the order of proceeding in matrimonial suits. That authority (not in the passages which have been adverted or referred to by the counsel for Mr. Sherwood, but in another part of his treatise) speaks of proceedings '*lite pendente*,' where there could have been no *contestatio litis*, and even before the return of the citation. In title 198, where he treats *De citatione in causâ matrimoniali*, I find it thus laid down by him: 'Si agens in causâ matrimoniali credit vel dubitat partem ream citandam velle (*lite pendente*) ad alia vota convolare, (id est, cum alio aut contrahere aut solemnizare matrimonium,) curare potest ut in citatione inseratur inhibitiô contra partem ream ne (*lite hujusmodi pendente*) convolet ad alia vota; matrimoniumve aliunde quovis-modo contrahat, et quod si de facto antea contraxerit, (id est, ante executionem citationis,) illud in facie ecclesiæ solemnizari non procuret, sub poenâ juris et contemptus.' So that, in a proceeding in *causâ matrimoniali*, if the party against whom the suit is instituted *lite pendente*, enters into a contract of marriage with another person, the other party has a remedy, and this pendency of suit is *ante executionem citationis*; so that here is a *lite pendens* referred to before a *contestatio litis*. Again, in title 201: 'Si mulier contra quam agitur in causâ matrimoniali, non obstante pendentia litis et inhibitione, (quod *lite pendente*, non convolare ad alias nuptias,) matrimonium solemnizaverit vel matrimonium contraxerit cum alio; hoc allegato et probato est sequestranda, (sumptibus potentis,) *lite pendente*.' And there are several other parts of the section, *De causâ matrimoniali* which speak of a breach of the inhibition *pendente lite*. In title 31, *De contemptu*, is this: 'De modo petendi decretum in negotio contemptus in causâ matrimoniali; nempe propter solemnizationem matrimonii (*pendente lite*) inhibitione judicis in contrarium non obstante.' Again, after reciting the issuing and serving of the citation with the inhibition, it proceeds: 'Quodque (vestris literis inhibitoriis, et executione earundem non obstantibus) ipse, post executionem earundem (in contemptum juris et jurisdictionis vestræ non ferendum) matrimonium quoddam præsumptum (de facto) contraxit cum quodamvis et illud in facie ecclesiæ solemnizari seu potius profanari curavit.' It

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thing hereinbefore enacted shall affect marriages between persons prohibited degrees of consanguinity.
 it further enacted, that all marriages which shall hereafter be between persons within the prohibited degrees of consanguinity or absolutely null and void to all intents and purposes whatsoever.
 led always, and be it further enacted, that nothing in this act shall extend to that part of the United Kingdom called Scotland.
 it enacted, that this act may be altered or repealed by any act passed in this present session of parliament."

STAT. 5 & 6 GULIELMI 4, C. 58. [SCOTLAND.] A.D. 1835.

amend the Acts relating to the Hereditary Land Revenues of the Crown in Scotland."

IX. STAT. 5 & 6 GULIELMI 4, C. 62. A.D. 1835.

an Act of the present Session of Parliament, intituled, An Act effectual Abolition of Oaths and Affirmations taken and made in Obedience of the State, and to substitute Declarations in lieu thereof, more entire Suppression of Voluntary and Extra-judicial Oaths and and to make other Provisions for the Abolition of unnecessary

ded always, and be it enacted, that nothing in this act contained apply to the oath of allegiance in any case in which the same now required to be taken by any person who may be appointed to any such oath of allegiance shall continue to be required, and shall be taken, as well and in the same manner as if this act had not been

ided also, and be it enacted, that nothing in this act contained apply to any oath, solemn affirmation, or affidavit which now is y be made or taken, or be required to be made or taken, in any ing in any court of justice, or in any proceeding for or by way nviction before any justice or justices of the peace, but all such ns, and affidavits shall continue to be required, and to be adminis-

allow from these passages, sidered that there was a *lis* issuing the decree or sen- n; but it is impossible he view, in speaking of these *contestatio litis*; for, accord- the contempt is founded of the inhibition after the ve.

ears, with reference to the of the instruments in pro- courts, and also to the au- n, who has been relied on for the general practice of the *contestatio litis* is not titute a *lis pendens*; that sit depending in the Eccle- sfore the *contestatio litis*, *pendens*, according to this moss with the extracting e citation; and if not, by r courts, on the return of sever it may be. To be ose a case in which there urdship. For what is the period it was not in the istorial court of London to court-days; and, supposing

that the sittings of the court were over, so proceedings could have taken place till the first session of Michaelmas Term following, and the party, without any fault of his own, would have been precluded from the benefit of the exception from the prohibitory clause in the act. I consider, then, in the first place, that it is not a technical meaning which we are to apply to the words 'suit depending in the Ecclesiastical court,' no such technical meaning being intended by the legislature; and, secondly, I am of opinion that, if these words were to receive an interpretation according to the technical rules of practice of the court, they would not take away the jurisdiction of this court.

"I therefore entirely agree in opinion with the judge of the court below on this point—that the jurisdiction of the court is not taken away by the act of parliament on the ground that there was no suit depending, touching the validity of this marriage, at the passing of the act, which is requisite in order to bring it within the terms of the exception of the act, which requires that the sentence of nullity should be pronounced in 'a suit which shall be depending at the time of the passing of this act.'"

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tered, taken, and made, as well and in the same manner as if this act had not been passed.

"VIII. And be it enacted, that it shall be lawful for the universities of Oxford and Cambridge, and for all other bodies corporate and politic, and for all bodies now by law or statute, or by any valid usage, authorized to administer or receive any oath, solemn affirmation, or affidavit, to make statutes, bye-laws, or orders, authorizing and directing the substitution of a declaration in lieu of any oath, solemn affirmation, or affidavit, now required to be taken or made: provided always, that such statutes, bye-laws, or orders, be otherwise duly made and passed, according to the charter, laws, or regulations of the particular university, other body corporate and politic, or other body so authorized as aforesaid.

"IX. And whereas persons serving the offices of churchwarden and sidesman are at present required to take an oath of office before entering upon the execution thereof, and also an oath on quitting such office, and it is expedient that a declaration shall be substituted for such oath of office, and that the oath on quitting the same shall be abolished; be it enacted, that in future every person entering upon the office of churchwarden or sidesman, before beginning to discharge the duties thereof, shall, in lieu of such oath of office, make and subscribe, in the presence of the ordinary or other person before whom he would, but for the passing of this act, be required to take such oath, a declaration that he will faithfully and diligently perform the duties of his office, and such ordinary or other person is hereby empowered and required to administer the same accordingly: provided always, that no churchwarden or sidesman shall in future be required to take any oath on quitting office as has heretofore been practised."

CX. STAT. 5 & 6 GULIELMI 4, c. 69 (1). A.D. 1835.

"An Act to facilitate the Conveyance of Workhouses and other Property of Parishes (2), and of Incorporations or Unions of Parishes, in England and Wales"

CXI. STAT. 5 & 6 GULIELMI 4, c. 71. A.D. 1835.

"An Act for appointing Commissioners to continue the Inquiries concerning Charities in England and Wales until the first day of March, One thousand eight hundred and thirty-seven."

(1) Vide Stat. 4 & 5 Vict. c. 38, s. 6. Extended by Stat. 7 Gul. 4 & 1 Vict. c. 50.

(2) *Property of Parishes*:—In *Regina v. Abrahams*, (4 Q. B. 157,) it appeared, that an individual conveyed lands to private persons in trust, to distribute the rents periodically among the poor of a certain parish. The deed provided that a receiver should be appointed, and who should account to the parishioners from time to time; and that a coffer, of which there should be three locks and three keys, should remain in the parish church for keeping all writings and accounts, and trust monies unexpended; one key to be kept by the receiver, another by the incumbent or curate, and the third by one of the churchwardens. An information was afterwards exhibited in Chancery, praying that a scheme might be approved of for the future management of the charity and application of the funds; and a scheme was accordingly prepared and decreed, regulating the matters referred to in the above prayer, but making

no mention of the coffer or keys. On motion for a *mandamus* to the trustees to deliver one key to the churchwardens: it was held, that the claim of the churchwardens was not merely equitable, but that they had a legal right which might be enforced by *mandamus*; it was also held to be no objection to the rule, that the charity was a private institution: Lord Denman observing, "I think the claim of the churchwarden to have a key, as being one of the parties named in the deed for that purpose, is a legal right. It is independent of the general administration of the funds. The court does not interfere in the case of dissenting ministers, and in other instances, where the establishments are private. It is true that, in *Esparto Rugby Charity (The Trustees of)*, (9 D. & R. 214,) a *mandamus* to pay certain persons an increased allowance was refused; but that would clearly have been an interference with the administration of the funds."

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L. STAT. 5 & 6 GULIELMI 4. c. 74(1). A.D. 1836.

'An Act for the more easy Recovery of Titles.'

[illegible]

1 & 5 Vict. cc. 36 & 37.
*effect of any tithes
 into touching the same:—*
v. Watson, (3 Q. B. 661,)
 ed., "It seems to me quite
 & 6 Gul. 4, c. 74, extends

to the prohibition of actions of debt for treble value under Stat. 2 & 3 Edw. 6, c. 13, s. 1, where the annual value is less than 10*l*. The words 'for or in respect of any tithes,' and 'all complaints touching the same,' are obviously sufficient."

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the said recited act of the parliament of Ireland of the seventh year of King George the Third, and the said recited act of the fifty-fourth year of King George the Third, in the same manner as if the same were herein set forth and re-enacted; provided always, that nothing hereinbefore contained shall extend to any case in which the actual title to any tithe, oblation, composition, modus, due, or demand, or the rate of such composition or modus, or the actual liability or exemption of the property to or from any such tithe, oblation, composition, modus, due, or demand, shall be *bona fide* in question, nor to any case in which any suit or other proceeding shall have been actually instituted before the passing of this act.

"II. And be it enacted, that in case any suit or other proceeding has been prosecuted or commenced, or shall hereafter be prosecuted or commenced, in any of his majesty's courts in England or Ireland, for recovering any great or small tithes, modus or composition for tithes, rate, or other ecclesiastical demand, subtracted, unpaid, or withheld by or due from any quaker, no execution or decree or order sue or be made against the person or persons of the defendant or defendants, the plaintiff or plaintiffs shall and may have his execution or decree against goods or other property of the defendant or defendants; and in case any person detained in custody in England or Ireland under any execution or decree in suit or proceeding, the sheriff or other officer having such person in his custody shall forthwith discharge him therefrom; and the plaintiff or plaintiffs in suit or proceeding shall and may, notwithstanding such discharge, issue any execution or take any other proceeding for recovering his demand and his costs out of the property, real or personal, of the person so discharged."

CXIII. STAT. 5 & 6 GULIELMI 4, c. 75. A.D. 1835.

"An Act for the Amendment of the Law as to the Tithing of Turnips in certain Cases."

"Whereas it is frequently convenient and necessary, in the agistment of turnips by sheep or cattle, to sever the turnips from the ground, in order that they may be the more easily and completely consumed, and thereby to prevent waste, and it is not reasonable that such severance should vary or affect the payment of tithe; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, in all cases where turnips shall be severed in the manner and for the purpose aforesaid, and shall be eaten on the ground by sheep or cattle, and not otherwise removed, the same shall be subject to the payment of tithe in the same manner and to the same extent as if they had been eaten by such sheep or cattle without having been so severed as aforesaid, and no farther or otherwise."

CXIV. STAT. 5 & 6 GULIELMI 4, c. 76(1). A.D. 1835.

"An Act to provide for the Regulation of Municipal Corporations in England and Wales."

"LXXI. And whereas divers bodies corporate now stand seised or possessed of sundry hereditaments and personal estate, in trust, in whole or in part, for certain charitable trusts, and it is expedient that the administration thereof be kept distinct from that of the public stock and borough fund; be it enacted, that in every borough in which the body corporate, or any one or more of the members of such body corporate, in his or their corporate capacity, now stands or stand solely, or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate seised or possessed for any estate or interest whatsoever of any hereditaments, or any sums of money, chattels, securities for money, or any other personal estate whatsoever, in whole or in part in trust, or for the benefit of any charitable uses or

(1) Vide Stephens on the Municipal Corporation Acts, 2nd ed. Stat. 5 & 7 Gul. 4, c. 45, 46, 47, 48; and Stat. 1 & 2 Vict. c. 31.

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respect of the said uses and trusts, shall continue in the persons who at the time of the passing of this act are such trustees as aforesaid, notwithstanding that they

Shrewsbury, and their successors, amongst other hereditaments, the advowson of the vicarage of C.

By Stat. 38 Geo. 3, c. 68, all the hereditaments and real and personal estates belonging to the school were vested in a corporate body, called "The Governors and Trustees of the School," who were to hold the same in trust for the benefit and maintenance of the school, except the right of election, and appointment of benefices which were to be in the mayor, aldermen, and assistants of the town of Shrewsbury, and the masters of the school, or other of the university of the parish of C.; except as lawful to give such masters of the school, vacated his office of mayor, aldermen, and le trustees, within the

meaning of the act 5 & 6 Gul. 4, c. 76, for the regulation of municipal corporations.

Lord Chancellor Cottenham, after stating the letters patent of Edward the Sixth, the indenture of the thirteenth of Elisabeth, and the effect of Stat. 38 Geo. 3, c. 68, down to the end of the twenty-fifth section, proceeded as follows:

"From this it is clear, that the vicarage of Chirbury, and the three curacies of St. Mary's, Astley, and Clive, were originally granted for the benefit of, and formed part of the property of, the school. The very exception shews, that they were considered as part of the estates belonging to the school. So much of the act as I have hitherto stated, which is intitled, 'An Act for the better Government and Regulation of the School,' shews no intention to alter the property, but trusts it as part of the possessions of the school; and although it does not vest the benefices in the new trustees, it provides in certain cases for their improvement and increase out of the income of the charity property. Then comes the twenty-eighth section, which enacts, &c." [His lordship here read that section, and then proceeded:]

"This section effects all that could have been effected for the benefit of the school from such property. It describes the benefices as belonging to the school. It probably was thought, that in order to secure the presentation of proper persons to those benefices, it was safer to vest the right of presentation in a body not capable of being personally benefited by it, rather than in the corporation of the trustees of the school; but it provides that a preference shall be given in the presentations to persons educated at

the school, being sons of burgesses or inhabitants of Chirbury; and a preference over these is to be given to retired masters of the school. In what other way could a more beneficial application of the patronage of those benefices have been made for the school, consistently with the paramount object of securing the appointment of proper clergymen for those curacies? It was said, that as there was to be only a preference in case of equality of other qualifications, and as the corporation were to be judges of such equality, the act would, in effect, give to the corporation the unrestricted patronage. No doubt the duties of such a trust are easily evaded, and it is difficult to prove a breach of such a trust; but it is nevertheless a trust, and one of which the abuse, if proved, would be corrected. Every trustee of an advowson may, during the absence or incapacity of the *cessui que trusts*, have to exercise the patronage of presenting to the living at his own discretion. Of this there may be more or less chance, according to circumstances, but the person so exercising the patronage is not less a trustee. I cannot conceive, that the act intended the corporation to have any other benefit. Their trust strictly was to present deserving persons from amongst the favoured class; and it is only upon the failure of such persons that the right of presentation, without restriction, was to be exercised by them,—a right which must exist in every trustee of an advowson, however small, in some cases, may be the chance of his having to exercise it.

"Such being, in my opinion, the nature of the interest of the corporation of Shrewsbury in these ecclesiastical benefices, the question is, how the Municipal Corporation Reform Act, 5 & 6 Gul. 4, c. 76, acts upon such interests? Sect. 71 provides, that when any body corporate of any borough is seized or possessed of any estate or interest in any hereditaments, in whole or in part, in trust or for the benefit of any charitable uses or trusts whatsoever, all the estate and interest, and all the power of such body corporate shall, in the event which has happened, cease and determine on the 1st of August last, and that the lord chancellor shall make such order as he shall see fit for the administration of such trust estates. It seems to me impossible, upon any construction of the School Act, to contend that these ecclesiastical benefices were not vested in the corporation, in part at least, for the benefit of the school; and if so, they were so vested in part for a charitable use and trust; and if so, they were within the act, and the trusteeship of the corporation has ceased, and the deficiency is to be supplied. If this be so, the 139th section, which provides for the sale of ecclesiastical benefices belonging to the municipal corporations, does not apply to the advowson; for that section, in terms, applies only to advowsons or rights of presentation of which the corporations may be seized or passed, otherwise than as charitable trustees.

"But it is said that, at all events, the

ld any office by virtue of which before the passing of this stees, until the first day of August, one thousand eight hun-

ation, in case there charity fit for pre- section, and ought, section applying to corporation had any or present to any necessary to deter- the opinion I have the interest of the ect of the sale will the right of patron- ight of presentation e corporation were interest, however, o protect, is the ad- mage, and not such her power, of pre- re, of opinion that ht of patronage or id to appoint new e corporation. ers ask, that they, ol, may be invested ; would be in direct , of the School Act, sets of trustees for ther property of the elf bound to follow, scheme of that act, applying the defici- benefices which the has occasioned. I o the master in the stees in the place of

ors of the Hospital ' Bristol v. Anne 913.) Mr. Baron flowing judgment: se arose out of the nicipal Corporation 5.) It appears by izabeth, by letters ayor and common ristol, for the time on, by the name of Hospital of Queen the manor of Con- nds which form the as afterwards con- , on certain charita- s will of John Carr, year 1586. ion council of Bris- racter of governors Elizabeth, adminis- arity from the time the 9th of Septem- on which the Mu- royal assent; and as who then consti- munion council conti-), pursuant to the having been made estates vested in table purposes, the month of August, ' the masters of the rint new trustees of

the Bristol charities. The master accord- ingly appointed new trustees; and his report was confirmed by the lord chancellor in the month of October, 1836. In this state of things, the question for our decision is, in whom the legal estate in the manor of Con- gresbury, of which the lands in question in this cause are part, is now vested.

"The question depends entirely on the construction to be put on the 71st section of the Municipal Corporation Act, by which it was enacted, among other things, that in every borough in which the body corporate then stood seized of any hereditaments, in trust for any charitable uses, all the estate and interest, and all the powers of such body corporate in respect of such uses, should continue in the persons who, at the time of the passing of the act, were such trustees, until the 1st of August, 1836, and should immediately therefrom utterly cease and determine. Provided that, if parliament should not otherwise direct, on or before the 1st of August, 1836, the lord chancellor should make such orders as he should see fit for the administration, subject to such charitable uses as aforesaid, of such trust estates.

"It has occurred to us as a matter of con- siderable doubt, whether this section applies to the present case, because the municipal body corporate of Bristol did not stand seized of any land. It was a separate corpora- tion, with a distinct name of incorporation and a distinct corporate seal, that was seized of the land in question, though the natural members of the body corporate were the same as those who constituted the municipal corpora- tion. If that doubt were well-founded, the plaintiff is entitled to recover on the de- mise by the Governors of the Hospital of Queen Elizabeth in Bristol. If it be not, and the corporation is treated as the same, and as seized of the land, we still think that the plaintiff is entitled to recover on the same demise. Had it not been for the 71st clause, it is clear that the trust estates in question would have continued in the corpo- ration as before the passing of the act. For though, under the previous sections, the name and style of the corporation, and the mode of electing the members, were changed, yet the identity of the body itself was not affected. (*Vide* ss. 1 & 6.) The corporation is still the same body which, by the charter of Queen Elizabeth, was incorporated by the name of 'The Governors of the Hospital of Queen Elizabeth in Bristol;' and the real question, therefore, is as to the effect of the 71st section.

"We are of opinion, notwithstanding this clause, that the legal estate remains, and, as fact, always has been vested in the corpora- tion; and that this 71st section affects only the equitable interest, or rather the right of administering the charitable funds. The object of the clause, as appears from its pre- amble, was to keep the administration of the charitable funds distinct from that of the municipal funds; and the question is, what

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dred and thirty-six, or until parliament shall otherwise order, and shall immediately thereupon utterly cease and determine: provided always, that if any vacancy

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is the true construction of the enactment whereby this object was to be effected? On the part of the defendant, it was contended, that, by the express words of the clause, all the estate of the corporation in the charity property was transferred, for a limited period, to the persons who, at the passing of the act, constituted the corporation; and then that, at the end of such limited period, namely, on the 1st of August, 1836, their estate was made absolutely to cease; the effect of which would probably be to re-vest the legal property in the heirs of the original founder.

"If this be the necessary meaning of the words used by the legislature, it would be our duty to construe the clause accordingly, whatever might be the inconvenience of such a course. But unless it is very clear that we should be doing violence to the language of the act by adopting any other construction, the great inconvenience of that suggested by the defendant may certainly afford fair ground for supposing that it cannot be what was contemplated by the legislature, and may well warrant us in looking for some other interpretation. Now it is to be observed, that what the preamble states as expedient to be done, is not to affect the ownership of charity estates, but only to keep the administration of them distinct from that of the borough fund; and for this purpose it certainly would not be matter of necessity that the legal interest should be affected. The subsequent enactment was assumed in the argument to be, that all the estate and interest of the corporation in the charity lands should be transferred to the individuals who, at the time of the passing of the act, constituted the body corporate, and should so continue until the 1st of August, 1836, and should then cease. This, however, is by no means the necessary meaning of the words used: by reading the words 'all the estate,' &c., and 'all the powers,' &c., as under a *vinculum*, the whole sentence, i. e., 'the estate,' &c., as well as 'the powers,' &c., will have reference to the latter words, 'in respect of the said uses and trusts;' and the meaning will then be, that the estate and interest in the trust only, and not in the legal estate, shall continue in those in whom it was then vested. The language, it must be admitted, is far from clear, and might, if the context so required, have been taken to transfer the legal estate in the lands affected by the trusts; but we thus see that it may also be taken to refer to the charitable trust only, i. e., the right or duty of administering to the fund; and this, as it ap-

pears to have been meant, and is, in construction, presents no difficulty. For a short time of the trusts is left who would, for the previously administered the lapse of a few nagement is made to nancellor. These are

provisions plain in themselves, easy to be acted upon, and well calculated to effect all which the preamble states as being expedient. Whereas, on the construction contended for by the defendant, we are driven to impute to the legislature the anomalous intention, first, of vesting the fee-simple in an indefinite, unascertained number of persons, and then, after the lapse of a few months, destroying the interest of those persons, without pointing out what was to become of the fee from that time. No doubt but that, even on that construction, the lord chancellor would have the power of getting in the legal fee, but this could only be done by means of a petition or bill in Chancery, entailing on the charity costs, without, as we can discover, any benefit whatever; and these considerations well warrant us in endeavouring to find some other meaning fairly attributable to the language used.

"It does not appear to us that the case of *Bignold v. Springfield*, (7 C. & F. 71,) referred to by the defendant, assists him in his view of this case. The only point really in dispute there was, whether the powers given to the lord chancellor came into operation on the 1st of August, 1836. The House of Lords decided that they did; and it will be seen that Chief Justice Tindal, in delivering the opinion of the judges, does not say that any estate ceased or was divested on the 1st of August, 1836, but that the administration of the charity estates, given by the clause in question, ceased on that day: a construction of the clause in strict accordance with our opinion.

"The only further argument of the defendant which it remains to notice, is that which was founded on the Irish Municipal Act, which was passed in the year 1840, (3 & 4 Vict. c. 108.) The 112th section of that act makes provision for charitable trusts similar, or nearly similar, to those in the English act. But in the Irish act, express provision is made as to the legal estate, and the difficulties which had occurred on this subject in the English act are met and obviated. We do not, however, think that any reliance is to be placed on this circumstance. The Irish act did not become law until a year after the decision in *Bignold v. Springfield*, (Ibid.,) in the House of Lords; and as Chief Justice Tindal had in that case pointed out to the attention of the house, that the clause in the English act was so framed as to give rise to difficulties in its construction, it was very natural, that in making provisions on a similar subject in a subsequent year, the legislature should take care to avoid all ambiguity, and so to word the clause as to prevent the occurrence of those difficulties which the chief justice had alluded to. The Irish act, indeed, goes further than the English, by at once vesting the legal estate in the charity trustees; a provision which is certainly very convenient, but which unfortunately does not exist in the clause now under our consideration. The English act

STAT. 5 & 6 shall be occasioned among the charitable trustees for any borough before the said first day of August, it shall be lawful for the lord high chancellor or lords commissioners of the great seal for the time being, upon petition, in a summary way, to appoint another trustee to supply such vacancy; and every person so appointed a

must be construed in the same way as if the Irish act had never passed: and for the reasons we have given, we think that, according to its true construction, the legal estate is, and always has been, where it was at the time of the passing of the act; consequently, that the plaintiff is entitled to judgment on the demise from the corporation."

It was held in *Bigbold v. Springfield*, (5 Bing. N. C. 745,) that the administrators of the charity estate and funds comprised in and described by the 71st section of Stat. 5 & 6 Gul. 4, c. 76, did not continue after the first of August, 1836, in the persons described in that section. Chief Justice Tindal delivering, in the House of Lords, the following unanimous opinion of the judges: "My lords, in answer to the question proposed by your lordships to her majesty's judges, *vis.* whether the administration of the charity estates and funds comprised in and described by the 71st section of Stat. 5 & 6 Gul. 4, c. 76, continued after the first of August, 1836, in the persons described in the said 71st section, no subsequent act having passed respecting the same before the first of August, 1836, and no vacancy having been occasioned amongst such persons before that time; I have the honour of stating our opinion to be, that the administration of the charity estates and funds referred to in the question did not continue after the first of August, 1836, in the persons described in the 71st section of the act. It was admitted by the counsel for the appellants, in the course of the argument, and very properly admitted, that it is impossible to put any construction on the whole of the clause, without meeting with much difficulty. But we think ourselves bound to put that interpretation upon it which, taking the whole of it together, appears to do the least violence to the words employed in it, and at the same time to give a consistent meaning to every part of the section. And, keeping this object in view, we think the words in the 71st section, that the powers of the former trustees shall continue 'until the first day of August, 1836, or until parliament shall otherwise order, and shall immediately thereupon utterly cease and determine,' are to be construed as if the words had been, until the first of August, 1836, or until parliament shall 'in the meantime' or 'sooner' otherwise order, and that the words 'shall immediately thereupon utterly cease and determine,' intend that, if parliament did not in the meantime otherwise order, the powers should cease and determine on the first of August; and if parliament did in the meantime otherwise order, that then they should cease and determine upon the day which should be appointed and substituted by the legislature instead of the first of August. And we feel ourselves warranted in giving this construction to the earlier part of the clause, by the consideration that the last proviso in the same clause con-

tains an enactment relating to the same subject-matter of legislation, and which is free from all ambiguity whatever, *vis.* 'Provided also, that if parliament shall not otherwise direct before the said first day of August, 1836, the lord chancellor shall make such orders as he shall see fit for the administration of such estates.' And we cannot understand the legislature to have had in its view an alteration by parliament, unlimited in point of time in the former part, but limited in point of time to the first of August in the latter part of the same section. My lords, the construction contended for on the part of the appellants is further liable to this objection, that it leaves the time at which the powers of the former trustees are to cease and determine, altogether undefined and uncertain. There might happen, according to that construction, an interval of time of unlimited extent before parliament might think fit 'to interfere and otherwise order,' and in the meantime, it is obvious, all would be involved in doubt and uncertainty. And again, there is, as it appears to us, a very strong objection against the reading 'and' instead of 'or,' as contended for on the part of the appellants, that is, against reading the act thus, 'until the first day of August, 1836, and until parliament shall otherwise order,' for this would imply that parliament could have no power to make such an order until after the first of August had passed: a construction not only inconsistent with the general authority of parliament, but irreconcilable with the proviso above referred to, which expressly refers to an alteration to be made before the first of August. Upon the whole, we think that the administration of the charity estates and funds did not continue in the persons described in the 71st section after the first of August."

On the fifth of August the petition and appeal were dismissed, the order confirmed, with costs to respondents in respect of the appeal.

Appointment of Trustees. In *re Ludlow Charities*, (3 M. & C. 262,) it was held that, in the appointment of trustees of property held by a corporation upon charitable trusts previously to the enactment of the Municipal Corporation Act, persons who are members under such statute are not ineligible as trustees, although the corporation may have formerly set up a claim to the property in opposition to the charity.

A person's name had been submitted to the master as a new trustee, and he had been approved by the master, but without any affidavit of his respectability. Such an affidavit was afterwards produced to the lord chancellor, and no objection to his respectability was made: it was held, that there was no ground for referring the question of his appointment back to the master.

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trustee as last aforesaid shall be a trustee until the time at which the person in the room of whom he was chosen would regularly have ceased to be a trustee, and he shall then cease to be a trustee: provided also, that if parliament shall not otherwise direct, on or before the said first day of August, one thousand eight hundred and thirty-six, the lord high chancellor or lords commissioners of the great seal shall make such orders as he or they shall see fit for the administration, subject to such charitable uses or trusts as aforesaid, of such trust estates.

"LXXII. And be it enacted, that the body corporate named in the said schedules (A) and (B), in conjunction with any borough, shall be trustees for executing by the council of such borough the powers and provisions of all acts of parliament made before the passing of this act, (other than acts made for securing charitable uses and trusts,) and of all trusts, (other than charitable uses and trusts,) of which the said body corporate, or any of the members thereof in their corporate capacity, was or were sole trustees before the time of the first election of councillors in such borough under this act.

"LXXIII. And be it enacted, that in every borough in which the body corporate, or a particular or limited number, class, or description of members of the body corporate, or of persons appointed by the body corporate, was or were before the passing of this act trustees jointly with other trustees for the execution of any act of parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees of the body corporate, by any statute, charter, bye-law, or custom, was or were before the passing of this act lawfully appointed to or exercised any powers, duties, or functions whatsoever, not otherwise herein provided for, and the continuance of which is not inconsistent with the provisions of this act, the council of such borough, on the day named in such act as last aforesaid, or in the deed or will by which such trust is created for a new election, nomination, or appointment of trustees, or on which such new election, nomination, or appointment has usually been made, (and if there shall be no such day named or usually observed, then on the first day of January in every year,) shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of such corporate body who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of such corporate body ceasing to be trustees, or ceasing to exercise such powers, duties, and functions, by virtue of this act, and in every case of extraordinary vacancy among the trustees or persons so appointed by the council shall forthwith appoint one other member of the council in the room of the person by whom such vacancy has been made, and to hold his trust or office for such time as the person by whom such vacancy has been made, would regularly have held it.

"LXXIV. And be it enacted, that notwithstanding anything in this act contained, every member of any body corporate who in his corporate capacity, and every nominee of any body corporate, or any particular number, class, or description of members of such body corporate, who at the time of the passing of this act shall be for a definite number of years or other shorter time a trustee of such acts or trusts as last aforesaid, shall continue to be such trustee until the time when he would have ceased to be such trustee if this act had not passed; and if a trustee for an indefinite time, or for life, or for so long as he shall be a member, or of a particular class or description of such body corporate, then until the first day of January, in the year one thousand eight hundred and thirty-six, and no longer; and every member of the council appointed under the provisions of this act to be a trustee of such acts or trusts as last aforesaid shall continue to be such trustee until the time herein provided for the new appointment of a member of the council to be trustee in his room, notwithstanding that he may have ceased to be a member of the council; and in case any particular member or officer of any of the said bodies corporate shall have been appointed by any such act, or by any such trust deed or will as last aforesaid,

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ing a definite number of years or other shorter time any specific or functions whatsoever, the person who at the time of the passing shall be the person designated and qualified to perform the same to perform the same until the time when he would have ceased same if this act had not passed; and if appointed for an indefinite life, or for so long as he shall be a member, or of a particular institution of such body corporate, then until the first day of January, one thousand eight hundred and thirty-six, and no longer: provided that nothing in this act shall be construed to extend to the body of trustees of the Liverpool Docks, but that every person who at the passing of this act shall be a trustee of the Liverpool Docks, shall be continued to be such trustee until the first day of the year one thousand eight hundred and thirty-six, and no longer; and every trustee who is appointed to discharge, or in his corporate capacity powers, duties, or functions whatsoever in respect of the said trust estate, and none other, shall continue to discharge the same until the act had not passed, until the first day of November, in the year one thousand eight hundred and thirty six, and no longer.

Provided always, and be it enacted, that nothing contained in this act shall affect certain letters patent bearing date in the fifth year of the late King Edward the Sixth, founding a free grammar-school at county of Lincoln, and creating a body corporate for the management thereof, and for the benefit of twelve poor persons mentioned in the said patent, by the name of the 'Warden and six Assistants of the said free school of King Edward the Sixth in Louth;' but that the said assistants shall continue and be a body corporate with perpetual succession, for the execution of the provisions of the said letters patent, for the management and government of the said school and the purposes aforesaid only, and shall remain and continue so until the said lands, tolls, tenements, and hereditaments now vested in the said assistants shall be sold, and the proceeds thereof applied to the purposes therein mentioned, in the same manner to all intents and purposes as if the said act had not been passed.

II. And be it enacted, that all the jurisdictions and authorities now exercised over the precinct or close of any cathedral shall be continued, as they have not been passed, concurrently with the jurisdiction and authority of the bishop of the diocese of the borough within which such close is situated; and no charter or act of parliament shall affect or interfere with the rights and privileges of any cathedral or of the bishop of the diocese of the borough within which such cathedral is situated.

. And be it enacted, that in every case in which any body corporate, class, number, or description of members, or the governing body corporate, now is or are in their corporate capacity, and not as trustees, according to the meaning and provisions of this act, seized or possessed, or in possession, or in receipt of any lands, tenements, or hereditaments wherunto any advowson or presentation (1) to any benefice or ecclesiastical preferment or appurtenant, or of any advowson in gross, or hath or have leave to nominate or present to any benefice or ecclesiastical preferment, or of any advowson, and every such right of nomination and presentation, shall and lawfully may, at any time or times, and in such manner as the commissioners appointed by the said act shall think fit, consider the state of the established church in England and Wales, and the ecclesiastical duties and revenues may direct, so that the best advantage may be made of the same; and it shall be lawful for the council of such diocese, or of such university, or of such college, or of such school, and they are hereby authorized and required, with the consent of

nomination or presentation:
de (Clerk), 2 M. & G. 72.
 In 6th James the First, the lordship of Bury St. rentd (subject to a then roof for forty years) to the regeases of that town, who expiration of the said lease, to pay 8*l.* 10*s.* of the tithes and glebe lands yearly to the carates and ministers of the parish churches of St. Mary and St. James, in Bury St. Edmunds aforesaid. By another charter of the 12th James the First, reciting, that he expected the aldermen and burgesses of Bury aforesaid would provide and sustain approved, able, and fit ministers

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the said commissioners or any three or more of them, in writing under their hands, STAT.
to convey and assure under the common seal of such body corporate such advowson GUL. 4

and preachers of the word, and other officers, in the churches aforesaid necessary, at all times to come—the king granted to them and their successors the whole and entire rectories and vicarages of Bury St. Edmunds, and of the aforesaid parish churches, and the advowsons and donations, free dispositions, and rights of patronage of the same churches, and all manner of tithes, &c.

The corporation made no endowment, and gave no fixed stipend to the ministers of either of the said churches, but subsequently to the year 1687 appointed two clergymen to each church, the one called a preacher or lecturer, and the other a curate or reader, the former being paid by a salary from the corporation, varying from 100*l.* to 80*l.* a year; and the latter, since the year 1712, deriving his only remuneration from the surplice fees and Easter offerings.

The office of curate or reader of the parish of St. James having become vacant before any sale had been effected by the corporation: it was held, that it was unnecessary to consider whether the right of presentation or nomination to that office was within Stat. 5 & 6 Gul. 4, c. 76, s. 139, inasmuch as it clearly fell within the provisions of Stat. 1 & 2 Vict. c. 31; and that the necessary consequence of holding it to be within the latter statute, was to bring it within the proviso of the 139th section of the former act; and consequently, that such right of presentation or nomination vested in the bishop of the diocese; Chief Justice *Tindal* delivering the judgment of the court in the following language: "The question which is stated for our opinion at the end of this special case, is, whether the right of nominating and appointing a clergyman to the office of curate or reader of the parish of St. James, in Bury St. Edmunds, was, upon the death of the late curate or reader, vested in the Bishop of Ely, as bishop. And the determination of this question appears to us, to depend upon the consideration of two points; viz. First, whether, considering the nature and description of the right of the corporation as set out in the case, such right to nominate and appoint, falls within the 139th section of Stat. 5 & 6 Gul. 4, c. 76, or within Stat. 1 & 2 Vict. c. 31. For, if this right falls within the former act, there can be no doubt, that the proviso for the interim appointment will govern the present case: but if, on the other hand, this right of nomination and appointment is not comprehended within the former act, but falls within the provisions of the latter, then arises the second question, whether the proviso contained in the 139th section of Stat. 5 & 6 Gul. 4, upon which alone the right of supplying the vacancy by the presentation or nomination of the bishop of

31, so as to make it unnecessary to consider whether such right does or does not fall within the 139th section of the former act.

"That it was the intention of the legislature to take from municipal corporations, when established upon their new system, all ecclesiastical patronage of every kind and description, and to vest the same in the purchasers thereof, appears to be beyond a doubt. The general and comprehensive terms used in the former act, the passing of the second act in order to facilitate the sale of church patronage, which recites the doubt as to the church patronage therein described, and the terms in which such doubt is thereby removed; the entire absence of any supportable ground of distinction between one species of ecclesiastical patronage and another, in respect that some should be taken from them and others left; these circumstances all combine to prove the intention of the legislature to have been, the general removal of all ecclesiastical patronage from the hands of municipal corporations; and certainly the particular character and description of the patronage now under consideration, as claimed on the part of the corporation, assuming it to be correctly claimed, namely, the right of nominating a curate or reader, for a period as short and limited as they may think fit, with the power to remove him at their own pleasure, would not entitle it to any particular favour, as an exception from the general operation of the statutes.

"But the question, whether the right of patronage claimed and exercised by the corporation of Bury St. Edmunds, does or does not fall within the operation of Stat. 1 & 2 Vict. c. 31, will best appear by comparing the description of the patronage contained in that act, with the facts stated in the case. The act recites, 'that in some instances, the manors, &c. whereof some municipal corporations are seised, were granted to them with an obligation to nominate, provide, and sustain, in certain churches and chapels, able and fit priests, curates, preachers, or ministers, for the performance and administration of ecclesiastical duties and rites therein, and for the cure of the souls of the parishioners and inhabitants; and although such corporations have from time to time duly nominated and provided such priests, curates, preachers, or ministers, and paid stipends for their sustenance, and have either provided houses for their residence, or paid allowances in lieu thereof, yet such stipends or allowances have not been fixed or assured by any competent authority; and for want of any regular endowment or augmentation of any such curacies, they have not been perpetual cures, or benefices presentative, and the curates have not become bodies politic and corporate within the meaning of Stat. 1 Geo. I, c. 10, or Stat. 36 Geo. 3, c. 3; by reason whereof doubts have arisen, whether the right of nominating ministers to such churches and chapelries can be sold under the provisions of the recited act.' Now

, we are of opinion that the right of nomination or nomination falls within the 1 & 2 Vict. c.

6 or such right of nomination or presentation as aforesaid to the purchaser or pur-
76. chasers thereof respectively, his or their heirs, executors, administrators, and

upon reference to the facts stated in the case, the right claimed and exercised by the corporation of Bury St. Edmunds appears to agree so closely with the recital of the act, that it might almost be supposed that the legislature had shaped the remedy with an express view to this particular case. For by the grant to the corporation of 6th James the First, the aldermen and burgesses agreed to pay *8l. 10s.* out of the tithes thereby granted to them, yearly, to the use of the curates and ministers of the two parish churches of Bury St. Edmunds: and by the second grant of the 12th James the First, the king, after stating his expectation, that the aldermen and burgesses of Bury St. Edmunds would provide able and fit ministers and preachers of the word, and other officers of the churches aforesaid necessary, at all times to come, granted to the aldermen and burgesses, and their successors, the whole and entire rectories and vicarages of Bury St. Edmunds, and the said parish churches of St. Mary and St. James, and all rights and patronage of the same: and all the tithes, both greater and less, and all other rights to the same belonging, to be held by them as freely and fully as the late abbot of the said monastery then lately dissolved, or any of his predecessors, had held the same. Now, under these grants, which were accepted by the corporation, there can be no doubt but that the corporation were bound to make a sufficient provision for the cure of the parish in question, and that they had the nomination and appointment of the person or persons who should perform the duty; nor is there any doubt, that if they had appointed a person to such cure with a fixed stipend, and irremovable at their own pleasure, he would have been a perpetual curate in the strict legal sense of the word.

"It appears, however, from the statement in the case, that they did not make any endowment, or give any fixed stipend to the ministers in either of the churches; nor did they, so far as appears in the case, for a considerable period subsequent to the grants of King James, appoint any one particular person to the cure of either of the churches; but from the year 1652, (the records previous to which year are lost,) down to the year 1687, the aldermen and burgesses from time to time appointed and provided the ministers necessary; during some part of that time, procuring, as they were best able, from Sunday to Sunday, clergymen from Cambridge or elsewhere, and paying them for such their services. So that the corporation, during that early period, appear to have acted precisely in the same manner as the monastery itself before the dissolution had done, except that the corporation procured ministers from other quarters instead of furnishing them out of their own body. Instances of which mode of nomination were probably not unfrequent at an early period after the dissolution of monasteries, as would appear from the case of *Corr v. Pinney*,

(3 Lev. 82,) where a covenant is set out in a lease by the Dean of Lincoln, of a certain rectory to the defendant, who covenants with the dean, 'that he would find or provide a sufficient minister or priest to serve in the church, such as the dean and his successors should allow and approve, and would pay the said priest forty marks per annum.' So that the person or persons provided by the corporation to officiate in the cure of the parish at that time, appears to have been removable or changeable at their will, just as the monk sent to officiate by the monastery, was in some instances removable 'ad nutum prioris' as appears in the case of *Burton v. Wade*, (Cro. Jac. 516.) And supposing such right of the corporation to appoint or present continued to be the same up to the time of the Municipal Corporation Act, (which the counsel for the defendant contends to have been the case,) that is, if there was no fixed stipend payable by the corporation, and the corporation had the power to appoint and remove, the case would fall precisely within the words of the preamble of the statute of Victoria,—that tithes were granted to the corporation, with an obligation to nominate able and sufficient ministers; that ministers were nominated and provided by the corporation, and stipends paid by them; but the stipends not having been fixed or allowed by competent authority, and for want of regular endowment or augmentation, the curacies have not become perpetual curacies; and the present case, therefore, would be precisely that which the statute intended to provide for.

"Two objections have been urged on the behalf of the corporation, against the application of the statute to the case before us. In the first place, it is said there was nothing which could be the subject-matter of a sale within the intention of these acts; for there was no certain duration of incumbency in the cure, this appointment being entirely at the will of the corporation, who might displace one curate or reader and appoint another as they pleased. Admitting this power of action to have existed in the corporation, for the purpose of argument, but not conceding it to be a fact in this case, when it appears that the curates have been regularly licensed by the bishop, the effect of which license it is now unnecessary to enter into; admitting it, however, to exist, still it is difficult to find the force of the objection. For the corporation are only required by the act to sell such right of nomination or presentation as they actually possess, without any reference to the period for which the nomination or presentation is given. If their right is, to present a curate who holds for life, they sell a power of presentation for life; if, a curate who is removable at will, such will be the presentation that is put to sale.

"It is objected, in the second place, that the right of nomination exercised by the corporation in respect of the parish church of St. James, is not a nomination of one in-

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assigns, or to such uses as he or they shall direct; and the proceeds of every such sale shall be paid to the treasurer of the borough, whose receipt shall be a sufficient and effectual discharge to the purchaser or purchasers to whom the same shall be given for the amount of his or their purchase money, and shall be by him invested in government securities for the use of the body corporate, and the annual interest payable thereon shall be carried to the account of the borough fund; provided always, that in any case of vacancy arising before any such sale shall have taken place and been completed such vacancy shall be supplied by the presentation or ordinary of the diocese in which such benefice or situation is situated."

GULIELMI 4, c. 79(1). [IRELAND.] A.D. 1835.

for the sixth day of April, One thousand eight hundred and thirty-five, for recovering Payment of certain Instalments of the Acts for establishing Tithe Compositions in Ireland."

& 6 GULIELMI 4, c. 81 (2). A.D. 1835.

Capital Punishments in Cases of Letter Stealing and Sacrilege."

1, after reciting Stat. 36 Geo. 3 (I.), and Stat. 52 Geo. 3 (I.), and that by Stat. 7 & 8 Geo. 4, c. 29, and Stat. 9 & 10 Geo. 4, c. 11, and other things, enacted, that if any person shall break

two separate curacies, each with a salary paid it is asserted, a same parish England, and there is not, in the provision would exist in dent from the is may, under have the cure as it is said, *aliter*; (*vide* '); a proposition the late Lord a case of *The Consist.* 162.) *advocationem* item *advoca-* 7 (b), 18 (a); . 75; *Smith's* or v. *Canter-* . 686.] But, that applies ch the eccle- al with the the sale, than which is con- vium appoint- ry to the pre- us to say, ler appears to 1 intention of the Stat. 1 &

erefore, now g within that thin the pro- s former sta-

tute, so as to give the bishop of the diocese the power of appointing to a vacancy before the sale. And we think the necessary consequence of holding it within the statute of Victoria is to bring it within the 139th section of the Municipal Corporation Act. And we consider the case of the same, as if the descriptive words of the later statute of Victoria had been actually inserted in the 139th section of the former act, and had formed part of that section. The doubt expressed in the recital of the statute of 1 & 2 Vict. c. 31, is, whether such rights of nomination as are therein described, could be sold under the provisions of the 139th section, one of which very provisions is, the power of interim appointment given to the bishop of the diocese. And when it is argued that, by the express words of the statute of Victoria, the curacy does not become a benefice until after the sale, and that this appointment takes place before, it may be answered that the power of appointment in the 139th section is not limited to the case of benefices, but is extended also to the ecclesiastical preferments mentioned in that clause; and that the right of nomination to this curacy is, upon the argument, to be considered as virtually introduced into the clause itself by the latter statute.

"For the reasons above given, we think that the right of appointment to the office of curate or reader of the parish church of St. James, in Bury St. Edmunds, became vested in the Bishop of Ely upon the death of the late curate; and that judgment, *reluctant* *certification*, must, therefore, be entered for the plaintiff for the damages agreed upon between the parties."

(1) Revived and continued by Stat. 6 & 7 Gul. 4, c. 95; and Stat. 7 Gul. 4 & 1 Vict. c. 58. Expired.

(2) *Vide* Stat. 6 & 7 Gul. 4, c. 4.

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apel and steal therein any chattel, or having stolen any
apel, shall break out of the same, every such offender,
ll suffer death as a felon," repealed "so much of each
he punishment of death upon persons convicted of any
hereinbefore specified," and enacted, that, "from and
(10th September, 1835,) every person convicted of any
act so specified, or of aiding or abetting, counselling,
on thereof, shall be liable to be transported beyond the
not less than seven years, or to be imprisoned, with or
common gaol or house of correction, for any term not

. 6 & 7 GULIELMI 4, c. 4. A.D. 1836.

*of the last Session for abolishing Capital Punishment
f Letter Stealing and Sacrilege (1)."*

med in the last session of parliament, intituled, 'An Act
hments in Cases of Letter Stealing and Sacrilege,' the
ken away in cases of letter stealing and sacrilege; but
or in copying the same a doubt may be entertained:
ch offences are now by law liable to any punishment:
the king's most excellent majesty, by and with the
lords spiritual and temporal, and commons, in the
d, and by the authority of the same, that the same act
f the words 'in the said act so specified,' the words 'in
ad been inserted in the said act of the last session; and
reafter be duly convicted of any of the offences men-
last session shall and may be sentenced, by the court
such offenders may be tried, to transportation for life,
less than seven, or to be imprisoned for any term not
or without hard labour, and for any period of solitary
imprisonment, at the discretion of such court or judge."

c. 6 & 7 GULIELMI 4, c. 17. A.D. 1836.

*for the better Administration of Justice in certain of
Majesty's West India Colonies."*

lar enacted, that the said supreme courts respectively
robates, under the seal of the said courts, of the last
or any inhabitants of the said islands or governments
' persons who shall die and leave personal effects within
'e power to grant letters of administration of the goods
r effects whatsoever of the persons aforesaid who shall
t have named an executor resident within each island
, or where the executor, being duly cited, shall not
robate, annexing the said will to letters of administra-
shall have left a will without naming any executor
resident within the islands or governments aforesaid,
into, shall not appear and sue forth a probate thereof,
and chattels, credits, and other effects whatsoever of

v. *Keane*, (1 entering the church. Vide etiam *Rees* v. *Wheeler*, 3 C. & P. 585.

(2) *Solitary confinement*:—Stat. 7 Geo. 4 & 1 Vict. c. 90, s. 6, enacts, that "it shall not be lawful for any court to direct, that any offender shall be kept in solitary confinement for any longer periods than one month at a time, or than three months in the space of one year."

weakening and

STATUTA GULIELMI IV. A.D. 1830—1837.

such persons so dying, in cases allowed by law, as the same is and may now be used in the diocese of London, and to demand, require, take, hear, examine, and allow, and, if occasion require, to disallow or reject the accounts of such executors or administrators, in such manner and form as may be used in the said diocese of London, and to do all other things whatsoever necessary in that behalf: provided always, that in the interval between any two successive terms of the said supreme courts it shall be lawful for such resident puisne justices as aforesaid, in the islands in which they shall be so respectively resident, to do all and every the judicial acts, and to exercise the ecclesiastical jurisdiction aforesaid, in all cases in which there shall be no *coaveat* entered or opposition made.

STAT.
GUL. 4

"XVIII. And be it further enacted, that it shall be lawful for either of the parties, plaintiff or defendant, to appeal to his majesty in council against any decree, order, or sentence made or pronounced by either of the said supreme courts in the exercise of such equitable or ecclesiastical jurisdiction as aforesaid, in such manner and upon and subject to such terms and conditions as his majesty by such charters or letters patent as aforesaid shall please to direct."

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CXIX. STAT. 6 & 7 GULIELMI 4, cap. xvii. A.D. 1836.

*"An Act to enable the Trustees of Bowdler's Blue-coat School in Shrewsbury to effect a Sale to John Jones, Esquire, of Estates called Trefnant and Llanerch-
rockwell, in the Parish of Guilsfield, in the County of Montgomery."*

STAT.
GUL. 4
xvii.

CXX. STAT. 6 & 7 GULIELMI 4, c. 19. A.D. 1836.

*"An Act for separating the Palatine Jurisdiction of the County Palatine of
Durham from the Bishopric of Durham."*

STAT.
GUL. 4

"Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the commencement of this act the Bishop of Durham for the time being shall have and exercise episcopal and ecclesiastical jurisdiction only; and that from and after the commencement of this act the palatine jurisdiction, power, and authority heretofore vested in and belonging to the Bishop of Durham shall be separated from the bishopric of Durham, and shall be transferred to and vested in his majesty, his heirs and successors, as a franchise and royalty separate from the crown, and shall be exercised and enjoyed by his majesty, his heirs and successors, (as a separate franchise and royalty,) in as large and ample a manner in all respects as the same has been heretofore exercised and enjoyed by the Bishop of Durham; and that all forfeitures of lands or goods for treason or otherwise, and all mines of gold and silver, treasure trove, deodands, escheats, fines, and amerciaments, and all jura regalia of what nature or kind soever, which, if this act had not passed, would or might belong to the Bishop of Durham for the time being, in right of the county palatine of Durham, shall be vested in and belong to his majesty and his successors in right of the same: provided always, that nothing hereinbefore contained shall prejudice or affect the jurisdiction of any of the courts of the said county palatine, or any appointment heretofore made to any office in the said county palatine, or any act whatsoever heretofore done by the Bishop of Durham in right of the said county palatine.

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"II. And be it further enacted, that from and after the commencement of this act all the power, authority, and jurisdiction of the court called 'The Court of the County of Durham,' and of the clerk of the court of the county of Durham as judge of the same court or otherwise, shall cease and determine; subject nevertheless and without prejudice to any proceedings then depending in such court, as to which the authority and jurisdiction of the said court and of the present clerk of the said court shall continue in full force and effect, notwithstanding the passing of this act; and in case of the death or removal from office of the present clerk of the said court whilst any such proceedings as aforesaid shall be still depending therein, the under-sheriff of the said county shall and may, for the purpose of any

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nga, act as judge of the said court, and exercise the same power, authorisation as the present clerk of the said court might have exercised if he had continuing in office: provided always, that after the commencement of this act the sheriff for the time being of the said county palatine shall and may exercise the same power of holding a county court, and the same jurisdiction as is usually had and exercised by sheriffs of other counties in England. And be it further enacted and declared, that after the passing of this act it shall be lawful for his majesty and his successors to appoint a custos rotularum of the county of Durham, and from time to time to appoint to that office as vacancies thereof.

And whereas it is expedient that due provision shall be made for the compensation of any person or persons deprived of his or their office or offices in the county of Durham, for the losses he or they may sustain by the abolition of his or their office or offices, or reduction of his or their fees by virtue or in consequence of this act, be it therefore enacted, that from and after the commencement of this act all moneys to be issued, paid, and payable, out of and charged upon the consolidated fund of the United Kingdom of Great Britain and Ireland, to the persons or persons appointed before the twenty-fifth day of March, one thousand eight hundred and thirty-six, to any office or offices in the county of Durham which are abolished or affected by virtue of this act, free and clear of all taxes and charges whatsoever, such sums of money, at such times, by way of annuity or otherwise, as, having regard to the manner of his or their appointment to such office or offices, and the term and duration thereof, and all the circumstances of the case, shall be adjudged and determined to be due to such person or persons respectively, in consideration of his or their commission to be appointed by his majesty, or by virtue of any act in that behalf made, for the purpose of determining the amount of the compensation that shall be due and payable in such cases; and that in the mean time and until the same shall be awarded and determined in manner aforesaid, or the time shall be appointed for claiming the same, it shall be lawful for the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, to issue their warrants for the payment of such sums of money on or persons as aforesaid, out of the said consolidated fund, of such quarterly allowances as to the said commissioners shall seem reasonable, to the amount and times of payment, on account of such compensation as shall be awarded to the said parties respectively.

And be it further enacted, that no person shall be entitled to receive any such compensation or allowance as aforesaid who shall not present to the said commissioners of his majesty's treasury a full and true statement of the salary and emoluments of the office in which he has been employed, as verified on oath before a judge, or master or master extraordinary of the High Court of Chancery, or of the amount of the salary, fees, and emoluments of such office, and of the disbursements and outgoings of the same, for the term of ten years before the passing of this act; and that such compensation shall cease altogether or be reduced in amount, as the case may require, if the party entitled to receive the same shall be placed in any other office or office in which the salary and emoluments shall be equal to the whole or to a part of the compensation or allowance, so that in the last-mentioned case he shall not be entitled to receive more of such compensation or allowance than the difference between the full amount thereof and the amount of the salary and emoluments of the office in which he may be hereafter placed.

And be it further enacted, that nothing in this act shall affect the right of any person holding a patent of any office, whether before or after the passing of this act or not, to receive any fee or stipend granted by such patent or patents of the bishopric of Durham; and that such revenues shall continue to be subject to all the same fees and stipends in respect of any office in the county of Durham as the same have been heretofore subject to.

And be it further enacted, that in the interpretation of the clauses and provisions hereinbefore contained the words 'County of Durham' shall comprise the county of Durham and Sadberge, including the detached parts of

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Craikshire, Bedlingtonshire, Norhamshire, Allertonshire, and Islandshire, and all other places heretofore within the jurisdiction of the Bishop of Durham in right of the said county palatine.

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"VIII. And be it further enacted, that this act shall as to all the foregoing matters not otherwise provided for, commence and take effect upon and from the fifth day of July in this present year, and shall, as to all the matters hereinafter provided for, commence and take effect from the passing thereof.

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"IX. Provided always, and be it further enacted, that nothing hereinbefore contained shall have the effect of severing or separating from the said bishopric, or of affecting the rights and powers of the said bishop in, over, or upon or with respect to any lordships, manors, houses, lands, tenements, tithes, rents, collieries, mines, minerals, rectories, advowsons, profits, or emoluments of any kind or description whatsoever, whether held in right of the said bishopric, or in right of the said county palatine, or otherwise howsoever, other than and except only any profits and emoluments hereinbefore expressly mentioned and directed to be severed therefrom.

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"X. And be it further enacted, that from and after the passing of this act the Bishop of Durham elect, or Bishop of Durham for the time being, shall take and hold the said bishopric, and all the property, patronage, and rights belonging thereto, except as hereinbefore provided, subject to and under any provisions which shall be made by or under the authority of parliament with respect to the said bishopric within the space of three years next after the passing of this act; any law, statute, or canon to the contrary notwithstanding."

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CXXI. STAT. 6 & 7 GULIELMI 4, c. 20(1). A.D. 1836.

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"An Act for imposing certain Restrictions on the Renewal of Leases by Ecclesiastical Persons."

"Whereas it is expedient that such provision as is hereinafter contained should be made respecting the granting of ecclesiastical leases; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the passing of this act no archbishop or bishop, ecclesiastical corporation sole or aggregate, dignitary, canon, or prebendary, or other spiritual person, nor any master or guardian of any hospital, shall grant any new lease of any house, land, tithes, or other hereditaments, parcel of the possessions of his or their see, chapter, dignity, canonry, prebend, benefice, or hospital, by way of renewal of any lease which shall have been previously granted of the same for two or more lives, until one or more of the persons for whose lives such lease shall have been so made shall die, and then only for the surviving lives or life and for such new life or lives as, together with the life or lives of such survivor or survivors, shall make up the number of lives, not exceeding three in the whole, for which such lease shall have been so made as aforesaid; and that where any such lease shall have been granted for forty years no such archbishop, bishop, ecclesiastical corporation sole or aggregate, dignitary, canon, prebendary, spiritual person, master, or guardian shall grant any new lease, by way of renewal of the same, until fourteen years of such lease shall have expired; and that where any such lease shall have been made as aforesaid for thirty years no such archbishop, bishop, ecclesiastical corporation sole or aggregate, dignitary, canon, prebendary, spiritual person, master, or guardian shall grant any new lease, by way of renewal of the same, until ten years of such lease shall have expired; and where any such lease shall have been granted for twenty-one years, no such archbishop, bishop, ecclesiastical corporation sole or aggregate, dignitary, canon, prebendary, spiritual person, master, or guardian shall grant any new lease, by way of renewal of the same, or (in the case of archbishops or bishops) concurrently therewith, until seven years of such lease shall have expired; and that where any such lease shall have been granted for years no such archbishop, bishop, ecclesiastical corporation sole or aggre-

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(1) See *vide* Stat. 6 & 7 Gul. 4, c. 64; and Stat. 5 & 6 Vict. c. 27.

STATUTA GULIELMI IV. A.D. 1830—1837.

ion, prebendary, spiritual person, master, or guardian shall grant of renewal of the same or otherwise, for any life or lives; any to the contrary notwithstanding.

further enacted, that whenever any archbishop, bishop, ecclesiastical sole or aggregate, dignitary, canon, prebendary, spiritual person, or guardian, shall hereafter grant any renewed lease of any house, or hereditaments, parcel of the possessions of his or their see, canonry, prebend, benefice, or hospital, such lease shall contain, in the case of a lease for lives, setting forth the names of the persons named as cestuique vie in the then last preceding lease of the same premises, and which of such persons, if any, is or are then dead, or for whom some other person has been exchanged by virtue of the provision made, and in case of a lease for years setting forth for what term of years the lease of the same premises was granted, and how much of the term has expired, and how much remains to come and unexpired, every such lease shall, so far as relates to the validity of the lease so to be made, be deemed and taken to be conclusive evidence of the truth of the same as recited or stated.

it further enacted, that if any person shall execute any such lease or counterpart thereof, knowing such recital or statement, or any part thereof, to be false, or shall wilfully introduce or cause to be introduced, or aid or abet, or shall wilfully introduce or cause to be introduced, or aid or abet, any such recital or statement into any such lease, knowing the same to be false, or shall prepare or engross, or cause to be prepared, any lease or counterpart of a lease containing any such false recital as aforesaid, knowing the same or any part thereof to be false, every such person shall be deemed and taken to be guilty of a misdemeanor; and every such person offending shall, in addition to any punishment to which he or she may be liable by law, be liable to pay to any person suing for the same the full sum of five pounds, at the option of such person, five years' improved annual value of the premises comprised in such lease.

nevertheless, and be it enacted, that in cases where it shall be proved to the satisfaction of the court, that in any case where it shall be hereinafter mentioned, that for ten years now last past it hath been the usual practice (such practice having in the case of a corporation subsisting at the time of the person for the time being representing such corporation) to grant such leases for forty, thirty, or twenty-one years respectively, periods longer than fourteen, ten, or seven years respectively, nothing shall prevent any archbishop, bishop, ecclesiastical corporation, dignitary, canon, prebendary, spiritual person, master, or guardian, from granting a renewed lease conformably to such usual practice; provided that a certificate shall be made to appear to the satisfaction of the archbishop in the case of a lease granted by such archbishop or by a corporation, and in the case of a lease granted by any other corporation or person to the archbishop and also of the bishop having jurisdiction over such person, and shall before the granting of such lease be certified in writing in the hand of the archbishop in the one case, and of the archbishop or bishop in the other case; the certificate so signed by an archbishop only to be deposited in the registry of such archbishop, and the certificate so signed and also by a bishop to be afterwards deposited in the registry of such bishop; such certificate shall be conclusive evidence of the facts thereby

also, and be it enacted, that nothing herein contained shall prevent any archbishop, bishop, ecclesiastical corporation sole or aggregate, dignitary, canon, prebendary, spiritual person, master, or guardian, from exchanging any life or lives for which any lease shall have been granted as aforesaid, and from granting any renewed lease with a view to effectuate such exchange; provided that the same shall be approved of (in the case of an archbishop) by the archbishop in council, or (in the case of a bishop) by the bishop in council, or (in the case of any inferior corporation or person) by

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the archbishop of the province and bishop of the diocese; such approbation, when required to be given by his majesty in council, to be testified by the president of the council certifying on the renewed lease to be granted as aforesaid such approbation, and in all other cases to be testified by the person or persons whose approval is hereby required, certifying on such renewed lease his or their approbation of the same.

“VI. Provided also, and be it enacted, that nothing in this act contained shall prevent any grants or renewals of leases which may have been authorized by acts of parliament specially relating to the particular estates demised by such leases.

“VII. Provided also, and be it enacted, that nothing in this act contained shall prevent a lease from being granted, with a view to confirm any title or otherwise, for the life or lives of the same person or persons or for the lives or life of the survivors or survivor of them, or for the same term of years, and commencing at the same period, as the lease last granted for a life or lives or a term of years respectively.

“VIII. Provided also, and be it enacted, that no lease not authorized by the laws and statutes now in force shall be rendered valid by anything in this act contained.

“IX. And be it enacted, that if any lease contrary to this act shall have been granted since the first day of March in the year one thousand eight hundred and thirty-six, or shall be granted after the passing of this act, every such lease shall be void to all intents and purposes whatsoever: provided always, that nothing in this act contained shall be deemed or taken to affect any lease granted or to be granted pursuant to any covenant or agreement entered into previously to the first day of March, one thousand eight hundred and thirty-six.

“X. And be it further enacted, that nothing in this act contained shall be deemed or taken to extend to Ireland.

“XI. And be it further enacted, that this act may be altered or amended by any act during this present session of parliament.”

CXXII. STAT. 6 & 7 GULIELMI 4, CAP. XX. A.D. 1836.

“An Act to incorporate the Governors of the Westminster Hospital at the Broad Sanctuary, Westminster, and for conferring Powers the better to enable them to carry on their Charitable Designs.”

CXXIII. STAT. 6 & 7 GULIELMI 4, CAP. XX. A.D. 1836.

“An Act for consolidating the Rectories of Alford and Hornblotton, in the County of Somerset, and for settling the Advowson of such consolidated Rectory; and also for rectifying a Settlement made in pursuance of the Will of the late John Thring, Esquire, under the Direction of the High Court of Chancery, of Estates in the County of Somerset; and for other Purposes.”

CXXIV. STAT. 6 & 7 GULIELMI 4, CAP. XXI. A.D. 1836.

“An Act for empowering the Governors and Corporation of Etwall Hospital and Repton Free School, in the County of Derby, to sell certain Parts of their Estates in the same County, and to lay out the Monies arising from the Sale thereof in the Purchase of other Estates, to be conveyed to the same Uses.”

CXXV. STAT. 6 & 7 GULIELMI 4, C. 22. [SCOTLAND.] A.D. 1836.

“An Act to enable Bastards in Scotland to make Testaments.”

CXXVI. STAT. 6 & 7 GULIELMI 4, C. 24. A.D. 1836.

“An Act to render valid certain Marriages solemnized in a Chapel of Ease, in the Parish of Wandsworth, in the County of Surrey, called Saint Ann's Chapel.”

“Whereas Saint Ann's chapel, in the parish of Wandsworth in the county of Surrey and diocese of Winchester, is a chapel of ease to the parish church of

STAT. 6 & 7
GUL. 4, c. 24.

Wandsworth aforesaid, and hath been duly consecrated for the performance of divine service, but no authority hath ever been given by the bishop of the said diocese for the publication of banns and the solemnization of marriages in the said chapel; and whereas divers marriages have been solemnized in the said chapel by the officiating minister for the time being of the parish church of Wandsworth aforesaid, and by the officiating minister for the time being of the said chapel, and other clergymen, under the erroneous conception that according to the terms of the sentence of consecration of the said chapel, or otherwise, marriages might be lawfully solemnized therein; and entries of the several marriages so solemnized as aforesaid have been from time to time made in the register book of the said parish,

4 Geo. 4, c. 76.

in compliance with the provisions of an act of parliament passed in the fourth year of the reign of King George the Fourth, intituled, 'An Act for amending the Laws respecting the Solemnization of Marriages in England,' except that in each such entry it hath been expressly stated that the marriage was solemnized in the said chapel; and whereas it is expedient to remove all doubts arising from the circumstances aforesaid, touching the validity of the marriages so solemnized in the said chapel as aforesaid; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all marriages solemnized in the said chapel called Saint Ann's chapel, by the officiating minister for the time being of the said parish church of Wandsworth, and by the officiating minister for the time being of the said chapel, or by any other clergymen respectively being ministers of the church of England, shall be as good and valid in the law to all intents and purposes whatsoever, as if the same had been solemnized in the parish church of Wandsworth aforesaid.

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"II. And be it further enacted, that the minister or ministers who have solemnized such marriages respectively as aforesaid shall not be liable to any ecclesiastical censures, or to any other proceedings or penalties whatsoever, by reason of his or their having so as aforesaid solemnized the same respectively.

"III. And be it further enacted, that the registers of the marriages so solemnized as aforesaid, or copies of such registers, shall be received in all courts of law and equity as evidence of such marriages respectively, in the same manner as the same would have been receivable in evidence in case the said marriages respectively had been solemnized in the parish church of Wandsworth aforesaid, and the fact of the same marriages having been solemnized in the said parish church had been stated in the registers relating to such marriages respectively.

This act not to
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"IV. Provided always, and be it further enacted, that nothing in this act contained shall extend to authorize the publication of banns, or the solemnization of marriages in the said chapel hereafter."

STAT. 6 & 7
GUL. 4, cap.
xxiv.

CXXVII. STAT. 6 & 7 GULIELMI 4, cap. xxiv. A.D. 1836.

"An Act for confirming a certain Lease granted by the Mayor and Commonalty and Citizens of the City of London, Governors of the Possessions, Revenues, and Goods of the Hospital of King Edward the Sixth, called Christ's Hospital, and for extending the Powers to grant Building Leases given to them by an Act passed in the sixth year of the Reign of King George the Fourth."

STAT. 6 & 7
GUL. 4, cap.
xxx.

CXXVIII. STAT. 6 & 7 GULIELMI 4, cap. xxx. A.D. 1836.

"An Act for authorizing a Sale of Globe Lands belonging to the Vicarage of Dudley, in the County of Worcester, and for other Purposes."

STAT. 6 & 7
GUL. 4, c. 31.
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CXXIX. STAT. 6 & 7 GULIELMI 4, c. 31. [IRELAND.] A.D. 1836.

"An Act to amend an Act of His late Majesty King George the Second, for the Encouragement of Building of Chapels of Ease in Ireland."

1 Geo. 2, 1r.

"Whereas an act was passed in the first year of his late majesty King George the Second, intituled, amongst other things, 'An Act to enable Archbishops,

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Bishops, and other Ecclesiastical Persons and Corporations to grant their Patronage or Right of Presentation or Nomination to small Livings to such Persons as shall augment the same; wherein several provisions were made for the encouragement of building of chapels of ease; and whereas it is expedient to afford greater facilities to the carrying into effect the said objects proposed by the said act, and for that purpose to amend the same; therefore be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for any person or persons, bodies politic or corporate, seized or possessed of a sufficient estate for the purpose, by and with the consent of the archbishop or bishop of the diocese, to be signified in writing under his hand and seal, to allot and set apart any land not exceeding one plantation acre, provided the same shall not be within one measured mile of any other church or chapel where the liturgy and rites of the united church of England and Ireland, as by law established, are used and observed, unless the said lands shall be within some city or corporate town, or within a town containing four thousand persons, or the suburbs, liberties, and precincts of the same; on which said lands so set apart it shall and may be lawful to and for any person or persons, bodies politic or corporate, to erect and build a church or chapel, or to appropriate as a church or chapel, any building already erected on such land, in which the liturgy and rites of the united church of England and Ireland as by law established are to be used and observed, who shall first settle and assure lands, tenements, or hereditaments held in fee-simple, or for lives with covenant for perpetual renewal thereof, or for a term of ninety-nine years of which sixty years at the least shall be then unexpired, free from incumbrances, and of the clear yearly value of fifty pounds at the least, or money in any of the government funds amounting at the least to one thousand two hundred and fifty pounds, as a provision or maintenance for a minister to officiate in such church or chapel, and his successors for ever, as a perpetual endowment of such church or chapel: provided always, that the land so set apart for building thereon such church or chapel, or whereon such building shall be erected as aforesaid, shall be held in fee-simple, or for lives with covenant for perpetual renewal thereof, or for a term of ninety-nine years, of which not less than sixty years shall be unexpired; and provided also, that by the deed of endowment thereof one third at least of the sittings in such church or chapel shall be set apart and appropriated as free sittings for ever.

"II. And be it further enacted by the authority aforesaid, that where any person or persons, bodies politic or corporate, shall erect or appropriate as aforesaid and endow, and where two or more persons, bodies politic or corporate, shall join in or contribute to the erecting or appropriating as aforesaid, and endowment of any church or chapel or building as aforesaid, in pursuance of this act, the minister or ministers to officiate in such church or chapel shall be from time to time nominated and appointed by trustees, who shall not be fewer than five nor more than seven in number, and who shall be members of the united church of England and Ireland, to be for that purpose named, in the first instance, by the person or persons, bodies politic or corporate, so erecting or appropriating and endowing any such church or chapel, and that the vacancies which shall from time to time occur in the number of such trustees shall be filled up in such manner and order as in the deed of such endowment shall be settled: provided that if it should happen that all the trustees of any such church or chapel for the time being should die without having appointed any other trustee or trustees as their successors, then and in such case it shall be lawful for the minister for the time being of the said church or chapel, with the consent of the bishop of the diocese, to appoint the requisite number of trustees by the deed of endowment of such church or chapel required.

"III. And be it further enacted, that in case such endowment shall be formed in the whole or in part of government funds, it shall be lawful for such trustees, as they shall think fit, to dispose of such government funds, and to invest the produce thereof in the purchase of lands, tenements, or hereditaments held in fee-

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simple, or for lives with covenant for perpetual renewal, or for long terms for years of which at least sixty years shall be unexpired, in such manner and subject to such restrictions as in said deed of endowment shall be for that purpose provided; and where such endowment shall be formed in the whole or in part of any estate or interest in lands or tenements less than a fee-simple it shall be lawful for such trustees, as they shall see fit, to purchase any more extended interest therein, or the reversion or inheritance therein, in such manner and subject to such restrictions as in the said deed of endowment shall be for that purpose provided.

“IV. And be it further enacted, that the bishop of the diocese, with the consent of the incumbent, shall assign a particular district to every such church or chapel as shall be built or appropriated under the provisions of this act, or which has been or shall be built or appropriated under any other statute, or under and by virtue of any ecclesiastical authority, except where from special circumstances he shall deem it not advisable to assign a district; and such district shall be under the immediate care of the minister who shall have been duly licensed to serve such church or chapel, so far as regards the visitation of the sick and other pastoral duties; provided always, that it shall be lawful for the bishop also to determine whether baptisms, churchings, or burials shall be solemnized or performed in any such church or chapel or not; and the bishop shall cause a description of the boundaries of the district assigned by him to such church or chapel to be registered in the registry of the diocese, and shall also cause his order and direction in writing as to all offices to be performed in any such church or chapel to be registered in the registry of the diocese.

“V. And be it further enacted by the authority aforesaid, that the trustees to be so nominated and appointed by or in the manner directed as aforesaid, by any person or persons, bodies politic or corporate, who shall build or appropriate and endow any such church or chapel as aforesaid, shall from the time of such endowment be and be esteemed in law to be patron or patrons of such church or chapel, and the right of presentation or nomination thereto shall be and is hereby from thenceforth for ever after vested in the trustees to be so nominated by or appointed in such manner as aforesaid, by such person or persons, bodies politic or corporate, who shall build or appropriate and endow the same as aforesaid; and that such endowed church or chapel shall be for ever after called and known by such name as the said founders of such church or chapel shall in and by their deed of endowment direct and appoint.

“VI. And be it further enacted, that if any minister already possessed of any benefice, living, or curacy shall be nominated and appointed to officiate in any such church or chapel as aforesaid, and shall accept such appointment, and be duly licensed thereunto, that then such benefice, living, or curacy shall from thenceforth be and be deemed and adjudged absolutely void to all intents and purposes whatsoever, and it shall be lawful for the archbishop, bishop, or other patron to collate or present thereto in like manner and form as if the former incumbent had died: and in case any minister who shall have been nominated and appointed to officiate in any such church or chapel as aforesaid, and who shall have accepted such appointment, and have been duly licensed thereunto, shall be collated or instituted to any other benefice, living, or curacy, that then the said appointment of such minister to officiate in such church or chapel as aforesaid shall from thenceforth be and be deemed and adjudged absolutely void to all intents and purposes whatsoever, and it shall be lawful for the trustees for the time being in the deed of endowment of such church or chapel named, or subsequently duly appointed as thereby directed, to nominate and appoint another minister to officiate in such church or chapel in like manner and form as if the former minister had died.

“VII. And be it further enacted by the authority aforesaid, that all churches or chapels which shall at any time hereafter be erected or appropriated and endowed by virtue of this act shall be and are hereby declared and established to be from the time of such endowment perpetual cures and benefices presentative, and the ministers duly admitted and instituted or nominated and licensed thereunto, and their successors respectively, shall be and shall be esteemed in law bodies politic and

STATUTA GULIELMI IV. A.D. 1830—1837.

corporate, and shall have perpetual succession by such name and names as in the grant of such endowment shall be mentioned, and shall have a legal capacity, and are hereby enabled to take in perpetuity to them and their successors all such lands, tenements, and hereditaments as shall be granted unto them respectively by virtue of this or any other act, or any deed or endowment; any law or statute to the contrary notwithstanding.

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"VIII. And be it further enacted, that all lands and grounds which shall be granted and conveyed as and for the sites of such churches or chapels as aforesaid, and upon which any such church or chapel shall be erected or appropriated as aforesaid, shall become and be and remain absolutely vested in the trustees for the time being in the deed of endowment of such church or chapel named, or subsequently duly appointed as thereby directed, free from all demands or claims of any body politic or corporate, or person or persons whatever, and without being at any time subject to any question as to any right, title, or claim thereto or in any manner affecting the same.

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"IX. And be it further enacted by the authority aforesaid, that no deeds of grant for any erection, appropriation, or endowment to be made in pursuance of this act shall be good and effectual in law unless such deeds be enrolled within six months from the date thereof in his majesty's court of Chancery in Ireland.

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"X. And be it further enacted by the authority aforesaid, that all churches or chapels endowed by virtue of the powers given by this act, and all ministers and curates officiating therein, shall be subject to the visitation and jurisdiction of the archbishop or bishop of the diocese wherein such churches or chapels are situated, to all intents and purposes of law whatsoever.

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"XI. And be it further enacted by the authority aforesaid, that for continuing the succession in such perpetual cures and benefices, and that the same may be duly and constantly served, in case such endowed cures or benefices be suffered to remain void by the space of six months without any nomination within that time of a fit person to serve the same by the person or persons having a right of nomination thereto to the archbishop, bishop, or other ordinary, within that time to be licensed for that purpose, the same shall lapse to the archbishop, bishop, or other ordinary, and from him to the metropolitan, and from the metropolitan to the crown, according to the course of law used in cases of presentative livings and benefices, and the right of nomination to such endowed benefice may be granted or recovered, and the incumbency thereof may and shall cease, and be determined, in like manner and by the like methods as the presentation to or incumbency in any vicarage presentative may now be respectively granted, recovered, and determined; and moreover, in case the minister of such church or chapel shall be absent from his cure for above the space of sixty-one days in any one year, without the licence of the archbishop, bishop, or other ordinary first obtained for that purpose, such church or chapel shall from thenceforth be and be esteemed in law actually void.

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"XII. And be it further enacted by the authority aforesaid, that no lapse shall occur, in case such church or chapel becoming void by want of such residence of such incumbent as aforesaid, till six months after notice thereof in writing given by the bishop or other ordinary to the person or persons having right of nomination to the same: provided always, that in case the person or persons entitled to nominate to such endowed benefice shall suffer a lapse to incur, but shall after present or nominate to the same before any advantage taken thereof by the ordinary, metropolitan, or crown respectively, such presentation or nomination shall be as effectual as if made within six months, although so much time be before elapsed as that the title by lapse be vested in the crown.

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"XIII. And be it further enacted, that it shall and may be lawful to and for any person or persons, bodies corporate and politic, with the consent of the bishop of the diocese and the incumbent, to erect and build a chapel of ease in any pariah, provided the incumbent shall, together with the bishop of the diocese, give their consent thereto by writing under their respective hands and seals, to be deposited in the registry in the diocese; and when such chapel shall have

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1. GULIELMI IV. A.D. 1830—1837.

ted, the minister of the parish in which the case is to time and for ever the minister of said chapel; pro- is a mother church at which the minister is bound e required to have divine service in said mother church ice on each Sunday or holiday, in each."

AT. 6 & 7 GULIELMI 4, c. 37. A.D. 1836.

ral Acts now in force relating to Bread to be sold out of d the Liberties thereof, and beyond the Weekly Bills of es of the Royal Exchange; and to provide other Regula- ed Sale of Bread, and for preventing the Adulteration of ad, beyond the Limits aforesaid."

ya, and be it enacted, that no master or mistress, jour- exercising or employed in the trade or calling of a baker, d, shall on the Lord's day, or on any part thereof, make r cakes, of any sort or kind, or shall on any other part our of half-past one of the clock in the afternoon, sell or or suffer to be sold or exposed for sale, any bread, rolls, nd, or bake or deliver, or permit or suffer to be baked or ing, pie, tart, or victuals, or in any other manner exer- f a baker, or be engaged or employed in the business or ed except so far as may be necessary in setting and super- spare the bread or dough for the following day's baking; g against the last-mentioned regulations, or any one or hereof convicted before any justice of the peace for the ere the offence shall be committed, within six days from her upon the view of such justice, or on confession by the ore witness or witnesses upon oath or affirmation, shall f l undergo the forfeiture, penalty, and punishment, here- is to say,) for the first offence the penalty of ten shillings, penalty of twenty shillings, and for the third and every ively the penalty of forty shillings; and shall moreover, n, bear and pay the costs and expenses of the prosecution, e be assessed, settled, and ascertained, by the justice com- hereof, together with such part of the penalty as such to be allowed to the prosecutor or prosecutors for loss of lowing up the prosecution, at a rate not exceeding three be paid to the prosecutor or prosecutors for his, her, or and the residue of such penalty to be paid to such jus- s after his receipt thereof to be transferred by him to of the poor, or to some other officer, (as the convicting ct,) of the parish, township, or place, in which the offence l, to be by such overseer or officer paid over to the use of nty, riding, or division, in which such parish, township, hether the same shall or shall not contribute to such bitant of such county, riding, or division, shall be deemed any proceeding under this act by reason of the applica- feiture to the use of the said general rate as aforesaid; unt of the penalty and of the costs and expenses afore- . after conviction of the offender or offenders, each justice : under his hand and seal, direct the same to be raised ale of the goods and chattels of the offender or offenders, iency of such distress, commit the offender or offenders -with or without hard labour, on a first offence for the second offence for the space of fourteen days, and on a fence for the space of one month, with or without hard of the penalty, costs, and expenses, be sooner paid and

STATUTA GULIELMI IV. A.D. 1830—1837.

discharged: provided nevertheless, that it shall be lawful for every baker residing beyond the limits aforesaid to deliver to his or her customers on the Lord's day, any bakings until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained: provided always, that the provisions of this act, so far as they authorize the baking and preparing bread on Sundays, shall not extend to Scotland."

STAT.
GUL. 4
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till half
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CXXXI. STAT. 6 & 7 GULIELMI 4, C. 41. [SCOTLAND.] A.D. 1836.

"An Act to abolish the Commissary Court of Edinburgh, and to regulate the mode of taking Proofs in Consistorial Causes in Scotland."

STAT.
GUL. 4
[Sc.]

CXXXII. STAT. 6 & 7 GULIELMI 4, C. 55. [IRELAND.] A.D. 1836.

"An Act to amend the Laws relating to Loan Societies in Ireland."

STAT.
GUL. 4
[Ir.]

"XXIV. And be it further enacted, that the trustees of any such society may from time to time appropriate such portion of the clear net profits, over and above all losses, as they shall think proper, in support of the hospital or infirmary of the county for which or for a portion of which the society shall be established, or for such other local charitable purposes as they shall think fit: the residue, or the whole of such net profits if no part shall be so appropriated, being employed as part of the funds of the society until the trustees shall otherwise determine: provided always, that no part of any such net profits, after deducting losses, shall be appropriated in any way for the advantage or benefit of any member of the society, or of the persons managing or conducting the same, or for any purpose whatsoever, except as part of or in aid of the funds of the society, to be used according to the rules of such society, or for charitable purposes as hereinbefore provided; and that in the event of the dissolution of any such society, or that such society shall cease to act for the purposes for which it was established, or shall be deprived of the benefit of this act, the whole of the clear net profits, not previously appropriated for some charitable purpose, after payment of all debts of or claims on such society, and of all losses, shall be appropriated to such hospital or infirmary, or to such other local charitable purpose as the trustees, with the approbation of the Loan-Fund Board, shall think proper."

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CXXXIII. STAT. 6 & 7 GULIELMI 4, C. 58. A.D. 1836.

"An Act for declaring the Law as to the Day on which it is requisite to present for Payment to the Acceptors or Acceptor supra Protest for Honour, or to the Referees or Referee in case of need, Bills of Exchange which had been dishonoured."

STAT.
GUL. 4

"II. And be it further enacted and declared, that if the day following the day on which such bill of exchange shall become due shall happen to be a Sunday, Good Friday, or Christmas day, or a day appointed by his majesty's proclamation for solemn fast or of thanksgiving, then it shall not be necessary that such bill of exchange shall be presented for payment, or be forwarded for such presentment for payment, to such acceptors or acceptor for honour, or referees or referee, until the day following such Sunday, Good Friday, Christmas day, or solemn fast or day of thanksgiving."

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CXXXIV. STAT. 6 & 7 GULIELMI 4, C. 64. A.D. 1836.

"An Act to explain and amend an Act passed in this present Session of Parliament for imposing certain Restrictions on the Renewal of Leases by Ecclesiastical Persons."

STAT.
GUL. 4

"Whereas by an act passed in this present session of parliament, intituled, 'An Act for imposing certain Restrictions on the Renewal of Leases by Ecclesiastical Persons,' it is amongst other things enacted, that whenever any archbishop, bishop, ecclesiastical corporation sole or aggregate, dignitary, canon, prebendary, spiritual person, master, or guardian should thereafter grant any renewed lease of any house, land, tithes, or other hereditaments, parcel of the possessions of his or their see,

6 Gul.

6 & 7 chapter, dignity, canonry, prebend, benefice, or hospital, such lease should contain
1, c. 64. such recital or statement as therein mentioned, every such recital or statement
should, so far as relates to the validity of the lease so to be granted, be deemed and
taken to be conclusive evidence of the truth of the matter so recited or stated; and
it is thereby further enacted, that if any lease contrary to the said act should have
been granted since the first day of March in this present year, or should be granted
after the passing of the said act, every such lease should be void to all intents and
purposes: and whereas doubts have been entertained whether leases granted since
the said first day of March in this year, or to be hereafter granted, by any
archbishop, bishop, ecclesiastical corporation sole or aggregate, dignitary, canon,
prebendary, spiritual person, master, or guardian, and which do not contain such
recital or statement as aforesaid, are not made absolutely void by the aforesaid
enactment; and it is expedient that all such doubts should be removed: be it
therefore declared and enacted by the king's most excellent majesty, by and with
the advice and consent of the lords spiritual and temporal, and commons, in the
present parliament assembled, and by the authority of the same, that no lease
granted or to be hereafter granted by any archbishop, bishop, ecclesiastical cor-
poration sole or aggregate, dignitary, canon, prebendary, spiritual person, master, or
guardian, shall be deemed or taken to be void under the provisions of the said act
by reason only of its not containing such recital or statement as therein mentioned:
provided always, that whenever any archbishop, bishop, ecclesiastical corporation
sole or aggregate, dignitary, canon, prebendary, spiritual person, master, or guar-
dian, shall hereafter grant any renewed lease of any manor, messuage, land, tithes,
or hereditaments, parcel of the possessions of his or their see, chapter, dignity,
canonry, prebend, benefice, or hospital, and such lease shall contain such recital or
statement as in the said act is mentioned, every such recital or statement shall, so
far as relates to the validity of the lease so to be granted, be deemed and taken to
be conclusive evidence of the truth of the matter so recited."

6 & 7
4, c. 67

CXXXV. STAT. 6 & 7 GULIELMI 4, c. 67 (1). A.D. 1836.

*"An Act for suspending for one year Appointments to certain Dignities and
Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories."*

"Whereas his majesty was pleased, on the fourth day of February and on the
sixth day of June in the year one thousand eight hundred and thirty-five, to issue
two several commissions to certain persons therein respectively named, directing
them to consider the state of the established church in England and Wales with
reference to ecclesiastical duties and revenues: and whereas the said commissioners
have, in pursuance of such directions, made four several reports to his majesty,
bearing date respectively the seventeenth day of March one thousand eight hun-
dred and thirty-five, and the fourth day of March, the twentieth day of May, and the
twenty-fourth day of June one thousand eight hundred and thirty-six, and have
in the last of such reports, amongst other things, recommended that the chapter of
each cathedral church in England, except at Oxford, of the collegiate church of
Westminster, and of his majesty's royal chapel of Windsor, consist hereafter of a
dean and four canons only; that the chapter of Christ Church in Oxford consist
hereafter of a dean and six canons only; that the chapters of Saint Asaph and
Bangor respectively consist hereafter of a dean and two canons only; that the
chapter of Saint David's consist hereafter of a precentor and two canons only, and
that the chapter of Llandaff consist hereafter of an archdeacon and two canons
only; and that no new appointment be made to any of the prebends, dignities, or
offices, not being residentiary, in the several cathedral and collegiate churches,
except as therein specified, nor to the deanery of Wolverhampton; and that all
ecclesiastical rectories without cure of souls, except such as are in the patronage of

(1) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 71; Stat. 4 & 5 Vict. c. 39; Stat. 5 & 6 Vict.
Stat. 1 & 2 Vict. c. 100; Stat. 2 & 3 Vict. c. 112; Stat. 6 & 7 Vict. c. 60; and Stat. 6
c. 9; Stat. 2 & 3 Vict. c. 14; Stat. 2 & 3 & 7 Vict. c. 77.
Vict. c. 55; Stat. 3 & 4 Vict. c. 113, s. 60;

STATUTA GULIELMI IV. A.D. 1830—1837.

any college in either of the universities, or of any private patron, be suppressed; and whereas the said commissioners have also recommended various other measures, some of which are connected with and dependent upon the foregoing recommendations, and it is expedient that the reports of the said commissioners in these respects should be further considered in the next session of parliament; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all future appointments to any ecclesiastical dignity, place, or office referred to in the above-mentioned recommendations be made subject to such measures and regulations as may hereafter be enacted respecting the same, except as hereinafter excepted; no appointment, presentation, or collation be made to any canonry, prebend, or dignity in any cathedral church in England or Wales, or in his majesty's royal chapel of Windsor, or in the collegiate churches of Westminster and Ripon, or to any benefice without cure of souls in England or Wales, which is now vacant or which shall hereafter become vacant during the continuance of this act; provided always, that nothing herein contained shall be construed to apply to any archdeaconry, nor to any deanery, except the deanery of Wolverhampton, nor to the dignity of precentor in the cathedral church of Saint David's, nor to any of the canonries in the cathedral churches of York, Saint Paul's in London, Carlisle, Chichester, and Lincoln, nor to either of the two canonries of Christchurch, which are respectively annexed to the regius professorships of divinity and Hebrew in the university of Oxford, nor to the prebend in the cathedral church of Worcester, which is annexed to the Lady Margaret's professorship of divinity in the same university, nor to the two prebends in the collegiate church of Westminster, which the said commissioners have in their said reports recommended to be annexed to the parishes of Saint Margaret and Saint John in the city of Westminster respectively, nor to the fourth prebend in the cathedral church of Durham, which is by an act passed in the second year of his present majesty's reign to be annexed to the archdeaconry of Durham, nor to the prebends in the cathedral churches of Gloucester, Norwich, and Rochester, which are respectively annexed to the masterships of Pembroke college in Oxford and of Catherine hall in Cambridge, the provostship of Oriel college in Oxford, and the archdeaconry of Rochester respectively, nor to any prebend now enjoyed by the Bishops of Lincoln, Lichfield, Exeter, and Salisbury in the chapters of their respective sees, nor to any benefice without cure of souls which is in the patronage of any college or either of the universities or of any private patron, nor to any canonry in the chapter of Christ Church in Oxford by the vacancy of which the canonries in the said chapter shall be reduced below the number of six, nor to any prebend or canonry in the chapter of any other cathedral or collegiate church in England, or of his majesty's royal chapel of Windsor, or of the collegiate churches of Westminster or Ripon, by the vacancy of which the prebends or canonries in such chapters respectively shall be reduced below the number of four, nor to any canonry in the chapter of either of the cathedral churches of Wales by the vacancy of which the canonries in such chapter shall be reduced below the number of two.

"II. And whereas an act was passed in the last session of parliament, intituled, 'An Act for protecting the Revenues of vacant Ecclesiastical Dignities, Prebends, Canonries, and Benefices without Cure of Souls, and for preventing the Lapse thereof, during the pending Inquiries respecting the State of the Established Church in England and Wales;' be it enacted, that nothing herein contained shall be construed to prejudice or affect the said act, excepting such part thereof as provides that nothing therein contained shall prevent his majesty, or any archbishop, bishop, or other patron of any dignity, prebend, canonry, or benefice without cure of souls which at the time of the passing of the said act might have or should thereafter become vacant, from appointing a successor thereto in case he should think proper to do so, but that such last-mentioned provision, except so far as it relates to any canonry, prebend, dignity, or benefice hereinbefore excepted from the operation of this act, be and the same is hereby repealed.

ULIELMI IV. A.D. 1830—1837.

that all the provisions of the said act, except as in full force during the continuance of this act. hat this act shall continue and be in force for one and if parliament shall be then sitting, until the end

& 7 GULIELMI 4, c. 70(1). A.D. 1836.

the Conveyance of Sites for School Rooms."

3 & 7 GULIELMI 4, c. 71(2). A.D. 1836.

tation of Tithes in England (3) and Wales."

to amend the laws relating to tithes in England and ans for an adequate compensation for tithes, and for it therefore enacted by the king's most excellent vice and consent of the lords spiritual and temporal, parliament assembled, and by the authority of the or one of

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STATUTA GULIELMI IV. A.D. 1830—1837.

"III. And be it enacted, that the said commissioners shall from time to time give to any one of his majesty's principal secretaries of state such information respecting their proceedings or any part thereof as the said principal secretary of state shall require, and shall once in every year send to one of the principal secretaries of state a general report of their proceedings; and every year such general report shall be laid before both houses of parliament within six weeks after the receipt of the same by such principal secretary of state if parliament be sitting, or if parliament be not sitting then within six weeks after the next meeting thereof.

"IV. And be it enacted, that it shall be lawful for the commissioners from time to time to appoint a sufficient number of persons to be assistant commissioners, and also a secretary and assistant secretary, and all such clerks, messengers, and officers as they shall deem necessary, and to remove such assistant commissioners, secretary, or assistant secretary, clerks, messengers, or officers, or any of them, and on any vacancy in any of the said offices to appoint some other person to the vacant office; and the persons so appointed shall assist in carrying this act into execution at such places and in such manner as the said commissioners may direct: provided always, that the said commissioners shall not appoint more than twelve such assistant commissioners to act at any one time, unless the lord high treasurer, or any three or more of the commissioners of his majesty's treasury, shall, in the case of each such appointment, consent thereto; provided further, that the number of such clerks, messengers, and officers shall be subject to the like consent.

"V. And be it enacted, that no commissioner or assistant commissioner appointed as aforesaid shall during his continuance in such office be capable of being elected or of sitting as a member of the house of commons.

"VI. And be it enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person so to be appointed, shall hold his office for a longer period than five years next after the day of the passing of this act, and thenceforth until the end of the then next session of parliament; and after the expiration of the said period of five years and of the then next session of parliament so much of this act as authorizes any such appointment shall cease.

"VII. And be it enacted, that the salaries of the commissioners, the allowance to the assistant commissioners, and the salaries of the secretary, assistant secretary, clerks, messengers, and other officers to be appointed under this act, shall be from time to time regulated by the lord treasurer or the lords commissioners of his majesty's treasury, or any three of them: provided always, that the salary of a commissioner shall not exceed the sum of one thousand five hundred pounds a year, nor the allowance to an assistant commissioner the sum of three pounds for every day that he shall be actually employed or travelling in the performance of the duties of his office, nor the salaries of the secretary or assistant secretary the sum of eight hundred pounds a year; and that the salaries of the clerks, messengers, and other officers shall be in fit proportion: provided also, that the said lord treasurer or lords commissioners may allow to any commissioner, assistant commissioner, secretary, assistant secretary, clerk, messenger, or other officer, any such reasonable travelling and other expenses as may have been incurred by him in the performance of his duties under this act, in addition to his salary or allowance respectively.

"VIII. And be it enacted, that the salaries, allowances, and travelling and other expenses of the commissioners, assistant commissioners, secretary, assistant secretary, clerks, messengers, and officers as aforesaid, and all other incidental expenses of carrying this act into execution, not herein otherwise provided for, shall be paid by the lord treasurer or the lords commissioners of his majesty's treasury out of the consolidated fund.

"IX. And be it enacted, that every such commissioner and assistant commissioner shall, before he shall enter upon the execution of his office, take the following oath before one of the judges of his majesty's court of King's Bench or Common Pleas, or one of the barons of the court of Exchequer; (that is to say,)

"I, A. B., do swear, that I will faithfully, impartially, and honestly, accord-

JULIEMI IV. A.D. 1830—1837.

and judgment, fulfil all the powers and duties of a commissioner, as the case may be], under an act passed in the reign of King William the Fourth, intituled [here set

every such commissioner and assistant commissioner, the name of the judge or baron before whom he shall be forthwith published in the London Gazette. That the said commissioners, or any assistant commissioner under their or his hand, require the attendance of all who may think fit to examine upon any matter brought after mentioned relating to the commutation of tithes, and call for any answer or return as to any such tithes, and examine (2) all such persons upon oath, and them or him upon oath all books, deeds, contracts, writings, *terriers* (3), maps, plans, and surveys, or copies wise relating to any such matter: provided always, required, in obedience to any such summons, to travel to the place of his abode, or to produce any deeds, papers, or title of any lands or tithes.

That the said commissioners may delegate to their or any one or more of them, such of the powers hereby given as the said commissioners shall think fit, (except the power to make awards, or to frame forms of agreements and orders after provided, or to do any act herein required to be done by the said commissioners,) and the powers so delegated shall be exercised as the said commissioners shall direct; and the said commissioners at any time recal or alter all or any of the powers delegated, notwithstanding the delegation thereof, may act as if the powers were not so delegated; and all acts done by any such assistant commissioner in exercise of the powers so delegated, shall be obeyed by all persons as if done by the said commissioners, and the non-observance thereof shall be deemed a breach of the said act.

That in the construction and for the purposes of this act, the words "the king" shall be construed to mean and include the king's majesty, and any body corporate or sole, as well as an individual: and any word importing the singular shall be construed to mean and include several persons or parties as well as one.

15. s. 24.
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by the minister of the parish, but it does not appear to be essentially necessary, for a *terrier* signed only by the churchwardens, was admitted in evidence in favour of a vicar against an impropriator. *Stillingfleet v. Leigh*, Gwillim, 1615. 3 E. & Y. 1385. A *terrier*, though not signed by the impropriate rector, nor by any person for him, is evidence against him as to tithes due to him in the parish. *Potts v. Durant*, 3 Inst. 789. 2 E. & Y. 432. Where *terriers* state the rector to be entitled to the small tithes of the parish, the expression is so general and indefinite, as not to exclude the possibility of the existence of money payments in lieu of the small tithes; and, therefore, where *terriers* so stated, but the parson has proved money payments, for nearly a century back, in lieu of certain small tithes, a decree for tithes in kind of these tithes was refused, and the rector was left to his issue, or action at law. *Lonsdale v. Horne*, 1 Young, 38.

(4) *Vide* Stat. 2 & 3 Vict. c. 62. ss. 2 & 24.

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one person or party, and several things as well as one thing respectively, and the converse; and any word importing the masculine gender only shall mean and include a female as well as a male; and the word 'lands' shall mean and include all messuages, lands, tenements, and hereditaments; and the word 'tithes' shall mean and include all uncommuted tithes, portions and parcels of tithes, and all moduses, compositions real, and prescriptive and customary payments; and the word '*parish*' and '*parochial*' (1) shall mean and include and extend to every parish and every extra-parochial place, and every township or village, within which overseers of the poor are separately appointed under the provisions of an act passed in the thirteenth and fourteenth years of the reign of his late majesty King Charles

Act for the better Relief of the Poor of this Kingdom,'

the tithes are payable under a separate impropriation or separate portion or parcel (2), or which the commissioners may be considered as a separate district for the commutation 'landowner' or 'titheowner,' or 'owner of lands' shall mean and include every person who shall be in the receipt of the rents or profits of any lands or tithes, (except (3) for years, holding under a lease or agreement for a term of not less than two thirds of the clear yearly value of the land, which shall have been reserved, and except any tenant for years under a lease or agreement for a lease for a term which shall exceed fourteen years from the commencement thereof,) and that amount of interest of such person; and in every case in which the land shall have been leased or agreed to be leased to any person for years, by any lease or agreement for a lease on which the clear yearly value of the premises comprised in the lease shall have exceeded four-

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been severed and alienated from such rec-
tories. These severances of parcels of tithes
have, for the most part, been made by lay
impropriators of personages since the diso-
lution of monasteries in the reign of Henry
the Eighth. Parcels of tithes are very nume-
rous in some parts of the kingdom, and as
each parcel is for the purposes of the com-
mutation to be considered as a separate pa-
rish they will very much increase the labours
of the commissioners. It would seem, how-
ever, that the lands over which such portions
and parcels extend, cannot be the subject of
separate commutation, except in those cases
in which the portion or parcel comprises all
the tithes of the land. But such cases are
extremely rare. Parcels of tithes consist of
rectorial tithes, and the vicar is commonly
entitled to some of the tithes arising on the
same land, and it could scarcely have been
intended that, in such cases, the same lands
should be considered as a separate district,
in respect to the parcel of tithes, and united
with the rest of the parish, in respect of the
vicarial tithes. Ibid. 12.

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(3) *Except*.—The effect of the two ex-
ceptions seems to be, that no person holding
lands or tithes under a lease or an agreement
for a lease for life or lives, or for any term
of years however long, at a rent amounting
to two thirds of the clear yearly value of the
premises demised, shall be considered as an
"owner" within the meaning of the statute,
and that no tenant for years, whose term
does not exceed fourteen years from its com-
mencement, shall under any circumstances
be considered as an owner. Ibid. 13.

LIELEMI IV. A.D. 1830—1837.

such person or persons, and upon the like use and has or rent-charge in commutation or exchange for given shall be vested and holden; and for the pur-
ing any such agreement the provisions of this act
liability shall apply to every person party to such
h land shall be vested, and whose concurrence or
perfecting thereof, or of the title to such land, as
are repeated and re-enacted.

1, that at the said meeting or at some adjournment
dial meeting to be called in like manner, either
of the agreement, the owners of lands subject to
ir agents, present at the meeting, may appoint a
he majority in respect of number and the majority
ree upon the appointment, then they shall appoint
r of valuers as shall be then agreed on by such
er to be chosen by a majority in respect of number,
ty in respect of interest, of such landowners then

nacted, that as soon as may be after the choosing of
r the confirmation of the said agreement, the valuer
tion the total sum agreed to be paid by way of red-
expenses of the apportionment, amongst the several
ng to such principles of apportionment as shall be
hich the valuer or valuers shall be chosen, or if no
upon for the guidance of the valuer or valuers, then,
heable produce and productive quality of the lands,
tion and judgment, but subject in each case to the
d, and so that in each case the several lands shall
modus and composition real, prescriptive and re-
exemption from or non-liability to tithes relating
nd having regard to the several tithes to which the
provided that it shall be lawful for the said valuers,
n, by any writing under their hands, to appoint as
upon the business of such apportionment, and the
questions in difference between the valuers shall be
dopted by them in the apportionment.

nacted, that the said valuers and umpire, (if it shall
ct,) and their agents or servants, at all reasonable
he lands to be included in the apportionment, and
, and valuation of the same, without being subject
for so doing; provided always, that no valuer or
ng until he shall have made and subscribed before
e assistant commissioner or justice of the peace, a
purport and effect as the oath hereinbefore directed
sioners, substituting only the proper description of
commissioner, and adding to his signature the usual
claration it shall be lawful for the said commis-
sioner or justice, to administer; and every such
ribed shall be countersigned by the person before
made, and shall be sent by him to the office of the

acted, that the valuer or valuers or umpire may, if
oces of this act any admeasurement, plan, or valua-
nds or tithes in question of the accuracy of which
it it shall be lawful for the meeting at which such

c. 71, ss. (3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 63
& 64; Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 1.
71, s. 9. and Stat. 2 & 3 Vict. c. 62, s. 22.

seal, shall for the purposes of this act be substituted in the place of such patron, owner, or person so interested.

"XVI. And be it enacted, that it shall be lawful for any landowner or titheowner, by a power of attorney given in writing under his hand, to appoint an agent to act for him in carrying into execution the provisions of this act; and all things which by this act are directed to be done by or with relation to any person may be lawfully done by or with relation to the agent so duly authorized of such person; and every such agent shall have full power, in the name and on behalf of his principal, to concur in and execute any agreement, and to vote on any question arising out of the execution of this act; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted; and the power of attorney under which the agent shall have acted, or a copy thereof, authenticated by the signature of two credible witnesses, shall be appended to every agreement executed by any such agent, and shall be sent with it to the office of the commissioners as hereinafter provided; and any such power of attorney may be in the form following:

"I, *A. B.*, of [*&c.*], do hereby appoint *C. D.* of [*&c.*], to be my lawful attorney to act for me in all respects as if I myself were present and acting in the execution of an act passed in the sixth and seventh years (1) of his present majesty, intitled [here insert the title of this act].

"(Signed) *A. B.*"

"XVII. And be it enacted, that any one or more of the landowners or titheowners, whose interest respectively shall not be less than one fourth part of the whole *value* (2) of the lands subject to tithes, or one fourth part of the whole value of the tithes of any parish in England or Wales, may call a parochial meeting of landowners and titheowners within the limits of the parish, by notice (3) thereof in writing under his or their hand, to be affixed at least twenty-one days before such meeting on the principal outer door of the church, or in some public and conspicuous place within the limits of the parish (4), and to be twice at least during such twenty-one days inserted in some newspaper generally circulated within the county in which such parish is situated, for the purpose of making an agreement for the general commutation of tithes within the limits of such parish; and every landowner and titheowner attending such meeting shall bear his own expenses of attendance; and the landowners and titheowners who shall be present at any such meeting called as aforesaid, and whose interests in the lands and tithes of the parish respectively shall not be less than two thirds of the lands subject to tithes, two thirds of the great tithes and two thirds of the *small tithes* (5) of the parish, may proceed to make and

STAT. 6 & 7
GUL. 4, c. 71.

Acts may be done by agents duly authorized.

Power of attorney.

Parochial meetings may be called, at which owners of two thirds in value may agree on the sum to be paid to the titheowners, which agreement shall bind the whole parish.

(1) *In the sixth and seventh years*.—A statute passed in a session of parliament begun in the second and continued in the third year of a king's reign, must not be pleaded as passed in the second and third years of the reign; although such act be recited in a later statute as "passed in the second and third years," *See. Row v. Biers*, 1 A. & E. 327.

(2) *Value*.—The value of the land and tithes is to be estimated according to the assessment for the relief of the poor, and in extra-parochial places in which there is no poor's rate, upon a valuation according to the principle of such assessments. *Vide Stat. 6 & 7 Gul. 4, c. 71, s. 19.*

(3) *Notice*.—*Vide Stat. 6 & 7 Gul. 4, c. 71, s. 22.*

(4) *Parish*.—*Vide Stat. 6 & 7 Gul. 4, c. 71, s. 12.*

(5) *Small tithes*.—"Two-thirds of the great tithes and two-thirds of the small tithes," *See.* This provision which makes

the separate and distinct concurrence of the owners of two-thirds of the great tithes, and two-thirds of the small tithes, essential to the execution of a parochial agreement, seems intended for the protection of vicars, whose interests in the tithes of the whole parish collectively, bear almost universally, but a very small proportion to those of the impropriate or appropriators rectors, and might, therefore, be very materially prejudiced by agreements made without their assent. But as the language of the provision appears to have been framed upon the notion, that the words "great tithes" are synonymous with "rectorial tithes," and the words "small tithes" with "vicarial tithes," it is necessary to observe, that the division of tithes into great and small is merely a general legal distinction, and the terms "great" and "small" have no necessary or permanent connexion with rectorial and vicarial tithes. Vicars, it is true, are very commonly entitled to all the small tithes of the parish, but that is an ac-

some schedule thereunto annexed shall set forth all the lands of the said parish which are subject to the payment of any kind of tithes, and also the true or estimated quantity in statute measure of land subject to tithes within the parish which shall be then cultivated as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise, and shall also set forth whether any modus or composition real, or prescriptive or customary payment, shall be payable instead of all or any of the tithes of the said parish, and which lands or tithes respectively are covered thereby, and shall also set forth which of the said tithes, moduses, compositions, or payments are payable to the titheowner, or if there is more than one titheowner to each of the several titheowners in the said parish, distinguishing in what right every such titheowner is entitled to such tithes, and shall also set forth whether any and which of the lands of the said parish are or have been under any and what circumstances exempt from the payment of any and what tithes; and such agreement shall also state in words at length the amount of the sum or sums agreed to be paid (subject to variation as hereinafter provided) instead of the tithes of the lands comprised in the said agreement, and instead of all moduses and compositions real, prescriptive and customary payments, (if any,) payable in respect of such lands, or the produce of such lands or any of them, distinguishing, if there is more than one titheowner, the sum payable to every such titheowner, and where the tithes of different lands in the same parish are payable to different titheowners, or to the same titheowner in different rights, distinguishing the sum payable in respect of such different lands; and every such agreement shall also state all such other particulars as the commissioners shall by any order from time to time require to be inserted in such agreements.

"XXII. And be it enacted, that the commissioners shall frame and cause to be printed, as soon as conveniently may be after their appointment, forms of notices and agreements, and such other instruments as in their judgment will further the purposes of this act, and supply all or any of such forms to the churchwardens and overseers of any parish who may require the same, or to whom the commissioners may think fit to send the same, for the use of any landowner or titheowner desirous of putting this act in execution.

STAT. 6 & 7
GUL. 4, c. 71

Commissioners
to frame and
circulate forms
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"XXIII. And be it enacted, that any commissioner or assistant commissioner, if the commissioners shall think fit, may attend any such meeting for the purpose of taking part in the discussion and advising on the terms of agreement; but no commissioner or assistant commissioner, during the time that he is actually attending such meeting for that purpose, shall have any of the powers herein given to the commissioners in case of an award or apportionment by the commissioners as hereinafter provided.

Commissioner
or assistant
commissioner
may attend to
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"XXIV. And be it enacted, that if any suit shall be pending touching the right to any tithes, or if there shall be any question as to the existence of any modus or composition real, or prescriptive or customary payment, or any claim of exemption from or nonliability to tithes, under any circumstances in respect of any lands or any kind of produce, or touching the *situation or boundary of any lands* (1), or if any difference shall arise whereby the making and executing of any such agreement shall be hindered, it shall be lawful for the owners, or, if there shall be no owner actually in possession, for the persons claiming to be the owners of the lands and tithes respectively, being parties to such suit or difference, to submit the same to reference by any writing under their respective hands, containing an agreement that such submission shall be made a rule of any of his majesty's courts of record, upon such terms of reference as the parties may agree upon; and the decision of the arbitrator or arbitrators named in the said reference shall for the purposes of this act be final and conclusive on all persons: provided nevertheless, that no person being owner of an estate in land or tithes, less in the whole than an

Suits and
differences may
be referred to
arbitration.

1) *Situation or boundary of any lands*:—
By Stat. 2 & 3 Gul. 4, c. 80, dignitaries of the church and ecclesiastical and collegiate corporations are enabled to enter into any agreement or deed of submission with their

lessees and copyhold tenants, or with the owners of any other hereditaments, for the purpose of settling unknown or disputed boundaries of manors, lands, tithes, or hereditaments.

the lands or produce thereof in the said parish, the commissioners or assistant commissioner shall in such case estimate the amount of such modus, composition, or payment as the value of the tithes payable in respect of such lands or produce respectively, and shall add the amount thereof to the value of the other tithes of the parish ascertained as aforesaid, and shall also make due allowance for all exemptions from or non-liability to tithes of any lands or any part of the produce of such lands: provided also, that if it shall appear to the said commissioners or assistant commissioner that any question concerning any modus or composition real, prescriptive or customary payment, or claim of exemption from or non-liability to the payment of tithes relating to the lands in question, shall have been decided by competent authority before the making of the said award, the commissioners or assistant commissioners shall act on the principle established by such decision, and shall make their award as if such decision had been made at the beginning of the said period of seven years.

"XLV. And be it enacted, that *if any suit shall be pending*(1) touching the Commissioners

STAT. 6 & 7
GUL. 4, c. 71
allowed for in
the award.

There was no evidence that any small tithes were ever paid to or claimed by the rector, or the persons entitled to the rectory: it was held, that the defendants, after failing to shew title to the small tithes in themselves or the owners of the lands, could not be heard to say, that the small payments in the name of privy tithes were compositions; and that privy tithes are not personal tithes, but are the same as small tithes. *Clee v. Hall*, 7 C. & F. 744. It was likewise held, that where there is evidence, that the vicarage was endowed with small tithes, the vicar's right to them is established against all lands within the parish as to which no particular discharge is proved; although no small tithes have ever been paid. *Ibid.*

Respecting the costs, it was decided, that where any of the defendants proved a particular discharge of the lands in his occupation, or shewed they were originally part of the glebe lands, the vicar's bill against them was dismissed with costs, but without costs as to such defendants as did not make and prove that defence in the court below. *Ibid.*

In *Shoobridge v. Ward*, (4 Scott's N. R. 579.) it appeared, that the titheable lands in the parish of Tenterden consisted of three different descriptions, viz., uplands, townlands, and marshlands, the occupiers of which owed upon an immemorial modus or customary payment of 4d. an acre in lieu of vicaral tithes in respect of the uplands, of 6d. an acre in respect of the townlands, and of 8d. an acre in respect of the marshlands. An award made by an assistant tithe commissioner under Stat. 6 & 7 Gul. 4, c. 71, found the alleged modus as to the marshlands, but disaffirmed it as to the uplands and townlands, there being no certain or defined boundary line separating the uplands from the townlands. An issue was thereupon directed, under sect. 45, wherein the question was, "whether from the time whereof, &c., there had been and was within the parish a certain known portion of the said parish consisting of lands called uplands, and whether, from time whereof, &c., there was not paid and payable by the occupiers the district modus or customary payment of 4d. for every acre of such lands occupied by such occupiers," and a similar issue (in another cause) as to the townlands, the modus as to the marshlands

not being disputed. At the trial it appeared that there was a natural boundary between the marshlands and the rest of the parish; and with respect to the uplands and townlands, the plaintiff proved that there were lands in the parish which had been immemorially known as such, and had always paid the acreages of 4d. and 6d. respectively, and that the lands occupied by him were within the district or division known as uplands; but he failed to establish a precise boundary line separating the townlands from the uplands; whereupon the judge told the jury, that, in the absence of proof of a defined boundary between the uplands and townlands, there was no evidence to shew that there was a certain known portion of the parish consisting of lands called uplands: it was held, that this was not a proper direction.

To a bill for the tithes of hay within a certain parish, it was averred by the answer, that there is within the said parish a piece of land called D., and that by a good and laudable custom, observed within the said parish, from time whereof the memory of man is not to the contrary, the said piece of land called D. hath been, and is, and of right ought to be, enjoyed by the impropriate rector of the said parish, or other owner for the time being of the tithes of hay of certain lands within the said parish, in lieu and full satisfaction of and for the tithes of hay of such last mentioned lands: it was held, that this modus was well pleaded as a custom within the parish, and that the expression "or other owner" did not render it bad for uncertainty. *Oliver (Clerk) v. Latham*, 1 Y. & C. 243.

(1) *If any suit shall be pending*:—Under Stat. 6 & 7 Gul. 4, c. 71, s. 45, the commissioners, if they intend to determine any suit "heretofore pending," must give specific notice of their intention to that effect, the ordinary notice to commute being insufficient for that purpose. But there is no doubt as to the jurisdiction of the commissioners to determine such suits, though the jurisdiction is discretionary. *Wetherell v. Weighill*, 3 *Ibid.* 243.

The tithe commissioners have no jurisdiction to interfere with suits for tithes which were pending in the court of Exchequer when the Stat. 6 & 7 Gul. 4, c. 71, was passed. *Girdlestone v. Stanley*, *Ibid.* 421.

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shall be any question as to the existence of any prescriptive or customary payment, or any claim of any kind of produce, or touching the situation or boundary, or any difference shall arise whereby the making of any award or assistant commissioner shall be hindered (1), the commissioners or assistant commissioner to appoint a time and place for hearing and determining the same; and the decision of the assistant commissioner shall be final and conclusive on all persons subject to the provisions hereinafter contained.

And be it enacted, that any person claiming to be entitled to any tithes thereof, who shall be dissatisfied with any award or assistant commissioner (2), may, if the yearly

award shall be hindered, it shall be lawful for the commissioners or assistant commissioner to appoint a time and place in or near the parish for hearing and determining the same, and the decision of the commissioners or assistant commissioner shall be final and conclusive on all persons subject to the provisions hereinafter contained.' The 46th section gives a power to all persons dissatisfied with the decision of the commissioners, where the yearly value of payment to be made or withheld shall exceed 20*l.*, to try the right by a feigned issue, and the 66th section makes the final award of the commissioners binding on all persons and in all cases. The object of the legislature, when they passed this statute, was to give the commissioners power to determine all questions relative to moduses and other similar matters, so as to prevent all litigation after an award should once be made. Now, as at the common law, it is competent to a party to put forth different claims in succession, so under this statute, until the door of all litigation is shut by the award, the party interested ought to be allowed to set up any second claim he may think himself entitled to set up, after having been defeated by evidence or otherwise on the first, and it would require strong language to convince us, that he is precluded from so doing. There is nothing in the 45th or any other section of the act to lead to any other conclusion. The concluding words of the 45th section are indeed relied on for this purpose, by which it is said that 'the decision of the commissioners shall be final and conclusive;' but it is plain these words cannot mean the particular matters in question — that the decision of the commissioners shall be conclusive upon them, and cannot further be construed to prevent other questions being raised. If a party abuses this privilege, he will suffer by being mulcted in the costs, but even if he were not, it would not be a sufficient ground to shake the jurisdiction of the commissioners. Then, however, it is said that the commissioners have no power while an act of validity of the force argued) the first established by the the commissioners decide in favour of of 6*cl.*, there would The answer to th

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value of the payment to be made or withheld according to such decision exceed the sum of twenty pounds, cause an action to be brought in any majesty's courts of law at Westminster against the person in whose favour decision shall have been made, *within three calendar months* (1) next after decision shall have been notified in writing, in such manner as the commissioner or assistant commissioner shall direct, to the parties interested therein or to known agents, in which action the plaintiff shall *deliver a signed issue* in such disputed right may be tried (2), and shall proceed to a trial (3) at law

that the commissioners have a discretion vested in them as to the time at which they will hear claims of this nature, so that they can postpone the hearing of this particular one until the action shall be disposed of, but

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the action being an appeal from the decision of the assistant commissioner, no matter, not in issue before the assistant commissioner, can be insisted upon on the action. It seems, therefore, necessary to state, that such an action, although the nature of an appeal, differs very materially from an appeal (properly so called) from an inferior court of record to a superior court, where the cause is re-heard, judgment or decree in the court below is reversed by the court above. In the case of an appeal from a decree of a court of equity to the House of Lords, the decree and other proceedings of the court below are matters of record, and are within the judicial cognizance of the House of Lords, which adjudicates solely upon the merits of the cause as it appears in issue in the inferior court, and permits no new matter to be introduced which was not in issue in the inferior court.

But it is otherwise in the case of an action brought under the provisions of this Act by a party dissatisfied with the decision of an assistant commissioner. Not to mention other reasons, the decision of an assistant commissioner, and the proceedings before him, are not matters of record, and cannot be brought under the judicial notice of a court of law; and, upon the whole, it is clear that the parties to the action are at liberty to introduce new matters, and insist upon points which were not in issue before the assistant commissioner. See the Tithe Acts, § 3.

Where, on a hearing before the assistant commissioner appointed to assess the amount of a commutation rent-charge under Stat. 6 & 7 Gul. 4, c. 71, a landowner denied the right of B., an alleged titheowner, to rectorial tithe of his lands, asserting that they were tithe free; and the assistant commissioner decided, that B. was owner of the rectorial tithe, and, as rector, entitled to the payment of the same: it was held, that on a writ of certiorari under Stat. 6 & 7 Gul. 4, c. 71, s. 1, the landowner could not deny, that the lands were subject to the payment of the same to B., for the purpose of raising the question of title as between B. and a third party. Lord Denman observing, "I am of opinion that the plaintiff cannot raise the question in this form, and that such a mode of proceeding was never intended by the Legislature. The observation of Mr. Paget is very striking, that the right of the landowner to be different according to the circumstances under which the titheowner claims; and his right to protect himself by the Tithe Acts, (2 & 3 Gul. 4, c. 100, and 3 & 4, c. 27,) may depend upon these, and be open to the landowner to avail himself

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issue at the sittings after the term or at the assizes then next or next but one after such action shall have been commenced to be holden for the county within which such lands or the greater part thereof are situated, with liberty nevertheless for the court in which the same shall have been commenced or any judge of his majesty's courts of law at Westminster to extend the time for going to trial therein, or to direct the trial to be in another county if it shall seem fit to such court or judge so to do; and every defendant in any such action shall enter an appearance thereto, and accept such issue; but in case the parties shall differ as to the form of such issue, or in case the defendant shall fail to enter such appearance or accept such issue, then the same shall be settled under the direction of the court in which the action shall be brought, or by any judge of his majesty's courts of law at Westminster, and the plaintiff may proceed thereon in like manner as if the defendant had appeared and accepted such issue; and the parties in such action shall produce to each other and their respective attorneys or counsel at such time and place as any judge may order before trial, and also to the court and jury upon the trial of any such issue, *all books, deeds, papers, and writings, terriers, maps, plans, and surveys*(1) relating to the matters in issue in their respective custody or power;

advantage of this kind by showing the truth of the case on trial of the issue. The only question here is, on whom the burden of proof ought to lie; and I think it must be on the landowner. The ownership of the title must, in the first instance, be taken to be with him who is in a situation to claim it; and, if the landowner disputes that right, he must shew, that the party claiming is disentitled." *Edwards v. Benbury*, 3 Q. B. 887.

On a bill filed by a perpetual curate against occupiers for the tithes of hay and certain small tithes, it appeared probable from the evidence that, previous to the year 1715, the curate only received the tithes by permission of the lay impropriator; but, it was proved, since that period he had, to a certain extent, received tithes, or a compensation for tithes, and that no tithes of any description had ever been demanded by, or paid to the impropriator: it was held, that the curate's title to tithes was established, but issues were directed to try the existence of certain moduses, set up by the defendants. *Oliver (Clerk) v. Lifford*, 1 Y. & C. N. C. 243.

An award was made by an assistant tithe commissioner under Stat. 6 & 7 Gul. 4, c. 71, with respect to certain alleged district moduses. Both the vicar and the landowners of the parish being dissatisfied with the award, the vicar brought an action against one of the landowners, and seventy-four of the landowners brought actions against the vicar, in order to try the disputed right, under issues to be directed pursuant to the 46th section of the statute: but the court refused to order the seventy-four actions brought by the landowners against the vicar, to abide the event of the action brought by him. *Ward (Clerk) v. Pomfret*, 1 M. & G. 559.

(3) *Proceed to a trial*.—A feigned issue under Stat. 6 & 7 Gul. 4, c. 71, s. 46, is not within the same rules of practice as actions at law, and therefore, when the plaintiff fails to proceed promptly to trial, on such an issue, the defendant cannot obtain judgment as in case of a nonsuit; but must make the delay of the plaintiff the subject of a special application to the court. *Wick v. Cotton*, 3 D. & D. P. C. 227.

(1) *Shall produce . . . all books, deeds, papers, and writings, terriers, maps, plans, and surveys*.—In order to render a document admissible in evidence, it is not necessary that it should come from the most proper place of custody; it is sufficient if it come from a place where it may reasonably be expected to be found. On the trial of a feigned issue, under Stat. 6 & 7 Gul. 4, c. 71, s. 46, between the vicar of M., and the owners of the lands within the township of E. K., within the parish of M., to try whether there was a modus of 13s. 4d., payable by the lord of the manor of E. K. in lieu of all vicarial tithes, in respect of the lands within the township, the plaintiff gave in evidence a bill filed in the Equity Exchequer in 1826, by the then vicar of M., against certain occupiers of lands, for the subtraction of tithes, in which the then defendants (none of whom were parties to the present issue) set up a claim of a modus of 13s. 4d., payable by the occupiers of lands within the township, and on which a decree was made to take an account of the tithes, and that the defendants should pay such sums, as should be found to be due, with costs: it was held, that this decree, although receivable, was not conclusive evidence on the trial of the above issue; nor was it seemingly binding upon the tithe commissioner:—Mr. Baron Parke stating, "I am of opinion that the rule ought to be discharged. The first ground on which it was moved was, that the judge at nisi prius ought to have told the jury, that the decree of the Equity Exchequer in 1826 was binding on the tithe commissioner when about to make his award, and ought to be considered as equally binding on them. We are not called upon to decide on the correctness of the course taken by the assistant tithe commissioner: if he has acted improperly with respect to this evidence, the plaintiff's remedy, if he have one, is by *certiorari*. But I am quite clear, that the learned judge did perfectly right in not giving greater weight to the decree of the court of Exchequer, and in telling the jury that the evidence was not binding on them. The issue joined in this case, namely, whether there was a

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and it shall be lawful for the judge by whom any such action shall be tried, if he shall think fit, to direct the jury to find a verdict, subject to the opinion of the

modus of 13s. 4d. covering the whole of the township of Eye Kettleby, ought to be tried like any other issue, whether there was such a modus or not; and we cannot try the question in any other way, because it arises in consequence of the decree of the commissioner, than if it had been directed by the court of Chancery or this court. All that we have a right to do, is to see that that issue is tried according to the rules of law. The learned judge, as it seems to me, was perfectly right in telling the jury that they were not bound by this decree. But I go further, and say that that decree was not binding even on the commissioner. The 44th section of the statute provides for the case where it shall appear to the commissioners or assistant commissioner that any question concerning any modus or composition real, prescriptive or customary payment, or claim of exemption from, or non-liability to, the payment of tithes relating to the lands in question, shall have been decided by competent authority before the making of the award, and enacts, 'that the commissioners or assistant commissioner shall act on the principle established by such decision;' but that provision must be understood as being confined to such decrees and decisions as are made by a court of competent authority to bind the same persons, as are bound by the award of the commissioners. The legislature can only have meant to give that authority to such judgments of competent courts as would be binding on the parties who were to be bound by the award of the commissioners. This clearly was not a decree of that kind, for its whole effect was to decide that there was not a modus of 13s. 4d. payable by the occupiers of land in the township to the vicar of Eye Kettleby. That was the only point which was decided by the decree; it does not decide the question on which this issue is to be tried, which is, whether a modus of 13s. 4d. is payable by the lord of the manor to the vicar of Eye Kettleby for the whole of the tithes in that township. Therefore, it seems to me that the learned judge was quite correct in his ruling, and that no new trial ought to be granted on that ground." *Croughston v. Blake*, 12 M. & W. 205.

A court of equity will compel a discovery and production of documents in aid of proceedings at law to try a disputed right under the Tithe Commutation Act, notwithstanding special provisions are contained in that act for those purposes; thus, in *Morris v. Norfolk (Duke of)*, (9 Sim. 488,) the vice-chancellor of England observed: "I have had an opportunity, during the argument of this demurrer, of looking a good deal into the act of parliament; and I do not find that there are any sections which relate to the matter, other than the 10th, the 45th, and 46th sections, with the exception of one section, upon which I shall, presently, make an observation.

"The bill before me is, in my opinion, a mere bill of discovery; and the particular

mode in which the injunction is asked, does not appear to me to vary its character at all. The form in which the injunction is asked, is certainly very unusual; but I do not think that anything turns upon that. Whether the court would grant such an injunction or not, I am not, now, to determine; but, by the frame of the bill, nothing is asked but discovery, and an interim injunction: the bill is, therefore, to be considered as a mere bill of discovery.

"I apprehend that, in all respects, that which was the law before the passing of the act, remains the law after the passing of it, except so far as it can be shown, that the law has been altered by express words which have taken away a portion of the ancient law, or altered it, or that the provisions which the act has substituted are, of themselves, necessarily inconsistent with the former state of the law. I make that observation, because it is very well known, that a very serious question arose after the act of parliament was passed which first created the court of Review, whether that act of parliament had taken away the jurisdiction which was exercised by the vice-chancellor's court generally, and also by the lord chancellor. In that act, there were no express words which took away the jurisdiction of the vice-chancellor's court; but it was held, after very considerable discussion, that, although there were no express words, yet the general provisions of the act had the effect of taking away that particular jurisdiction: and that was the opinion which Lord Brougham gave in the case which was argued, at his request, before himself and me.

"It is quite clear, on the face of this act, that there is nothing whatever, in the shape of express provision, which takes away the right of the plaintiff or defendant in the action which the act has directed to be brought in certain cases, to file a bill of discovery. But the question is whether, if there be no express words to take away that right, there is anything to be found in the general provisions of the act, which has that effect. Now what has the act of parliament done? It, first of all, speaks of some proceedings before the commissioners, which are no farther to be noticed here than by observing, that they have taken place, and the result has been that, under the provisions of the act, the present plaintiff in equity, (who was dissatisfied with the decision of the commissioners,) did, within the time appointed by the act, cause an action to be brought, in one of her majesty's courts of law at Westminster, against the person in whose favour the decision was made. He has brought his action; and I do not see why, when, under the provisions of the act of parliament, he has once become a plaintiff in one of the superior courts of law, he is disabled from filing a bill of discovery, in the court of Chancery, for the purpose of supporting his action. The act of parliament, it is true, does provide that the action shall be tried within a limited

case; and the verdict which shall be given in any such action, the court upon the case subject to which the same may be

this, namely, that the court in which the record, or to any judge of law at Westminster (means a judge acting in the court,) to extend it. It has been said, provision is, or rather bill of discovery from the same objection also any bill of discovery in a case where the extract that informant personally has, that the object of the death of the defendant in his answer; and, inasmuch that the bill is useful to the plaintiff to be a reason why the bill is such a bill. I admit that it might come on before put in; and, in that very would be of no use but suppose that, if that there should be discovery, the very fact of discovery pending, either with the whole single judge, for post-issue until the answer the bill of discovery. I direct, that the parties shall produce, to each respective attorneys or counsel and place as any judge and also to the court of any such issue, all and writings, terriers, maps relating to the matter in dispute, and order were made in the matter of it would be by that which the plaintiff is answer to a bill of discovery; that the defendant making of the judge's of the documents; in which the judge could would have the effect to light; because the that the books, deeds, the custody or power could be produced. I observe that it is not that the defendant has any documents. Suppose to be true, it is quite the judge would have from the defendant, act, or, what is still of the contents been so destroyed. But this action, which to be brought, is per the court of law: res. It seems to me the control of the things are made impos-

sible in the act of parliament. But, at any rate, it is not an action in the nature of an issue directed, by this court, to a court of law. It is an action which the legislature has expressly given to the party dissatisfied with the decision of the commissioners. The fact that there can be no writ of error, only goes to show, that the proceeding is not allowed by the act of parliament; but, nevertheless, the action is still an action in one of the superior courts of law at Westminster; and, consequently, it is an action liable to all the incidents of an action, one of which is, that the plaintiff in the action, may file a bill of discovery in the court of Chancery. One thing has occurred to me, in looking over this act of parliament, which, in my opinion, plainly shows that the legislature did mean that all such rights and remedies should remain, as are not taken away. By the 66th section it is enacted, that no confirmed agreement, award, or apportionment, shall be impeached, after the confirmation thereof, by reason of any mistake or informality therein or in any proceeding relating thereto, so that the proposition is expressly confined to the ground of mistake or informality. But, notwithstanding that provision, a confirmed agreement, award, or apportionment, if it was obtained by fraud, might be set aside, and I cannot but think, that the marked manner in which this section is expressed, shows that it was the intention of the legislature, that all the rights and remedies of the parties to the proceedings under this act of parliament, should remain so far as they are not expressly taken away by the provisions of the act.

"Upon the whole, my opinion is, (after the full discussion which I have heard,) that there is nothing so peculiar in the mode in which this action is directed to be carried on, as to authorize me to say, that the person who, under the provisions of the legislature, has exercised his liberty of bringing his action, shall be deprived of what I conceive to be necessary to bringing the action, that is, the right of filing a bill of discovery in this court in order to support that action. The consequence is, that the defendant must be overruled."

In a suit by a vicar or perpetual curate, against occupiers for tithes, the evidence of a landowner within the same parish, was held, in *Oliver (Clerk) v. Latham*, (1 Y. & C. N. C. 243,) not to be admissible on behalf of the defendants. *Vide Stat. 6 & 7 Vict. c. 85.*

On the trial of an action of debt for the treble value of predial tithes, the plaintiff had proved the defendant's occupation of the land, the subtraction of the tithes, its great value, and that tithes had been previously paid in respect of land encroached from the same common. The defendant called witnesses to prove exemption from tithes, by reason of the barrenness of the land. It was held, that, although in the re-examination of a witness for the plaintiff, a question had been

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given, shall be final and binding upon all parties thereto, unless the court wherein such action shall be brought shall set aside such verdict and order a new trial to be had therein, which it shall be lawful for the said court to do, if it shall see fit: provided also, that in case any such decision shall involve a question of law only, and the parties in difference shall be agreed upon the facts relating thereto, and whereon such decision shall have been founded, the said commissioners or assistant commissioner, at the request of the person dissatisfied, (such request to be made in writing within three calendar months after such decision, and at least fourteen days' previous notice in writing of such request to be given in like manner to the other parties in difference or to their known agents,) shall direct a case to be stated for the opinion of such one of his majesty's courts of law at Westminster as the commissioners or assistant commissioner shall think fit; which case shall be settled by them or him or under their or his direction in case the parties differ about the same, and may be set down for argument and be brought before the court in like manner as other cases are brought before the court; and the decision of such court upon every case so brought before it shall be binding upon all parties concerned therein: provided always, that after such verdict given and not set aside by the court, or after such decision of the court, the said commissioners or assistant commissioner shall be bound by such verdict or decision; and the costs⁽¹⁾ of every such action, or of stating such case and obtaining a decision thereon, shall be in the discretion of the court in or by which the same shall be decided, which may order the same to be taxed by the proper officer of the court, and the like execution may be had for the same as if such costs had been recovered upon a judgment of record of the said court.

" XLVII. And be it enacted, that no proceeding of or before the commissioners or any assistant commissioner, or in any action, or in any case stated, or reference in pursuance of this act, shall abate or cease by reason of the death of any person interested therein.

" XLVIII. And be it enacted, that if any person in whose favour any such decision of the commissioners or any assistant commissioner shall have been made shall die before any such action shall have been brought, or case stated, and before the expiration of the time hereinbefore limited for that purpose, it shall be lawful for every person who might have brought such action or have had such case stated, against the person so dying, to bring or have the same within the time so limited as aforesaid, nominally against such person as if living, and to serve the said commissioners or assistant commissioner with process and notices relating thereto in the same manner as the person deceased might have been served therewith if living; and it shall be lawful for every person entitled to the benefit of such decision as aforesaid, or, in case of any such person being a minor, idiot, lunatic, feme covert, beyond the seas, or under any other legal disability, the guardian, trustee, committee of the estate, husband, or attorney respectively, or in default thereof, such person as may be nominated for that purpose by the commissioners, and whom they are hereby empowered to nominate under their hands and seal, to appear and defend such action or argue such case; and proceedings shall be had therein in the same manner, and the rights of all persons shall be equally bound and concluded by the event of such action or the decision upon such case, as if such person had been living; and the costs of every such action or case shall be in the discretion of the court as aforesaid.

asked as to the fertility of the land, the plaintiff was entitled to adduce evidence in reply to disprove the defence. *Gresswilde v. Kemp*, 1 C. & Marsh. 635.

(1) *Costs*.—Where a title commissioner had decided a question of modus against a vicar, and the latter delivered a feigned issue to try that question, which the jury found for the defendants, the court awarded them the costs, under Stat. 6 & 7 Gul. 4, c. 76, s. 46, the rule being, that when an issue

is tried, the unsuccessful party must pay the costs of the issue. *Croughton v. Blake*, 12 M. & W. 205.

A defendant is entitled to judgment as in case of a nonsuit, where more than two assizes have elapsed since issue joined on a feigned issue under Stat. 6 & 7 Gul. 4, c. 71, s. 46, and in such case, the court will make an order for costs. *Sandys (Clerk) v. Beverley (Mayor, Aldermen, & Burgesses of)*, 1 D. & L. P. C. 641. 12 M. & W. 568.

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) Provided always, and be it enacted, that nothing in this act shall deprive any right to tithes which now is or hereafter shall be barred by law for shortening the time required in claims of *modus decimandi* or for discharge from tithes, or for the limitation of actions and suits in property.

And be it enacted, that as soon as all such suits and differences shall be decided, or if there shall have been no suits or differences then the commissioners or assistant commissioner shall have ascertained and foreseen the total value of all the tithes of the said parish, the commissioners or assistant commissioner shall frame the draft of an award, declaration ascertained as aforesaid shall be the amount of the rent-charge in respect of the tithes of the said parish, and every such draft shall contain particulars hereinbefore required to be inserted in any parochial survey schedule thereto; provided always, that no such award shall be binding on the land instead of the tithes of the parish.

And be it enacted, that as soon as the said draft shall have been made by the commissioners or assistant commissioner, they or he shall deposit a copy of the same in the office of any special report thereunto annexed at some convenient place in the said parish for the inspection of all persons interested in the same, and shall forthwith give notice in such manner as to the commissioners or assistant commissioner seem fit where the said copy may be inspected, and shall also appoint some convenient place and time, (the first not earlier than seven days from the first giving of such notice,) for holding a meeting for the consideration of such intended award by any person interested therein; and the commissioners or assistant commissioner at such meeting as aforesaid shall receive and determine any objections which may be then and there made to the intended award, or adjourn the further hearing thereof, if they or he shall think proper, to a *future meeting* (3), and may, if they or he shall think proper, direct any further valuation of the lands or tithes or any of them.

And be it enacted, that the time to fix further meetings for the hearing and determining of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed with regard to the original meeting; and the said commissioners or assistant commissioner shall have heard and considered all such objections they or he shall amend the draft of such award, if they or he shall see occasion.

And be it enacted, that as soon as the commissioners or assistant commissioner have made such amendments in the draft of the award as to them shall seem necessary, they or he shall cause the same to be fairly written, and send it to the office of the commissioners, and the commissioners shall satisfy themselves that all the proceedings incident to the making of the award have been duly performed, and if they shall think that the award is confirmed shall confirm the same under their hands and seal, and shall publish the award the date of such confirmation, and shall publish the fact of the confirmation and the date thereof in the parish in such manner as to them shall seem fit; and every such confirmed award *shall be binding* (4) on all the lands in the said lands or tithes.

And be it enacted, that as soon as the commissioners shall have confirmed the award, the commissioners or some assistant commissioner shall call a meeting of the owners of land subject to tithes in the said parish, for the purpose of choosing valuers to apportion the amount so awarded among the owners of the land in the said parish, and shall give notice thereof in writing under their hands and seal, to be fixed at least twenty-one days before such meeting on the parsonage of the church, or in some public and conspicuous place within the parish; and one or more valuers or a single valuer may be chosen at such meeting by the land-

2 & 3 Gul. 4, c. 100 (enact); Gul. 4, c. 71, s. 65; and Stat. 2 & 3 Vict. c. 62, s. 23.

2 & 3 Vict. c. 62, s. 24. (4) *Shall be binding*:—Vide Stat. 2 & 3 Vict. c. 62, s. 8.

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owners then present in like manner, and the valuers so chosen shall act with the same powers and be subject to the same provisions as if the rent-charge so awarded had been agreed to at a parochial meeting of the landowners and titheowners of the parish, and the valuers had been thereupon chosen as *aforesaid* (1).

"LIV.(2) And be it enacted, that if upon the expiration of six calendar months after the day of the date of the confirmation of any agreement or award no valuer or valuers shall have been appointed, or the apportionment of such valuers or valuer shall not have been made and sent to the office of the commissioners as hereinafter provided, it shall be lawful for the commissioners or some assistant commissioner to apportion the rent-charge previously agreed or awarded to be paid among the lands of the said parish, having regard to the average titheable produce and productive quality of the said lands, according to the discretion and judgment of the commissioners or assistant commissioner, but subject to the provisions hereinafter contained, and so that the several lands may have the full benefit in each case of every modus, composition real, prescriptive and customary payment, and of every exemption from or non-liability to tithes relating to the said lands respectively, and having regard to the several tithes to which the said lands are severally liable.

"LV.(3) And be it enacted, that a draught of every apportionment shall be made, and shall set forth the agreement or award, as the case may be, upon which such apportionment is founded, and every schedule thereunto annexed; and the said draught, or some schedule thereunto annexed, whether made by or under the direction of the valuers or commissioners or assistant commissioners, shall state the name or description and the true or estimated quantity in statute measure of the several lands to be comprised in the apportionment, and shall set forth the names and description of the several proprietors and occupiers thereof, and whether the said several lands are then cultivated as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise, and shall refer, by a number set against the description of such lands, to a map or plan to be drawn on paper or parchment, and the same number shall be marked on the representation of such lands in the said map or plan; and the draught of the apportionment shall also state the amount charged upon the said several lands, and to whom and in what right the same shall be respectively payable.

"LVI. And be it enacted, that immediately after the passing of this act, and also in the month of January in every year, the comptroller of corn returns for the time being, or such other person as may from time to time be in that behalf authorized by the privy council, shall cause an advertisement to be inserted in the London Gazette, stating what has been, during seven years ending on the Thursday next before Christmas Day then next preceding, the average price of an imperial bushel of British wheat, barley, and oats, computed from the weekly averages of the corn returns.

"LVII.(4) And be it enacted, that every rent-charge charged upon any lands by any such intended apportionment shall be deemed at the time of the confirmation of such apportionment, as hereinafter provided, to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley, and oats, as the same would have purchased at the prices so ascertained by the advertisement to be published immediately after the passing of this act, in case one third part of such rent-charge had been invested in the purchase of wheat, one third part thereof in the purchase of barley, and the remaining third part thereof in the purchase of oats, and the respective quantities of wheat, barley, and oats so ascertained shall be stated in the draught of every apportionment.

"LVIII.(5) And be it enacted, that it shall be lawful for the valuers or commissioners or any assistant commissioner, upon the request of any landowner, at any time before the confirmation of the apportionment, to apportion the whole rent-

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(1) *Aforesaid*:—*Vide* Stat. 6 & 7 Gul. 4, 3 & 4 Vict. c. 15, s. 21, c. 71, ss. 32-35. (4) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, ss. 4 & 7.
(2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 60. (3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 72; Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 5; and Stat. s. 9.

s. 7. charge intended to be charged upon any lands of such landowner held under the same title and for the same estate, in the same parish, specially upon the several closes or portions of such lands or according to an acreable rate or acreable rates upon lands of different quality, in such manner and in such proportion, and to the exclusion of such of them, as the landowner, with the consent of the person entitled to such rent-charge, may direct, and the particulars of every such special apportionment shall be included in the draught of the apportionment, and taken to be a part thereof; provided always, that the extra expenses of every such special apportionment shall be borne by the party at whose instance the same shall have been made, and shall be recoverable as other costs of the apportionment are recoverable, and that no close of land shall be charged with any rent-charge or share of rent-charge on account of the tithes of any other lands, unless the value of such lands shall be at least three times the value of the whole rent-charge upon such lands.

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“LIX. (1) And be it enacted, that for the purpose of making any such apportionment, as well as for the purpose of making any award as hereinbefore provided, the commissioners and assistant commissioners may employ such land-surveyors and tithe-valuers as to them shall seem fit, and may order them to be paid for valuing, surveying, mapping, and planning after any rate not exceeding two guineas to every such person for every day that he shall have been so employed, and may assess the same as part of the expenses of making their award or apportionment respectively; and the said commissioners and assistant commissioners, and the land-surveyors and tithe-valuers employed by them respectively, shall have all the powers and be subject to all the provisions hereinbefore enacted concerning the valuers appointed at a parochial meeting, except that they shall not be bound to adopt any principles of apportionment agreed to at any parochial meeting; provided always, that it shall be lawful for such commissioners and assistant commissioners to make any agreement with any such land-surveyors or tithe-valuers for the payment to the same of one sum for the whole duty or any part thereof to be performed by them respectively.

“LX. (2) And be it enacted, that the draught of every apportionment, whether made by or under the direction of the commissioners or any assistant commissioner, or by any valuer or valuers appointed as hereinbefore is provided, shall be signed by the person by or under whose direction it shall have been made, and shall be sent, together with the map or plan therein referred to, by the person by whom it is signed, to the office of the commissioners, or otherwise to some assistant commissioner, as the commissioners may direct, with such proof as the commissioners may require that every proceeding incident to the making of such draught of apportionment has been duly performed.

“LXI. And be it enacted, that as soon as the draught of any such apportionment, verified as aforesaid, shall have been sent to the commissioners, they shall cause a copy of the same to be deposited at some convenient place within the said parish for the inspection of all persons interested in the said lands or tithes, and shall forthwith cause notice to be given, in such manner as to them shall seem fit, where the said copy may be inspected, and shall also in such notice appoint some convenient place and such times as they shall think necessary, (the first not earlier than twenty-one days from the first giving of such notice,) for holding a meeting to hear objections to the intended apportionment by any person interested therein, and the said commissioners or some assistant commissioner at such meeting as aforesaid shall hear and determine any objections which may be then and there made to the said intended apportionment, or adjourn the further hearing thereof, if they or he shall think proper, to a future meeting, and may, if they or he shall on occasion, direct any further valuation of the lands or any of them, and from time to time fix further meetings for the hearing and determining of objections, of which further meetings, when not holden by adjournment, notice shall be given in some

(1) *Vide Stat. 7 Gul. 4 & 1 Vict. c. 68,* (2) *Vide Stat. 6 & 7 Gel. 4, c. 71, m. 31.*
s. 3. 53, 54, & 59.

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ner hereinbefore directed with regard to the original meeting; and when the said commissioners or assistant commissioner shall have heard and determined all such objections, they and he are and is hereby required to cause such apportionment to be amended accordingly if they or he shall see occasion.

“LXII.(1) And be it enacted, that it shall be lawful for the owner of any lands chargeable with any such rent-charge to agree, at any time before the confirmation of any such instrument of apportionment, with any ecclesiastical person being the owner of the tithes thereof in right of any spiritual benefice or dignity, for giving land instead of the rent-charge charged or about to be charged upon his lands; and every such agreement shall be made under the hands and seals of the landowner and titheowner, and shall contain all the particulars hereinbefore required to be inserted in a parochial agreement for giving land instead of tithes or rent-charge; provided always, that no such titheowner shall be enabled to take or hold more than twenty imperial acres of land in the whole by virtue of any such agreement or agreements made in the same parish; and the same consent and confirmation relatively to the lands and tithes comprised in the said agreement shall be necessary to any such agreement as in the case of a parochial agreement for giving land instead of tithes; and all the provisions hereinbefore contained concerning a parochial agreement for giving land shall be applicable to every such agreement as hereinbefore last mentioned, so far as concerns the lands and tithes comprised in the said agreement; provided also, that any amendment which shall be made in the draught of apportionment before confirmation thereof, and subsequent to any such agreement for giving land instead of rent-charge, whereby the charge upon the lands referred to in such agreement shall be altered, shall be taken to annul the execution of such agreement for giving land, and any consent which may have been necessary thereunto.

“LXIII.(2) And be it enacted, that after such proceedings as aforesaid shall have been had, and all such objections, if any, shall have been finally disposed of, the commissioners or assistant commissioner shall cause the instrument of apportionment to be engrossed on parchment, and shall annex the map or plan thereunto belonging to the engrossed instrument of apportionment, and shall sign the instrument of apportionment and the map or plan, and shall send both to the office of the commissioners, and if the commissioners shall approve the apportionment they shall confirm the instrument of apportionment under their hands and seal, and shall add thereto the date of such confirmation.

“LXIV.(3) And be it enacted, that two copies of every confirmed instrument of apportionment, and of every confirmed agreement for giving land instead of any tithes or rent-charge, shall be made and sealed with the seal of the said commissioners, and one such copy shall be deposited in the registry of the diocese within which the parish is situated, to be there kept among the records of the said registry, and the other copy shall be deposited with the incumbent and church or chapel wardens of the parish for the time being, or such other fit persons as the commissioners shall approve, to be kept by them and their successors in office with the public books, writings, and papers of the parish, and all persons interested therein may have access to and be furnished with copies of or extracts from any such copy on giving reasonable notice to the person having custody of the same, and on payment of two shillings and sixpence for such inspection, and after the rate of three-pence for every seventy-two words contained in such copy or extract; and every recital or statement in or map or plan annexed to such confirmed apportionment or agreement for giving land, or any sealed copy thereof, shall be deemed satisfactory evidence of the matters therein recited or stated, or of the accuracy of such plan.

“LXV.(4) And be it enacted, that the commissioners, if they shall see fit, C

(1) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 26-30; Stat. 2 & 3 Vict. c. 62, s. 19; and Stat. 3 & 4 Vict. c. 15, s. 17. (3) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 1.
(2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 65; Stat. 7 Gul. 4 & 1 Vict. c. 69; and Stat. 2 & 3 Vict. c. 62, s. 27, 52, & 63. (4) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 27, 52, & 63.

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agreement, award, or apportionment, may require notice in such manner as they shall direct to the person next in expectancy of an estate of inheritance in any lands or son to whom they may think notice ought to be given, and by some assistant commissioner hear and determine any confirmation by any person interested therein, and may apportionment to be amended accordingly.

It is enacted, that no confirmed agreement, award, or apportionment after the confirmation thereof by reason of any mistake or in any proceeding relating thereunto.

It is enacted, that from the first day of January next following every such apportionment the lands of the said parish shall be free from the payment of all tithes, except so far as relates to land at rack-rent dissenting as hereinafter provided, and shall be payable thenceforth to the person in that behalf apportionment a sum of money equal in value, according to the then next preceding advertisement, to the quantity of respectively mentioned therein to be payable instead of the value of a rent-charge issuing out of the lands charged there- sum shall be payable by two equal half-yearly payments on the first day of January in every year, the first payment of barren reclaimed lands, as hereinafter provided, being made next after the lands shall have been discharged from tithes. Any rent-charge may be recovered at the suit of the person entitled or administrators, by distress and entry as hereinafter provided. On every first day of January the sum of money thenceforth payable in such rent-charge shall vary so as always to consist of the value of bushels and decimal parts of a bushel of wheat, barley, according to the prices ascertained by the then next preceding advertisement. Any person entitled from time to time to any such varied rent shall have the same powers for enforcing payment thereof as are herein given in the original rent-charge: provided always, that nothing herein shall be taken to render any person whatsoever personally liable for such rent-charge: provided always, that the rent-charge payable on any lands in the said parish which during any seven years preceding Christmas, one thousand eight hundred and thirty, were exempted from tithes by reason of having been inclosed, or converted from barren heath or waste ground, shall be payable for the first time on the first day of July or first day of January next after the apportionment which shall be nearest to the time when the land was or would have become payable for the first time in the year if no commutation thereof had taken place.

It is enacted, that from the first day of January next following the expiration of every parochial or other agreement for giving land at rack-rent or rent-charge, the lands of the parish in which any such agreement shall be absolutely discharged from the payment of the same, or which it shall have been agreed that such land shall

be free from tithes, shall be subject to all parliamentary, parochial, and county and other rates, taxes, and assessments, in like manner as the tithes commuted for such rent-charge have been subject.

It is enacted, that all rates and charges to which any such rent-

act. c. 62, s. 8. (3) *Vide* Stat. 6 & 7 *Gal.* 4, c. 71, s. 27
id. 4, c. 71, s. 56, & 62.
 1 & 1 *Vict.* c. 69, (4) *Vide* Stat. 7 *Gal.* 4 & 1 *Vict.* c. 69.
Vict. c. 62, s. 10; s. 9; and Stat. 3 & 4 *Vict.* c. 15, s. 21.
 s. 13.

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charge is liable shall be assessed upon the occupier of the lands out of which such rent-charge shall issue, and in case the same shall not be sooner paid by the owner of the rent-charge for the time being may be recovered from such occupier in like manner as any poor rate assessed on him in respect of such lands; and any occupier holding such lands under any landlord and who shall have paid any such rate or charge in respect of any such rent-charge shall be entitled to deduct the amount thereof from the rent next payable by him to his landlord for the time being, and shall be allowed the same in account with his landlord; and any landlord or owner in possession who shall have paid any such rate or charge, or from whose rent the amount of any such rate or charge in respect of any such rent-charge shall have been so deducted, or who shall have allowed the same in account with any tenant paying the same, shall be entitled to deduct the amount thereof from the rent-charge, or by all other lawful ways and means to recover the same from the owner of the rent-charge, his executors and administrators; provided that the owner of every such rent-charge shall have and be entitled to the like right of demanding, inspecting, and taking copies of every assessment (1) containing such rate or charge, and of appeal against the same, and the like power of prosecuting such appeal, and the like remedies in respect thereof, as any occupier or rate-payer has or may have in the case of poor rates, although such rate or charge is herein made assessable upon the occupier, and the owner of the rent-charge is not mentioned by name in such assessment.

“LXXI. (2) And be it enacted, that any person having any interest in or claim to any tithes, or to any charge or incumbrance upon any tithes, before the passing of this act, shall have the same right to or claim upon the rent-charge for which the same shall be commuted as he had to or upon the tithes, and shall be entitled to have the like remedies for recovering the same as if his right or claim to or upon the rent-charge had accrued after the commutation; provided that nothing herein contained shall give validity to any mortgage or other incumbrance which before the passing of this act was invalid or could not be enforced; and every estate for life, or other greater estate, in any such rent-charge, shall be taken to be an estate of freehold; and every estate in any such rent-charge shall be subject to the same liabilities and incidents as the like estate in the tithes commuted for such rent-charge; and where any lands were exempted from tithe whilst in the occupation of the owner thereof by reason of being glebe or of having been heretofore parcel of the possessions of any privileged order, the same lands shall be in like manner exempted from the payment of the rent-charge apportioned on them whilst in the occupation of the owner thereof; and where by virtue of any act or acts of parliament heretofore passed any tithes are authorized to be sold, exchanged, appropriated, or applied in any way, the rent-charges for which such tithes may be commuted under the provisions of this act, or any part thereof, shall or may be saleable or exchangeable, appropriated and applied, to all intents and purposes in like manner as such tithes, and the same powers of sale, exchange, and appropriation shall in all such cases extend to and may be exercised in respect of the said commutation rent-charges; and the money to arise by the sale of such rent-charges shall or may be invested, appropriated, and applied to the same purposes and in like manner as the money to arise by the sale of any such tithes might have been invested, appropriated, and applied under such particular act or acts in case this act had not been passed; and no such rent-charge shall merge or be extinguished in any estate of which the person for the time being entitled to such rent-charge may be seized or possessed in the lands on which the same shall be charged: provided always, that it shall be lawful for any person seized in possession of an estate in fee-simple or fee-tail of any tithes or rent-charge in lieu of tithes, by any deed

(1) *Inspecting, and taking copies of every assessment*:—*Vide Stat. 17 Geo. 2, c. 3, ss. 2 & 3; and Stat. 6 & 7 Gul. 4, c. 96, s. 5* *Batcheidor v. Hodges*, 4 A. & E. 592. *Spenceley v. Robinson*, 3 B. & C. 658. *Edwards v. Bennett*, 6 Bing. 230, in error. *Bennett v. Edwards*, 7 B. & C. 586. 8 *Ibid.*

702. *Parker v. Edwards*, 7 *Ibid.* 594.

Whitchurch v. Chapman, 3 B. & Ad. 691.

(2) *Vide Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 12; Stat. 1 & 2 Vict. c. 64; Stat. 2 & 3 Vict. c. 62, ss. 1, 2, 4, 5, 11, & 33; and Stat. 3 & 4 Vict. c. 15, s. 14.*

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and seal, to be made in such form as the said commissioners be confirmed under their seal, to release, assign, or so that the same may be absolutely merged and inheritance of the lands on which the same shall

acted, that if at any time subsequent to the confirmation of apportionment the owner of any lands charged shall be desirous that the apportionment thereof shall for the commissioners of land tax for the county or situate, or any three of them, to alter the apportionment such proportion and to the exclusion of such of the the consent of two justices of the peace acting for or other jurisdiction in which the lands are situated, an apportionment shall be made by an instrument in seals of the said commissioners of land tax and of the of the like form and tenor as to the said lands as the bearing date the day of its execution by the said commissioners to the provisions hereinbefore contained with respect to any rent-charge may be charged on account of the every such altered apportionment shall be as valid as the tithe commissioners as aforesaid, and shall be the original apportionment; and in every such case of altered apportionment, under the hands and seals of land tax and justices and landowner, shall be one to the diocese, and one to the incumbent and church or persons having the custody of the other copy of the original; and one counterpart shall be annexed to the apportionment in the custody of the registrar and such taken to be an amendment thereof; and therefor altered only according to such altered apportionment; and the same shall be borne by the landowner desiring the

acted, that the commissioners or assistant commissioner or he may see fit, may order such expenses of action of any books, deeds, contracts, agreements, maps, plans, and surveys, or copies thereof, and all salary or allowance to any commissioner or assistant commissioner, or settlement of any suit or difference, or in the hearing to any award or apportionment before the said commissioner, to be paid by such parties interested respectively, or in the event of such suit, difference, or apportionment, as the commissioners or assistant commissioner shall think reasonable.

acted, the allowances to and expenses of land-tax for making any award, and all other expenses of an award, except the salary or allowance to any commissioner, and except any expenses which the commissioner, or any court or arbitrator, may be authorized to be otherwise paid, shall be borne and paid by the parties interested

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1. 71, s. 5.
52, s. 23.

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assistant commissioner, and except any expense which the commissioners or assistant commissioner may be authorized and may have ordered to be otherwise paid,) shall be borne and paid by the owners of lands included in the apportionment in rateable proportion to the sum charged on the said lands in lieu of tithes by such apportionment.

"LXXVI. And be it enacted, that if any difference shall arise touching the said expenses, or the share thereof to be paid by any person, it shall be lawful for the commissioners or some assistant commissioner to certify under their or his hand the amount to be paid by such person; and in case any person shall neglect or refuse to pay his share so certified to be payable by him, and upon the production of such certificate before any two justices of the peace for the county or other jurisdiction wherein the lands mentioned in the agreement or award or apportionment are situate, such justices, upon the nonpayment thereof, are hereby required, by warrant under their hands and seals, to cause the same and the costs of the distress to be levied by distress and sale of the goods of the person liable to pay the same, and to render the surplus, (if any,) after deducting the charges of the distress and sale, to the person distrained upon.

"LXXVII. (1) And be it enacted, that every owner of an estate in land or tithes less in the whole than an immediate estate of fee-simple or fee-tail, or which shall be settled upon any uses or trusts, may with the consent of the commissioners, and in such manner as they may direct, charge so much of the expenses of commutation as is to be defrayed by him, or any part thereof and the interest thereon, after the rate of four pounds by the hundred, upon the lands whereof the tithes are commuted, or upon the rent-charge to be received by him instead of such tithes respectively, but so nevertheless that the charge upon such lands or rent-charge respectively shall be lessened in every year following such commutation by one twentieth part at least of the whole original charge thereon.

"LXXVIII. And be it enacted, that every ecclesiastical beneficed person who shall commute the tithes of his benefice under this act may advance or borrow the sum necessary to defray so much of the expenses of commutation as is to be defrayed by him, or any part thereof, and as a security for repayment may charge or assign the rent-charge to be received instead of such tithes for twenty years, or until the principal sum advanced or borrowed, and the interest thereon after the rate of four pounds by the hundred, and the expenses of such charge or assignment, shall be sooner paid: and every incumbent successively shall pay the interest of the sum advanced or borrowed, or of so much thereof as shall then remain unpaid, as the same shall become due, or within one calendar month next following, and also an instalment at the rate of five pounds for every hundred pounds of the principal sum advanced or borrowed, and in default of such payment the ordinary may sequester the profits of the benefice until such payments shall be made, provided that the sum to be so advanced or borrowed shall be ascertained and certified under the hand of any commissioner or assistant commissioner, and shall be by him stated to have been the amount of such expenses properly incurred by such ecclesiastical beneficed person in relation to such commutation.

"LXXIX. And be it enacted, that any tenant or occupier who at the time of such commutation shall occupy at rack-rent any lands of which the tithes shall be so commuted may, within one calendar month next after the confirmation of the apportionment by the commissioners, signify, by writing under his hand given to or left at the usual residence of his landlord or his agent, his dissent from being bound to pay any rent-charge apportioned and charged on the said lands as aforesaid, and in that case such landlord shall be entitled, from the time when the said apportionment shall take effect, and during the tenancy or occupation of such tenant or occupier, to stand, as to the perception and collection of tithes, or receipt

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making the apportionment," within the 75th section of that act: and the attorney can therefore recover the amount of his bill for such services, in an action against the land-owners who were parties to employing him.

Hinchliffe v. Armistead (Clerk), 9 M. & W. 155.

(1) *Vide* Stat. 2 & 3 Vict. c. 62, ss. 16 & 17.

hereof, in the place of the owner of the tithes so commuted, and remedies (1) for enforcing tender and payment in the position which the titheowner would have had if the place.

acted, that any tenant or occupier at the time of such notice signified his dissent from being bound to pay any rent-charge, or who shall hold his lands under a lease or agreement shall be holden and enjoyed by him free of tithes, and who shall occupy any lands by any lease or agreement shall be bound to pay any such rent-charge, and who shall pay any such rent-charge, shall be bound to pay the amount thereof from the rent payable by him to his landlord, and the same in account with the said landlord.

acted, that in case the said rent-charge shall at any time be in arrear for the space of twenty-one days next after any half-yearly day, all be lawful for the person entitled to the same, after giving notice in writing at the usual or last known residence of the tenant or occupier to distrain upon the lands liable to the payment thereof, to distrain upon the lands liable to the payment thereof, and to dispose of the same otherwise to act and demean himself in relation to the same, and for arrears of rent reserved on a common lease for more than two years' arrears shall at any time be recover-

acted, that in case the said rent-charge shall be in arrear for the space of forty days next after any half-yearly day of payment, and no sufficient distress on the premises liable to the payment thereof, it shall be lawful for any judge of his majesty's courts of record at the place, to order a writ to be issued (3) directed to

The remedies

1. A suit in equity of the Eagle's Traction on Stat. 14, for the recovery of tithes. 2. A summary process for the recovery of tithes, (Stat. 1055); and Stat. 14; and the by Stat. 7 & 8 Geo. 1, 3 Geo. 3, c. 15 & 6 Gul. in the Tithe

to recover six months' Stat. 3 &

well Rent-charge (Stat. 151,) it was provided that if the tenant or occupier of any land liable to the payment of a rent-charge should at any time be in arrear for the space of twenty-one days next after any half-yearly day of payment, and no sufficient distress on the premises liable to the payment thereof, it shall be lawful for any judge of his majesty's courts of record at the place, to order a writ to be issued (3) directed to

although at the end of one or more of such previous half years there may have been a sufficient distress for the amount then due. Mr. Justice Patterson observing, "The remedy given by this act for the recovery of rent-charge is by distress, under sect. 81. provided that not more than two years' arrears shall be so recoverable, and, in default of such distress, by seizure and possession of the land, under sect. 82, provided that not more than two years' arrears over and above the time of such possession shall be at any time recoverable." Why should one section be construed differently from the other? There is no reason to suppose that, although a party might distrain for an arrear of two years, the legislature intended that he should not enforce the remedy under sect. 82, unless he attempted to distrain at the end of a single half year, and no distress were found. The construction of both clauses must be the same. In the case of proceedings on a vacant possession, (Stat. 11 Geo. 2, c. 19, s. 16,) it never was contended that, if the landlord omitted to enforce his remedy at the end of a first year, he could not avail himself of it afterwards."

(3) Writ to be issued:—"To reconcile the landowners to the right of entry which is here given to the owners of the rent-charge, it has been very confidently asserted, and, as it seems, without contradiction, both before and since the passing of the act, that the power of entry is 'incidental to every case of ordinary rent-charge;' but this assertion is clearly erroneous; no such power exists, except where it has been expressly granted to the grantee in default of payment, as

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the sheriff of the county in which the lands chargeable with the rent-charge are situated, requiring the said sheriff to summon a jury to assess the arrears of rent-charge remaining unpaid, and to return the inquisition thereupon taken to some one of his majesty's courts of law at Westminster, on a day therein to be named, either in term time or vacation; a copy of which writ, and notice of the time and place of executing the same, shall be given to the owner of the land, or left at his last known place of abode, or with his known agent, ten days previous to the execution thereof; and the sheriff is hereby required to execute such writ according to the exigency thereof; and the costs of such inquisition shall be taxed by the proper officer of the court; and thereupon the owner of the rent-charge may sue out a writ of *habere facias possessionem*, directed to the sheriff, commanding him to cause the owner of the rent-charge to have possession of the lands chargeable therewith until the arrears of rent-charge found to be due, and the said costs, and also the costs of such writ and of executing the same, and of cultivating and keeping possession of the lands, shall be fully satisfied: provided always, that not more than two years' arrears over and above the time of such possession shall be at any time recoverable.

"LXXXIII. And be it enacted, that it shall be lawful for the court out of which such writ shall have issued, or any judge at chambers, to order the owner of the rent-charge who shall be in possession by virtue of such writ from time to time to render an account of the rents and produce of the lands and of the receipts and payments in respect of the same, and to pay over the surplus (if any) to the person for the time being entitled thereunto, after satisfaction of such arrears of rent-charge and all costs and expenses as aforesaid, and thereupon to order writ of *supplicatio* to issue to the said writ of *habere facias possessionem*, and also by rule or order of such court or judge from time to time to give such summary relief to the parties as to the said court or judge shall seem fit.

"LXXXIV. Provided always, and be it enacted, that in all cases in which it shall be necessary to make any distress under this act in respect of any lands in the possession of any person of the persuasion of the people called Quakers, the same may be made upon the goods, chattels, or effects of such person, whether on the premises or elsewhere, but nevertheless to the same amount only and with the same consequences in all respects as if made on the premises; and that in all cases of distress under this act upon persons of that persuasion the goods, chattels, or effects which may be distrained shall be sold without its being necessary to impound or keep the same: provided always, that no writ under the provision hereinbefore contained shall be issued for assessing or recovering any rent-charge payable under this act in respect of any lands in the possession of any person of the persuasion aforesaid, unless the same shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, without the person entitled thereto being able to find goods, chattels, or effects either on the premises or elsewhere liable to be distrained as aforesaid sufficient to satisfy the arrears to which such lands are liable, together with the reasonable costs of such distress.

"LXXXV. And be it enacted, that whenever any rent-charge payable under the provisions of this act shall be in arrear, notwithstanding any apportionment which may have been made of any such rent-charge, every part of the land situate in the parish in which such rent-charge shall so be in arrear, and which shall be occupied by the same person who shall be the occupier of the lands on which such rent-charge so in arrear shall have been charged, whether such land shall be occupied by the person occupying the same as the owner thereof, or as tenant thereof, holding under the same landlord under whom he occupies the land on which such rent-charge so in arrear shall have been charged, shall be liable to be distrained

which case the grantee gains such an interest in the soil, as will enable him to maintain an ejectment when the right has accrued." *Eagle on the Tithe Acts*, 118, 119. *Re v. Stockley Pomroy*, Burr. S. C. 762. *Vide Re v. Belford (Inhabitants of)*, 10 B. & C.

54. *Vide etiam Lumley on Annuities*, 22. In the case of rent-charges created by the act, it will be seen, that the action of ejectment is dispensed with, and a summary proceeding substituted.

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commissioners, in which case the same shall be valid, shall extend to any Easter offerings, mortuaries, or surplice fees, or to the tithes of fish or of fishing, or to any personal tithes other than the *tithes of mills* (1), or any *mineral tithes* (2), or to any payment instead of tithes arising or growing due within the city of London, or to any permanent rent-charge or other rent or payment in lieu of tithes, calculated according to any rate or proportion in the pound on the *rent or value* (3) of any houses or lands in any city or town under any custom or private act of parliament, or to any lands or tenements the tithes whereof shall have been already perpetually commuted or extinguished under any act of parliament heretofore made.

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"XCI.(4) And be it enacted, that no advertisement inserted by direction of Adver

4. Tithes arising within the city of London.
5. Payments in lieu of tithes according to the rent or value of houses or lands in cities and towns; these payments are due only by custom or act of parliament. *Ibid.* 421. 6. Lands, the tithes of which have been perpetually commuted by private acts of parliament. *Vide ante* 314—324.

(1) *Tithes of mills*.—"Tithes which are merely personal are necessarily excepted from the operation of the act, because there is nothing to which a permanent rent can be attached; but in regard to mills, they are predial as well as personal; predial in point of locality, and personal in the mode of paying the tithes, which, it is to be observed, are due only of the clear profits of the miller, after a deduction of all necessary expenses, such as rent, servants' wages, repairs, &c. For the law relating to tithes of mills, *vide* 1 Eagle's Treatise on Tithes, 377. Tithes of mills are, in general, a very precarious profit, for besides the deduction of the expenses of the miller, such tithes are due only of the profits of the grinding of the corn of other persons, which is ground by the miller for hire, and not in respect of the corn which he may grind for the purposes of trade; and therefore a miller, who carries on the trade or business of a mealman or baker, is not bound to pay any tithes for the grinding of corn or grain into meal or flour for the purpose of such trade or business." Eagle on the Tithe Acts, 127.

"The fixing of a permanent rent-charge upon mills is liable to this objection, that if the mill should fall or be pulled down, without being rebuilt, the land will still be liable to a rent-charge far exceeding its annual value, and will, consequently, be wholly unable to bear the burden imposed in respect of the tithes of the mill. The same principle upon which hop grounds and market gardens are to pay a diminished rent-charge when the land is converted to other uses, ought *à fortiori* to have been applied to mills.

"Moduses for mills being, it is believed, very common, it may not be improper to remark, that, in such cases, the whole process of commutation will, in effect, consist in styling the modus a rent-charge, and transferring it, at the expense of the owner of the mill, from the person of the miller to the mill itself, or, more properly, to the land upon which it stands; for if there should hereafter be no mill upon the land the land

will necessarily be subjected to the burden of the rent-charge: whereas, under the ancient law, the payment of the modus would have ceased when the mill, which was the subject of the modus, no longer existed.

"It remains to be mentioned, that when the bill was first brought into the House of Commons, this clause contained a provision, that the act should not extend 'to any mixed tithes not arising upon land.' This was intended to obviate an objection very similar to that which has just been alluded to in regard to mills, namely, that where mixed tithes, as milk and calves, have been produced by cows kept wholly in cow-houses, and have not, in fact, been produced upon the land, and were an accidental and temporary profit, it would be unjust to fix a permanent rent-charge upon the buildings, or the lands on which they stand; but the provision was, it is believed, abandoned, in consequence of its having been discovered that it would be nugatory, because, in contemplation of law, there are no mixed tithes, except, perhaps, tithes of fish, which can be considered as 'mixed tithes not arising upon land.' " *Ibid.*

(2) *Any mineral tithes*.—By Stat. 2 & 3 Vict. c. 62, s. 9, parties who are competent to make a parochial agreement are empowered, at any time before the confirmation of any apportionment after a compulsory award, to "enter into a parochial agreement for the commutation of Easter offerings, mortuaries, or surplice fees, or tithes of fish, or fishing, or mineral tithes."

(3) *Rent or value*.—"Besides the customary payments which are here mentioned, there are other payments for houses, which consist of prescriptive payments of fixed sums of money for particular houses, and which are within the operation of the act, although, in such cases, the owner of the house cannot possibly derive any benefit from having such payments made a perpetual charge upon the house: not to mention the expense of the process. There seems to be no reason for interfering with these money payments, which being fixed and certain, are not properly the subject of commutation, and at the same time excepting payments which fluctuate with the rent or value of the houses, and are, therefore, clearly within the principle of the act." Eagle on the Tithe Acts, 129.

(4) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 12; and Stat. 1 & 2 Vict. c. 64, s. 2.

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y assistant commissioner, or by any titheowner or land-
azette, or in any newspaper, for the purpose of carrying
of this act, and no agreement, award, or power of attor-
or used under this act, shall be chargeable with any

acted, that the said commissioners may receive and send
and to places in England and Wales all letters and packets
e execution of this act free from the duty of postage, pro-
nd packets as shall be sent to the said commissioners be
ommissioners for England and Wales,' at their office in
t letters and packets as shall be sent by the said commis-
with the words 'Tithe Commissioners for England and
same, and be signed on the outside thereof under such
uch person in his own hand writing as the said commis-
of the lords commissioners of the treasury or any three
ppoint, (such name to be from time to time sent to the
ost-office in London,) and be sealed with the seal of the
under such other regulations as the said lords commis-
sioners of them shall think fit; and if the person so to be
or seal any letter or packet whatever, except such only
ll receive the special direction of his superior officer, or
now to relate exclusively to the execution of this act, or
ointed, or any other person, shall send or cause to be sent
letter, paper, or writing, or any inclosure, other than shall
execution of this act, every person so offending shall for-
ne hundred pounds and be dismissed from his office, one
hall be paid to the use of his majesty, his heirs and suc-
ciedty to the use of the person who shall inform or sue for
h penalty may be sued for and recovered in any of his
d in Westminster.

enacted, that if any person under the provisions of the
lase evidence he shall be deemed guilty of perjury; and
; or subscribe a false affidavit or declaration for the pur-
suffer the penalties of perjury; and if any person shall
in obedience to any lawful summons of any commissioner
r, or to give evidence, or shall wilfully alter, withhold,
oduce any book, deed, contract, agreement, account, or
an, or survey, or any copy of the same, which may be
roduced before the said commissioners or assistant com-
mised guilty of a misdemeanor.

nacted, that no action or suit shall be commenced against
unt commissioner, justice of the peace, valuer, umpire, or
one under the authority of this act, until twenty-one days
been given in writing to the party against whom such action
rought, or after sufficient satisfaction or *tender of amends*;))
any party aggrieved, or after three calendar months shall
ommission of the act for which such action or suit shall
such action shall be brought, laid, and tried in the county
of action shall have arisen, and not in any other county
ppear that such notice of action or suit was brought before
thereof given as aforesaid, or that sufficient amends were
said, or if any such action or suit shall not be commenced
mitted in that behalf, or such action shall be laid in any
an as aforesaid, then the jury shall find a verdict for the
court, upon summary application by motion in any such

— Vide Stat. 3 & 4 Gul. 4, c. 42, s. 21. Stephens on Non
Prima, ut. Tansan, 2599-2611.

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suit, may dismiss the same against such defendant; and if a verdict shall be found for such defendant, or such suit shall be dismissed upon application as aforesaid, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if upon any demurrer in such action or suit judgment shall be given for the defendant therein, then such defendant shall have costs, charges, and expenses as between attorney and client.

"XCV.(1) And be it enacted, that no order, adjudication, or proceeding made or had by or before the commissioners or any assistant commissioner *under the authority of this act*(2), or any proceeding to be had touching any offender against this act, shall be quashed for want of form, or be removed or removable by *certiorari*, or any other writ or process, into any of his majesty's courts of Record at Westminster or elsewhere.

"XCVI. And be it enacted, that this act shall extend only to England and Wales.

"XCVII. And be it further enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament."

CLXXXVIII. STAT. 6 & 7 GULIELMI 4, c. 75. [IRELAND.] A.D. 1836.

"An Act to extend the Jurisdiction and regulate the Proceedings of the Civil Bill Courts in Ireland."

"XIX. And be it enacted, that where the property or assets of any deceased person shall not exceed in value the sum of two hundred pounds, every executor or administrator shall, if thereunto required by notice in writing by any legatee, next of kin, creditor, or other person interested therein, within twelve months after the decease of the testator or intestate, lodge with the clerk of the peace of the county wherein such testator or intestate resided at the time of his death, and also in the county wherein such executor or administrator resides, a schedule or account, setting forth the particulars of the property or assets of or to which the testator or intestate died possessed or entitled, and the amount, produce, and value, of the same respectively, and the amounts and particulars of the debts due by the said testator or intestate, and the amounts and particulars of the debts, legacies, and funeral and testamentary expenses of the testator or intestate paid by or on account of any such executor or administrator, and showing the balance applicable to the purposes of the will of the said testator, or distributable amongst the next of kin of the said intestate, or the property or chattels then undisposed of; and every such schedule or account shall be verified by the oath or affirmation, (as the case may be,) of the executor or administrator, to be sworn before the clerk of the peace for the county wherein such executor or administrator resides, and which oath or affirmation the said clerk of the peace is hereby authorized and directed to administer; and such schedules or accounts shall be preserved and kept by the clerks of the peace among the records of their respective counties, and shall be deemed

(1) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 3; and Stat. 2 & 3 Vict. c. 62, s. 35.

(2) *Under the authority of this act*:—It seems, that in order to entitle a party to notice he must have reasonable grounds for supposing that the act done by him was in execution or under the authority of the act. In *Cook v. Leonard*, (6 B. & C. 353,) Mr. Justice Bayley observed: "Where a statute gives protection to persons acting in execution, or in pursuance of it, all persons acting under its provisions are entitled to that protection, although they exceed their authority by so doing. There must, however, be some limits to that rule, and it seems to me, that there are cases which warrant this distinction.

If an officer does any act, part of which is, and part of which is not, authorised by the statute; or if a magistrate act in a case which his general character authorizes him to do, the mere excess of authority in either case does not deprive the officer or magistrate of that protection which is conferred upon those who act in execution of it; but where there is a total absence of authority to do any part of that which has been done, the party doing the act is not entitled to that protection." *Vide etiam Butler v. Ford*, 1 C. & M. 662. *Smith v. Shaw*, 10 B. & C. 277. *Wallace v. Smith*, 5 East, 115. *Shelford on Tithes*, 279.

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ice against the said executor or administrator of the several sined.

. further enacted, that in case any such executor or administra-
odge such schedule as aforesaid within the time hereinbefore
rfeit any sum not exceeding twenty pounds, to be recoverable
the assistant barrister of the county wherein such executor
erson suing for same.

it enacted, that in all proceedings by civil bill by any legatee
covery of any legacy or distributive share as aforesaid, it shall
or the plaintiff, as such legatee or next of kin in such civil bill
nine on oath, if the court shall deem it necessary, in open
or administrator, in order to obtain a discovery of the estate
estator or intestate at the time of his or her decease, and the
f his or her debts, funeral and testamentary expenses, and to
that the defendant is the executor or administrator, (as the
ascertain all such facts as a party suing as legatee or as next
equity is entitled to discovery of.

. it enacted, that every executor or administrator may be com-
to be signed by the clerk of the peace, in like manner as writ-
d to attend and give evidence in the civil bill courts, to attend
bats, (if any,) of the will of the testator, or the letters of
e testator or intestate, (as the case may be,) and submit to be
open court touching the matters aforesaid on the trial of any
riding, division, or district of the county where such cause
every executor or administrator who shall disobey any such
it and pay the sum of ten pounds as a penalty; but such fine
nitigated or wholly given up, if the assistant barrister before
been required to attend shall, upon good and sufficient cause
fit to mitigate or give up the same.

e it further enacted, that it shall be lawful for any assistant
ion or proceeding for a legacy, or a distributive share of the
fa testator or an intestate, to require the party suing to give
vertisement or otherwise, requiring persons having claims on
ls of the deceased to produce and verify such claims; and he
shall be charged with or liable to any duty, and all costs
ce shall be borne and paid in such manner and by such parties
rister shall order or direct; and the assistant barrister may,
to direct such notice to be given, adjourn the civil bill to
s, so as to allow sufficient time for publishing or giving such

e it enacted, that any person rendering himself an executor
lable to be sued by civil bill in the manner hereinbefore men-
liable to the same extent as if sued in a superior court.

it enacted, that in any such action or proceeding the assistant
thinks fit, direct money to be paid into the bank of Ireland,
established, or such branch bank of the bank of Ireland as he
ame of such clerk of the peace, to the credit of the cause in
money shall be applied and disposed of according to the order
e assistant barrister; and all payments of such monies shall
he peace for the time being, and shall be made upon an order
hand of the clerk of the peace for the time being, counter-
unt barrister; which order shall be a good and sufficient war-
d purposes.

e it enacted, that it shall and may be lawful for any legatee of
r not exceeding twenty pounds charged upon or payable out of
ny person to whom arrears not exceeding twenty pounds are
rent-charge or annuity charged upon or payable out of any
d by civil bill against the person who shall be entitled to the

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real estate charged with such legacy or arrears; and it shall and may be lawful for the assistant barrister, upon due proof by the plaintiff that such real estate is liable to such legacy or arrears, and that the owner thereof has received therefrom, for his own use and benefit, more than the amount of the legacy or sum sought to be recovered, and that no personal property liable to the payment thereof is available for that purpose, to order or decree the payment of such legacy or arrears by the owner of such real estate.

"XXVII. And be it enacted, that in all proceedings under this act to recover any legacy, or lands, tenements, or hereditaments, an *examined or attested copy* (1) of the will bequeathing it, or of any will giving title to it, shall be received as evidence as if the original will or probate thereof was produced."

CXXXIX. STAT. 6 & 7 GULIELMI 4, C. 77 (2). A.D. 1836.

"An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage."

"Whereas his majesty was pleased, on the fourth day of February, and on the sixth day of June, in the year one thousand eight hundred and thirty-five, to issue two several commissions to certain persons therein respectively named, directing them to consider the state of the several dioceses in England and Wales, with reference to the amount of their revenues, and the more equal distribution of episcopal duties, and the prevention of the necessity of attaching by commendam bishoprics benefices with cure of souls, and to consider also the state of the seven cathedral and collegiate churches in England and Wales, with a view to the suggestion of such measures as may render them conducive to the efficiency of the established church, and to devise the best mode of providing for the cure of souls with special reference to the residence of the clergy on their respective benefices; and whereas the said commissioners have, in pursuance of such directions, made four several reports to his majesty, bearing date respectively the seventeenth day of March, one thousand eight hundred and thirty-five, and the fourth day of March, the twentieth day of May, and the twenty-fourth day of June, one thousand eight hundred and thirty-six: and whereas the said commissioners have, in their said reports, amongst other things, recommended that commissioners be appointed by parliament for the purpose of preparing and laying before his majesty in council such schemes as shall appear to them to be best adapted for carrying into effect the following recommendations; and that his majesty in council be empowered to make orders ratifying such schemes, and having the full force of law; and that the diocese of Canterbury consist of the county of Kent, (except the city and deanery of Rochester, and those parishes which it is proposed to include in the diocese of London,) and of the parishes of Croydon and Addington, and the district of Lambeth Palace, in the county of Surrey; and that the diocese of London consist of the city of London and the county of Middlesex, of the parishes of Barking, East Ham, West Ham, Little Ilford, Low Layton, Walthamstow, Wanstead, Saint Mary Woodford, and Chingford, in the county of Essex, all in the present diocese of London; of the parishes of Charlton, Lee, Lewisham, Greenwich, Woolwich, Eltham, Plumstead, and Saint Nicholas Deptford, in the county of Kent, and Saint Paul Deptford, in the counties of Kent and Surrey, all now in the diocese of Rochester; of the borough of Southwark, and the parishes of Be-

(1) *Examined or attested copy*.—The probate of a will is not an examined copy within the meaning of Stat. 6 & 7 Gul. 4, c. 75, s. 27; and it seems that the copy referred to by that section must be both examined and attested. *Jackson v. Jackson*, 1 Irish Cir. Rep. 469.

(2) Certain express provisions continued

by Stat. 7 Gul. 4 & 1 Vict. c. 71; Stat. 1 & 2 Vict. c. 108; and Stat. 2 & 3 Vict. c. 55. Repealed in part by Stat. 1 & 2 Vict. c. 106, s. 103. *Vide etiam* Stat. 1 & 2 Vict. c. 30; Stat. 3 & 4 Vict. c. 113, s. 1 & 90; Stat. 4 & 5 Vict. c. 39; Stat. 5 & 6 Vict. cc. 26 & 112; and Stat. 6 & 7 Vict. c. 60.

all, Christchurch, Clapham, Lambeth, Rotherhithe, Wandsworth, Merton, Kew, and Richmond, in the present diocese of Winchester; and of the parishes of Putney, Mortlake, and Wimbledon, in the county of Surrey, in the jurisdiction of the Archbishop of Canterbury, and of the places locally situate within the limits of the diocese, except the district of Lambeth Palace; and that the diocese of Winchester be increased by the transfer of the parish of Addington and of the before-mentioned parishes to the diocese of Winchester; and that the parish of Bedminster be transferred from the diocese of Gloucester and Bristol; and that the diocese of Gloucester and Bristol be united to the diocese of Gloucester; and that the diocese of Bristol, consisting of the county of Somerset, be transferred to the diocese of Gloucester; and that the diocese of Ely be increased by the county of Bedford, now in the diocese of Lincoln, by the county of Norfolk and diocese of Norwich, and by the county of Suffolk and diocese of Norwich, and by the parishes of Sudbury, Stow, and Hartismere, and by that part of the county of Norfolk which is now in the diocese of Norwich; and that the islands are within the jurisdiction of the Bishop of Exeter; and that the sees of Gloucester and Worcester consist of the present diocese of Gloucester, and of the deaneries of Cricklade and Malmesbury, now in the diocese of Salisbury, and of the whole of the county of Wiltshire, in the diocese of Bath and Wells; and that the diocese of Hereford consist of the deanery of Bridgenorth, now locally situated in the diocese of Hereford and Lichfield; and that those parts of the county of Hereford which are now in the diocese of Hereford be united to the diocese of Hereford; and that the diocese of Worcester and Saint Asaph and Bangor respectively; and that the diocese of Stafford and Derby; and that the diocese of Lincoln and Nottingham; and that the diocese and province of York, be included in the diocese of York; and that the diocese of Norwich consist of the county of Norfolk, except those parts which it is proposed to transfer to the diocese of London; and that the diocese of Oxford be increased by the county of Oxford, and by the county of Berks, now in the diocese of Lincoln; and that the diocese of Peterborough be increased by the county of Lincoln; and that the diocese of Rochester be increased by the county of Essex, (excepting that part which is to leave in the diocese of London,) and of that part of the county of Kent which is now in the diocese of Salisbury, reduced according to the boundaries of the county of Kent, and that the county of Dorset, now in the diocese of Exeter, be added to the diocese of Exeter; and that the diocese of Worcester consist of the whole counties of Worcester and Hereford; and that the sees of Saint Asaph and Bangor be united, and that the whole of the two existing dioceses (except that part which is in the county of Salop) and of those parts of the county of Shropshire which are now in the diocese of Saint David's and of Llandaff consist of the whole counties of Glamorgan and Glamorgan; and that the diocese of Saint David's be altered by the county of Montgomery, Glamorgan, and Monmouth; and that the respective dioceses of Saint Asaph and Bangor consist of the county of Merioneth, and of that part of the county of Merioneth which is now in the diocese of York, except those parts which are now in the diocese of Ripon; and that the diocese of Ripon be increased by that part of the county of Northumberland which is now in the diocese of York; and that the diocese of Carlisle be united, and that the diocese consist of the county of Cumberland and Westmorland, and of those parts of Cumberland and Westmorland which are now in the diocese of Furness and Cartmel in the

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county of Lancaster, of the parish of Alderton, now in the diocese of Durham, as the deanery of Man; and that the diocese of Chester consist of the county of Cheshire, of so much of the county of Flint as is now in that diocese, and of so much of the county of Salop as is not in the diocese of Hereford; and that the whole diocese be included in the province of York, and that two new sees be erected in the province of York, one at Manchester and the other at Ripon; and that the diocese of Manchester consist of the whole county of Lancaster except the deanery of Furness and Cartmel; and that the diocese of Ripon consist of that part of the county of York which is now in the diocese of Chester, of the deanery of Craven, and of so much of the deaneries of the Ainsty and Pontefract in the county and diocese of York as lie to the westward of the following districts; *viz.*, the liberty of Ainsty and the wapentakes of Barkston Ash, Osgoldcross, and Staincross; and that all parishes which are locally situate in one diocese, but under the jurisdiction of the bishop of another diocese, be made subject to the jurisdiction of the bishop of the diocese within which they are locally situate; and that such variations be made in the proposed boundaries of the different dioceses as may appear advisable after more precise information respecting the circumstances of particular parishes shall be obtained; and that the bishops of the two newly erected sees be made bodies corporate and be invested with all the same rights and privileges as are now possessed by the other bishops of England and Wales, and that they be made subject to the metropolitan jurisdiction of the Archbishop of York, and that the collegiate churches of Manchester and Ripon be made the cathedrals, and that the chapters thereof be the chapters of the respective sees of Manchester and Ripon, and be invested with the rights and powers of other cathedral chapters; and that the members of the chapter of all other cathedral churches in England be styled dean and canons; that the chapter of Carlisle be the chapter of the united see of Carlisle and Man; that the bishops of the see of Saint Asaph and Bangor be elected alternately by the dean and chapter of Saint Asaph and by the dean and chapter of Bangor; that the bishop of the see of Bristol and Gloucester be elected alternately by the dean and chapter of Bristol and by the dean and chapter of Gloucester; that power be given to determine the future mode of confirming such acts of the bishop of either of the united sees as may require confirmation by a dean and chapter; and that upon the avoidance of either of the sees of Saint Asaph or Bangor and of Gloucester or Bristol the bishop of the other of the sees proposed to be united become *ipso facto* bishop of the two sees, and thereupon become seized and possessed of all the property, advowsons, and patronage belonging to the see so avoided; and that the jurisdiction of the bishop's court in each diocese be co-extensive with the limits of the diocese as newly arranged; and that such arrangements be made with regard to the apportionment of fees payable to the officers of the several diocesan courts as may be deemed just and equitable, for the purpose of making compensation to the officers who may be prejudiced by the proposed alterations; and that such alterations be made in the apportionment or exchange of ecclesiastical patronage among the several bishops as shall be consistent with the relative magnitude and importance of their dioceses when newly arranged, and as shall afford an adequate quantity of patronage to the bishops of the new sees; and that, in order to provide for the augmentation of the incomes of the smaller bishoprics, such fixed annual sum be paid to the commissioners out of the revenues of the larger sees respectively as shall, upon due inquiry and consideration, be determined on, so as to leave an average annual income to the Archbishop of Canterbury fifteen thousand pounds, to the Archbishop of York ten thousand pounds, to the Bishop of London ten thousand pounds, to the Bishop of Durham eight thousand pounds, to the Bishop of Winchester seven thousand pounds, to the Bishop of Ely five thousand five hundred pounds, to the Bishop of St. Asaph and Bangor five thousand two hundred pounds, and to the Bishop of Worcester and Bath and Wells respectively five thousand pounds; and that out of the fund thus accrued fixed annual payments be made by the commissioners, in such instances as shall be determined on, to such amount as shall be in like manner determined on, so that the average annual incomes of the other bishops respectively be not less than four thousand

. 6 & 7
4, c. 77. *Barne, Barmundsey, Camberwell, Christchurch, Clapham, Lambeth, Rotherhithe, Streatham, Tooting Graveney, Wandsworth, Merton, Kew, and Richmond, in the county of Surrey and present diocese of Winchester; and of the parishes of Saint Mary Newington, Barne, Putney, Mortlake, and Wimbledon, in the county of Surrey, and in the peculiar jurisdiction of the Archbishop of Canterbury, together with all extra-parochial places locally situate within the limits of the parishes above enumerated, except the district of Lambeth Palace; and that the diocese of Winchester be diminished by the transfer of the parish of Addington to the diocese of Canterbury, and of the before-mentioned parishes to the diocese of London; and that the whole of the parish of Bedminster be transferred from the diocese of Bath and Wells to the diocese of Gloucester and Bristol; and that the city and deanery of Bristol be united to the diocese of Gloucester; and that the southern part of the diocese of Bristol, consisting of the county of Dorset, be transferred to the diocese of Salisbury; and that the diocese of Ely be increased by the counties of Huntingdon and Bedford, now in the diocese of Lincoln, by the deaneries of Lynn and Fincham in the county of Norfolk and diocese of Norwich, and by the archdeaconry of Sudbury in the county of Suffolk and diocese of Norwich, with the exception of the deaneries of Sudbury, Stow, and Hartismere, and by that part of the county of Cambridge which is now in the diocese of Norwich; and that it be declared that the Scilly Islands are within the jurisdiction of the Bishop of Exeter and of the Archdeacon of Cornwall; and that the sees of Gloucester and Bristol be united, and that the diocese consist of the present diocese of Gloucester, of the city and deanery of Bristol, of the deaneries of Cricklade and Malmesbury in the county of Wilts and now in the diocese of Salisbury, and of the whole of the parish of Bedminster, now in the diocese of Bath and Wells; and that the diocese of Hereford be added to the deanery of Bridgenorth, now locally situated between the dioceses of Hereford and Lichfield; and that those parts of the counties of Worcester and Montgomery which are now in the diocese of Hereford be transferred to the dioceses of Worcester and Saint Asaph and Bangor respectively; and that the diocese of Lichfield consist of the counties of Stafford and Derby; and that the diocese of Lincoln consist of the counties of Lincoln and Nottingham; and that the latter county, now in the diocese and province of York, be included in the province of Canterbury; and that the diocese of Norwich consist of the counties of Norfolk and Suffolk, except those parts which it is proposed to transfer to the diocese of Ely; and that the diocese of Oxford be increased by the county of Buckingham, now in the diocese of Lincoln, and by the county of Berks, now in the diocese of Salisbury; and that the diocese of Peterborough be increased by the county of Leicester, now in the diocese of Lincoln; and that the diocese of Rochester consist of the city and deanery of Rochester, in the county of Essex, (excepting the parishes which it is proposed to leave in the diocese of London,) and of the whole county of Hertford; and that to the diocese of Salisbury, reduced according to the foregoing propositions, be added the county of Dorset, now in the diocese of Bristol; and that the diocese of Worcester consist of the whole counties of Worcester and Warwick; and that the sees of Saint Asaph and Bangor be united, and that the diocese consist of the whole of the two existing dioceses (except that part of the diocese of Saint Asaph which is in the county of Salop) and of those parts of the county of Montgomery which are now in the diocese of Saint David's and Hereford; and that the diocese of Llandaff consist of the whole counties of Glamorgan and Monmouth; and that the diocese of Saint David's be altered by the transfer of those parts of the counties of Montgomery, Glamorgan, and Monmouth which it is proposed to include in the respective dioceses of Saint Asaph and Bangor and Llandaff; and that the diocese of York consist of the county of York, except such parts thereof as it is proposed to include in the new diocese of Ripon; and that the diocese of Durham be increased by that part of the county of Northumberland called Hexhamshire which is now in the diocese of York; and that the sees of Carlisle and Sodor and Man be united, and that the diocese consist of the present diocese of Carlisle, of those parts of Cumberland and Westmorland which are now in the diocese of Chester, of the deanery of Furness and Cartmel in the*

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they are situate; and that all archdeacons have and exercise full and equal jurisdiction within their respective archdeaconries; and whereas it is expedient that the said recommendations should be carried into effect as soon as conveniently may be; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that the Lord Archbishop of Canterbury for the time being, the Lord Archbishop of York and the Lord Bishop of London for the time being, John Lord Bishop of Lincoln, James Henry Lord Bishop of Gloucester, the lord high chancellor of Great Britain, the lord president of the council, the lord high treasurer or the first lord of the treasury, and the chancellor of the exchequer, for the time being respectively, and such one of his majesty's principal secretaries of state as shall be for that purpose nominated by his majesty, under his royal sign manual, (such lord chancellor, lord president, lord high treasurer or first lord of the treasury, chancellor of the exchequer, and secretary of state, being respectively members of the united church of Great Britain and Ireland,) the Right Honourable Dudley, earl of Harrowby, the Right Honourable Henry Hobhouse, and the Right Honourable Sir Herbert Jenner, knight, shall for the purposes of this act be one body politic and corporate by the name of 'The Ecclesiastical Commissioners for England,' and by that name shall have perpetual succession and a common seal, and by that name shall and may sue and be sued, and shall have power and authority to take and purchase and hold lands, tenements, and hereditaments, to them, their successors, and assigns, for the purposes of this act, the statutes of mortmain, or any other act or acts to the contrary hereof notwithstanding.

"II. And be it enacted, that the two last-named bishops and the three last-named lay commissioners shall be at all times removable by his majesty in council by warrant under the sign manual; and that when any vacancy shall occur, by death, removal, resignation, or otherwise, among the two last-named bishops and the three last-named lay commissioners, or among such of the future commissioners under this act as shall not have become such commissioners by virtue of any dignity or office, according to the provisions of this act, it shall be lawful for his majesty to fill up such vacancy by appointing under his royal sign manual, instead of any such commissioner being a bishop some other bishop of England or Wales, and instead of any such commissioner being a layman some other layman, being a member of the said church, to be a commissioner under this act; and every such bishop or person so to be appointed shall accordingly become to all intents and purposes one of the commissioners for the purposes of this act.

"III. And be it enacted, that every such commissioner, whether herein named or hereafter to be appointed, not being an archbishop or bishop, shall, before acting under the said commission, and at the first meeting he shall attend, subscribe in the book of the minutes of the proceedings of the said commissioners a declaration in the words following:

"I do hereby solemnly, and in the presence of God, testify and declare, that I am a member of the united church of England and Ireland as by law established. Witness my hand this day of ."

"IV. (1) And be it enacted, that all acts, matters, and things which the said commissioners are by any of the provisions of this act authorized or required to do and perform, shall and may be done and performed by any five of such commissioners: provided always, that such five commissioners be for such purpose assembled at a meeting whereof due notice shall have been given to all the said commissioners.

"V. Provided always, and be it enacted, that no proceeding which requires to be ratified and confirmed by the common seal of the corporation shall be finally concluded, nor the said seal affixed to any deed or instrument, save at a meeting whereof notice shall have been in like manner given, and whereat two at least of the said episcopal commissioners shall be personally present: provided also, that in

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tioners, being the only episcopal commissioners, the seal of the said commissioners shall be used in the confirmation of any such proceeding as such seal to any deed or instrument as aforesaid, the seal shall not take place until a subsequent seal have been held, after due notice thereof shall

at each meeting of the said commissioners the com-
lence there present shall preside as chairman, and
id precedence of all the commissioners so present
he order of appointment shall so preside; and the
all not only vote as a commissioner, but shall also
ive the casting or deciaive vote.

at the said commissioners may from time to time
, and such clerks, messengers, and officers as they
ime to time, at the discretion of the said comm-
r, secretary, clerks, messengers, and officer, or
in their stead: provided always, that the amount
, secretary, clerks, messengers, and officers shall
by the lord high treasurer, or the lords comm-
or any three or more of them.

ected, that the secretary or other officer of the said
, in which he shall make minutes of the proceed-
their several meetings, and enter the names of the
nd such entry of the proceedings at each meeting
thereof.

t it shall be lawful for the said commissioners, by
e chairman of any such meeting, to require the
they shall think fit to examine touching any
, also to make any inquiries, and call for any
such matter, and also to administer oaths, and
n oath, and to cause to be produced before them,
grants, rules, regulations, bye-laws, books, deeds,
and writings whatsoever, or copies thereof respec-
y such matter; or, in lieu of requiring such oath
ers may, if they think fit, require any such person
ion of the truth of his examination.

the said commissioners shall from time to time
sty in council, such schemes as shall appear to the
adapted for carrying into effect the herein before-
all in such schemes recommend and propose such
inquiry, which the said commissioners are hereby
hem to be necessary for carrying such recommen-
t: provided always, that nothing herein contained
s said commissioners from proposing in any such
aristions as to matters of detail and regulation as
gnant to any or either of the said recommenda-
shall be competent to the said commissioners to
at all parishes, churches, or chapelries which are
it subject to any peculiar jurisdiction other than
the diocese in which the same are locally situate,
diction of the bishop of the diocese within which
tries are locally situate.

at the said commissioners shall prepare, and lay
uch scheme as shall appear to the said commis-
eventing the appointment of any clergyman not
. language to any benefice with cure of souls in
ty of the inhabitants of which do not understand

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"XII. And be it enacted, that when any scheme prepared under the authority of this act shall be approved by his majesty in council it shall be lawful for his majesty in council to issue an order or orders ratifying the same, and specifying the time or times when such scheme or the several parts thereof shall take effect, and to direct in every such order that the same be registered by the registrar of each of the dioceses the bishops whereof may or shall be in any respect affected thereby, and in any newly-created diocese by such person as shall be for that purpose named in such order, which person shall in such last-mentioned diocese become registrar there, and so continue as long as he shall demean himself well in his office.

"XIII. And be it enacted, that every such order shall, as soon as may be after the making and issuing thereof by his majesty in council, be inserted and published in the London Gazette.

"XIV. And be it enacted, that so soon as any such order in council shall be so registered and gazetted, it shall in all respects, and as to all things therein contained, have and be of the same force and effect as if all and every part thereof were included in this act, any law, statute, canon, letters patent, grant, usage, or custom to the contrary notwithstanding.

"XV. And be it enacted, that a copy of every order of his majesty in council made under this act shall be laid before each house of parliament in the month of January in every year, if parliament shall be then sitting, or if parliament be not then sitting within one week after the next meeting thereof.

"XVI. And be it enacted, that the registrar of every diocese to whom any order of his majesty in council made by virtue of this act shall be delivered shall forthwith register the same in the registry of his diocese; and the persons who shall be for that purpose appointed in the dioceses of Manchester and Ripon shall forthwith register every such order in books to be by them for that purpose provided, which shall thenceforth become the registry of those dioceses respectively; and if any such registrar or other person shall refuse or neglect to register any such order he shall for every day during which he shall so offend forfeit twenty pounds, and if his offence shall continue for the space of three months he shall forfeit his office, and it shall be lawful for the bishop of the diocese, or for his majesty, as the case may be, to appoint a successor thereto.

"XVII. And be it enacted, that for such registration as aforesaid no registrar shall be entitled to receive any fee or reward, but that on every search for any such order he shall be entitled to receive a fee of three shillings, and for every copy or extract of any such order, certified by him, he shall be entitled to receive for every folio of ninety words four pence; and the copy of every such entry, certified by the registrar, shall be admissible as evidence in all courts and places whatsoever.

"XVIII. And be it enacted, that after the passing of this act no ecclesiastical dignity, office, or benefice shall be held in commendam by any bishop, unless he shall so hold the same at the time of passing thereof; and that every commendam thereafter granted, whether to retain or to receive, and whether temporary or perpetual, shall be absolutely void, to all intents and purposes.

"XIX. And be it enacted, that all archdeacons throughout England and Wales shall have and exercise full and equal jurisdiction within their respective archdeaconries, any usage to the contrary notwithstanding.

"XX. (1) And whereas it may be expedient to consider the state and jurisdiction of all the ecclesiastical courts in England and Wales; be it enacted, that nothing herein contained, nor any order of his majesty in council made under the authority of this act, either for altering the limits of either of the existing provinces or the boundaries of any existing diocese or archdeaconry, or for uniting any existing sees, or for creating any new bishopric or archdeaconry, or for appointing any registrar under the provisions of this act, or for any other purpose whatever, shall for one year after the passing of this act, or if parliament shall be then sitting till the end of the session of parliament, in any manner affect or be construed to

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power, or authority of any or either of the existing ecclesiastical courts in England or Wales, or the extent or limits thereof, but that during the said period every such court shall continue in all matters within the present limits to exercise the same jurisdiction as heretofore

has been exercised, and that in all cases of monitions to reside, and payment of the stipends of curates, and of proceedings consequent thereon, as hereinafter excepted, and in all cases of licences granted to the same shall issue only under the authority and in the name of the bishop of the diocese, whether such diocese be according to the present territorial divisions or newly created under the authority of this act: provided that it shall be necessary to institute in any ecclesiastical court proceedings consequent thereon, such proceedings shall be commenced, carried on, and tried by the same court which at the time of the passing of this act had jurisdiction in such matters respectively, and in all cases shall be commenced at the instance of a bishop in the name of the judge of such court, that nothing herein contained shall affect any power or authority of the archbishops at the time of the passing of this act, but that all such powers and authorities, except as may be otherwise provided by any order of law made and issued in pursuance of this act, shall to all intents and purposes remain subject to the same authority and jurisdiction as if they had not been passed.

It is enacted, that nothing herein contained, nor any such order or decree, shall during such period as last aforesaid, be construed to alter or change in whatsoever the law of *bonis notabilibus* as it exists at the time of the passing of this act, notwithstanding any change of province, diocese, archbishopric, or jurisdiction whatsoever.

It is enacted, that all marriage licences shall during such period continue to be granted in the same manner and by the same authorities as before the passing of this act.

It is enacted, that during such period every ecclesiastical court shall be had shall have power to send for and enforce the production of all original instruments and documents relating to such proceedings, and to exercise the same authority the same may have been issued.

It is further enacted, that in case the office of judge, registrar of any or either of the ecclesiastical courts in England or Wales (the Prerogative court of Canterbury) shall become vacant during the said period, the person who may be thereunto appointed shall hold such office subject to all regulations and alterations affecting the same hereafter made and provided by or under the authority of parliament, and shall not by his appointment thereto acquire any vested interest or claim or title to compensation in respect thereof, in case the same shall be abolished by parliament.

And whereas by an act passed in the fifth and sixth years of his Majesty George the Fourth, intituled, 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' provision was made concerning the sale of preferments in the patronage of the several municipal corporations, at such time and in such manner as the commissioners of the said act should direct; be it enacted, that from and after the passing of this act the provisions in the said recited act relating to the said commissioners shall apply and be held to apply to the persons appointed under this act by the style and title of 'The Commissioners for England.'

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CXL. STAT. 6 & 7 GULIELMI 4, c. 85 (1). A.D. 1836.

"An Act for Marriages (2) in England."

"Whereas it is expedient to amend the law of marriages in England, be enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that after the first day of March, in the year one thousand eight hundred and thirty-seven, notwithstanding anything in this act contained, all the rules prescribed by the rubric concerning the solemnizing of marriages, shall continue to be duly observed by every person in holy orders of the Church of England (3) who shall solemnize any marriage in England: provided always, that where by any law or canon in force before the passing of this act it is provided that any marriage may be solemnized after publication of banns, such marriage may be solemnized in like manner on production of the registrar's certificate (4) as hereinafter provided (5); provided also, that nothing in this act contained shall affect the right of the Archbishop of Canterbury and his successors and his and their proper officers, to grant special licences to marry at any convenient time and place, or the right of any surrogate or other person now having authority to grant licences for marriages.

"II. And be it enacted, that the society of friends commonly called quakers and also persons professing the Jewish religion, may continue to contract and solemnize marriages according to the usages of the said society and of the said persons respectively; and every such marriage is hereby declared and confirmed good in law, provided that the parties to such marriage be both of the said society or both persons professing the Jewish religion respectively; provided also, that notice to the registrar shall have been given, and the registrar's certificate shall have been issued in manner hereinafter provided.

"III. And be it enacted, that the superintendent registrar of births and deaths of every union, parish, or place, shall be, in right of his office, superintendent registrar of marriages within such union, parish, or place, and that such union, parish, or place, shall be deemed the district of such superintendent registrar of marriages.

"IV. And be it enacted, that in every case of marriage intended to be solemnized in England after the said first day of March, according to the rites of the church of England, (unless by licence or by special licence, or after publication of banns,) and in every case of marriage intended to be solemnized in England after the said first day of March, according to the usages of the quakers or Jews, or according to any form authorized by this act, one of the parties shall give notice under his or her hand, in the form of schedule (A) to this act annexed, or to the like effect, to the superintendent registrar of the district within which the parties shall have dwelt for not less than seven days then next preceding, or if the parties dwell in the districts (6) of different superintendent registrars, shall give the like notice to the superintendent registrar of each district, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time not being less than seven days during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

"V. And be it enacted, that the superintendent registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book, to be for that purpose furnished.

(1) Suspended until June, 1837, by Stat. 7 Gul. 4 & 1 Vict. c. 1; amended and explained by Stat. 7 Gul. 4 & 1 Vict. c. 22; and Stat. 3 & 4 Vict. c. 72.

(2) *Marriages*:—Vide Stat. 4 Geo. 4, c. 76 (entè 1226).

(3) *Church of England*:—Vide Stat. 7

Gul. 4 & 1 Vict. c. 22, s. 35.

(4) *Registrar's certificate*:—i. e. superintendent registrar's certificate. Vide Stat. 7 Gul. 4 & 1 Vict. c. 22, s. 1.

(5) *Hereinafter provided*:—Vide Stat. Gul. 4 & 1 Vict. c. 22, s. 36.

(6) *Districts*:—Vide Stat. 3 & 4 Vict. c. 92

6 & 7
1, c. 85. nished to him by the registrar-general, to be called 'The Marriage Notice Book,' the cost of providing which shall be defrayed in like manner as the cost of providing register books of births and deaths (1); and the marriage notice book shall be open at all reasonable times without fee, to all persons desirous of inspecting the same; and for every such entry the superintendent registrar shall be entitled to have a fee of one shilling.

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meetings
ridians. "VI. And be it enacted, that if such superintendent registrar shall be clerk to the guardians of any poor law union, or of any parish or place comprising the district for which such superintendent registrar shall act, he shall read such notices as hereinafter directed; and if he shall not be such clerk, then he shall transmit to such clerk on the day previous to each weekly meeting of such guardians all such notices of intended marriage as he shall have received on or since the day previous to the weekly meeting immediately preceding the same; and such clerk shall read such notices immediately after the minutes of the proceedings of such guardians at their last meeting shall have been read; and such notices shall be so read three several times in three successive weeks at the weekly meetings of such guardians, unless in any case licence for marriage shall be sooner granted, and notice of such licence being granted shall have been given to such clerk: provided also, that if it shall happen that the board of guardians of any such union, parish, or place, shall not so meet, it shall be sufficient for the purposes of this act that such notices shall be read at any meeting of such guardians which shall be held (2) within twenty-one days from the day of such notice being entered.

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days,
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upon
d. "VII. And be it enacted, that after the expiration of seven days, if the marriage is to be solemnized by licence, or of twenty-one days if the marriage is to be solemnized without licence, after the entry of such notice, the superintendent registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, shall issue (3) under his hand a certificate in the form of schedule (B) to this act annexed (4), provided that no lawful impediment be shown to the satisfaction of the superintendent registrar why such certificate should not issue, and provided that the issue of such certificate shall not have been sooner forbidden in manner hereinafter mentioned by any person or persons authorized in that

(1) Deaths:—Vide Stat. 7 Gul. 4 & 1 Vict. c. 22, s. 25.

(2) Meeting . . . shall be held:—Vide Stat. 7 Gul. 4 & 1 Vict. c. 22, s. 24.

(3) Shall issue:—The superintendent registrar has no power to issue his certificate pursuant to Stat. 6 & 7 Gul. 4, c. 85, s. 7, in cases where it is proposed, that the marriage shall take place out of his district. Thus, in *Esperie Brady*, (6 Dowl. P. C. 332,) an application was made for a writ of mandamus, to be directed to the superintendent registrar of the Salford union, to issue his certificate pursuant to Stat. 6 & 7 Gul. 4, c. 85, s. 7. The parties in question resided in the Salford union: they were [Roman] catholics, and were desirous of being married without licence, at a [Roman] catholic chapel, in Manchester, but which was not within the district of the superintendent registrar, there being no [Roman] catholic chapel within the district, over which, the registrar had jurisdiction. The question was, whether, as there was no [Roman] catholic chapel within the district in which they resided, they had a right to a certificate for the purpose of marrying at a [Roman] catholic chapel not within the district;—to which Mr. Justice Patteson observed, "What authority is there for saying, that persons can be married in a different district from that in which they reside? The intention of the act was not that parties should be married, in fact,

in a foreign country, or that notice could be given in London, in order to be married in Cumberland. There are no words in the act which give leave to be married anywhere, wherever the notice may have been given. I will, however, consider the case." His lordship afterwards stated, "I cannot think that, because, in one section (11) it is said, that the superintendent registrar cannot act, except within his district, that, in the other, (sect. 7,) where nothing is said on the subject, he may grant his certificate to marry at any place, without his district. It is impossible to construe acts of parliament on such a principle. However, on reading sect 25, it appears to me perfectly clear, what the intention of the legislature was. It was not the intention of the legislature, that the registrar should have power to grant his certificate for marriages out of his own district. The superintendent registrar appears to have put a construction on the act, and adopted a practice thereon, which, as soon as it was brought to the knowledge of the registrar-general, he put a stop to it, and I quite agree with him in the construction which he has put on the act. I cannot, therefore, grant the rule now sought to be obtained."

(4) Certificate in the form of schedule (B) to this act annexed:—The certificate is there described as the registrar's certificate.

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behalf, as hereinafter is provided; and every such certificate shall state the particulars set forth in the notice, the day on which the notice was entered, and that the full period of seven days or of twenty-one days, (as the case may be,) has elapsed since the entry of such notice, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the superintendent registrar shall be entitled to have a fee of one shilling.

“VIII. And be it enacted, that the registrar-general shall furnish to every superintendent registrar a sufficient number of forms of certificates, the cost of which shall be accounted for by the superintendent registrar to the registrar-general; and in order to distinguish the certificates to be issued for marriages by licence from the certificates to be issued for marriages without licence, a watermark in the form of the word ‘Licence,’ in Roman letters, shall be laid and manufactured in the substance of the paper on which the certificates to be issued for marriage by licence shall be written or printed; and every certificate to be issued for marriage by licence shall be printed with red ink, and every certificate to be issued for marriage without licence shall be printed with black ink, and such other distinctive marks between the two kinds of certificate shall be used from time to time as shall seem fit to the registrar-general.

“IX. And be it enacted, that any person authorized in that behalf may forbid the issue of the superintendent registrar’s certificate, by writing at any time before the issue of such certificate the word ‘forbidden,’ opposite to the entry of the notice of such intended marriage in the marriage notice book, and by subscribing thereto his or her name and place of abode, and his or her character, in respect of either of the parties, by reason of which he or she is so authorized; and in case the issue of any such certificate shall have been so forbidden the notice and all proceedings thereupon shall be utterly void.

“X. And be it enacted, that after the said first day of March, the like consent⁽¹⁾ shall be required to any marriage in England solemnized by licence as would have been required by law to marriages solemnized by licence immediately before the passing of this act; and every person whose consent to a marriage by licence is required by law is hereby authorized to forbid the issue of the superintendent registrar’s certificate, whether the marriage is intended to be by licence or without licence.

“XI. And be it enacted, that after the said first day of March every superintendent registrar shall have authority to grant licences for marriage in any building registered as hereinafter provided within any district under his superintendence, or in his office, in the form of schedule (C) to this act annexed, and for every such licence shall be entitled to have of the party requiring the same the sum of three pounds above the value of the stamps necessary on granting such licence; and every superintendent registrar shall four times in every year, on such days as shall be appointed by the registrar-general, make a return to the registrar-general of every licence granted by him since his last return, and of the particulars stated concerning the parties: provided always, that no superintendent registrar shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the registrar-general for the due and faithful execution of his office: provided also, that nothing herein contained shall authorize any superintendent registrar to grant any licence for marriage in any church or chapel in which marriages may be solemnized according to the rites of the church of England, or in any church or chapel belonging to the church of England, or licensed for the celebration of divine worship according to the rites and ceremonies of the church of England, or any licence for marriage in any registered building which shall not be within his district.

(1) *Consent*: The consent required by Stat. 4 Geo. 4, c. 76, s. 16 (*enâ* 1237), is directory, and a marriage without such consent is valid.

It will be perceived that Stat. 4 Geo. 4, c.

76, s. 16, expressly, and Stat. 6 & 7 Gul. 4, c. 85, impliedly, dispenses with consent, where there is no authorized person under the statute to give it.

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that before any licence for marriage shall be granted
istrar one of the parties intending marriage shall
uperintendent registrar, and in case the notice of
t have been given to such superintendent registrar,
ts of the superintendent registrar or superintendent
shall have been given, and
solemn affirmation or decl
reth that there is not any
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er the age of twenty-one y
sent to such marriage is re
; no person having authori
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in order to procure the same.

that any person, on payment of five shillings, may discontinue the proceedings against the grant of a certificate of any person named therein; and if any caveat against the grant of a certificate be made by or on behalf of any person, the registrar, such caveat being duly signed by or on behalf of the person, shall, if he or she be the same, together with his or her place of residence, and the reason on which his or her caveat is founded, no certificate shall be granted until the superintendent registrar shall be satisfied that it ought not to be granted, or licence for the said marriage, or until the person who entered the caveat, or the person by whom the caveat was entered, shall have been heard by the superintendent registrar, or until the superintendent registrar shall have decided upon the same; provided that in case of any appeal, the superintendent registrar shall refer the matter of any appeal to the court, who shall decide upon the same; provided that if the superintendent registrar refuses to grant the certificate, the person applying for the same shall have a right to appeal to the court thereupon either to confirm the refusal or direct the superintendent registrar to grant the certificate.

that after the mid first day of March no marriage
unless by virtue of a licence to be granted by the
e solemnized or registered in England until after
n after the day of the entry of such notice as afore-
solemnized by the licence of any superintendent
the expiration of seven days after the day of the

at whenever a marriage shall not be had within notice shall have been so entered by the superintendent, and any licence which may have been proceedings thereupon, shall be utterly void; and mine the marriage, nor shall any register register have been given, and entry made, and certificate the manner aforesaid (3).

at the superintendent's certificate, or, in case the superintendent of different districts, the call be delivered to the officiating minister, if the ordering to the rites of the church of England; and I be deliver
e the ma

4 Geo.
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nity for
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solemnized according to the usages of the said people; or to the officer of a synagogue by whom the marriage is registered, if the same shall be solemnized according to the usages of persons professing the Jewish religion; and in all other cases shall be delivered to the registrar present at the marriage, as hereinafter provided.

"XVII. And be it enacted, that it shall be lawful for the superintendent registrar of any union, parish, or place, subject to the approval of the board of guardians thereof, to appoint by writing under his hand such person or persons as he may think fit, with such qualifications as the registrar-general(1), by any general rule, may declare to be necessary, to be a registrar or registrars for the purpose of being present at marriages to be solemnized by virtue of this act at which the presence of a registrar is made necessary, and every such registrar of marriages shall hold his office during the pleasure of the superintendent registrar by whom he was appointed, or of the registrar-general.

"XVIII. And be it enacted, that any proprietor or trustee of a separate building(2), certified according to law as a place of religious worship, may apply to the superintendent registrar of the district, in order that such building may be registered for solemnizing marriages therein, and in such case shall deliver to the superintendent registrar a certificate, signed in duplicate by twenty householders at the least, that such building has been used by them during one year at the least as their usual place of public religious worship, and that they are desirous that such place should be registered as aforesaid, each of which certificates shall be countersigned by the proprietor or trustee by whom the same shall be delivered; and the superintendent registrar shall send both certificates to the registrar-general, who shall register such building accordingly in a book to be kept for that purpose at the general register office; and the registrar-general shall indorse on both certificates the date of the registry, and shall keep one certificate with the other records of the general register office, and shall return the other certificate to the superintendent registrar, who shall keep the same with the other records of his office; and the superintendent registrar shall enter the date of the registry of such building in a book to be furnished to him for that purpose by the registrar-general, and shall give a certificate of such registry under his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the London Gazette; and for every such entry, certificate, and publication, the superintendent registrar shall receive at the time of the delivery to him of the certificates the sum of three pounds.

"XIX. And be it enacted, that if at any time subsequent to the registry of any building for solemnizing marriages therein it shall be made to appear to the satisfaction of the registrar-general that such building has been disused for the public religious worship of the congregation on whose behalf it was registered as aforesaid, the registrar-general shall cause the registry thereof to be cancelled; provided that if it shall be proved to the satisfaction of the registrar-general that the same congregation use instead thereof some other such building for the purpose of public religious worship, the registrar-general may substitute and register such new place of worship instead of the disused building, although such new place of worship may not have been used for that purpose during one year then next preceding; and every application for cancelling the registry of any such building, or for such substitution and registry of a substituted building, shall be made to the registrar-general by or through the superintendent registrar of the district; and such cancel or substitution, when made, shall be made known by the registrar-general to the superintendent registrar, who shall enter the fact and the date thereof in the book provided for the registry of such buildings, and shall certify and publish such cancel or substitution and registry in manner hereinbefore provided in the case of the original registry of the disused building; and for every such substitution the superintendent registrar shall receive, at the

(1) Registrar-general:—Vide Stat. 7 Gul. 4 & 1 Vict. c. 22, s. 35.

(2) Separate building:—Vide Stat. 7 Gul. 4 & 1 Vict. c. 22, s. 35.

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of the certificate from the party requiring the substitution, and after such cancel or substitution shall have been made, in general it shall not be lawful to solemnize any marriage, unless the same shall be again registered in the manner provided.

It is enacted, that after the expiration of the said period of twenty days if the marriage is by licence, marriages may be solemnized in the building stated as aforesaid in the notice of such marriage, parties described in the notice and certificate, according to the form (1) as they may see fit to adopt: provided nevertheless, that the marriage shall be solemnized with open doors, between the hours of ten in the forenoon, in the presence of some registrar of the district in which the building is situate, and of two or more credible persons, who shall be witnesses, each of the parties shall declare, that I know not of any lawful impediment why I, *A. B.*, be joined in matrimony to *C. D.*

And the other shall say to the other, *I, A. B., do take thee, C. D., to be my lawful wedded wife [or husband.]*

And there be no lawful impediment to the marriage of such persons.

It is enacted, that any persons who shall object to marry under this act in any such registered building may, after due notice and in the presence of the registrar and some registrar of the district, and of two or more witnesses, with open doors, and between the hours aforesaid, in and using the form of words hereinbefore provided in the form (1) in such registered building.

It is enacted, that the registrar shall be entitled for every marriage solemnized under this act in his presence to have from the parties the sum of ten shillings, if the marriage shall be by licence, and five shillings.

It is enacted, that the registrar shall forthwith register every marriage in the manner aforesaid in his presence, in a marriage register to him for that purpose from time to time by the registrar-general, the form provided for the registration of marriages by an act of session of parliament, intituled, 'An Act for registering marriages in England,' the cost of which shall be defrayed in whole or in part out of the moneys provided for the cost of providing register books of births and deaths; and every marriage shall be signed by the person by or before whom the marriage shall have been solemnized, if there shall be any such person, and also by the parties married, and attested by two witnesses; and a copy of the register shall be made in order from the beginning to the end of the year.

It is enacted, that in every year, on such days as shall be appointed by the registrar-general, within one calendar month next after the first day of April, the first day of July, the first day of October, and the first day of January, respectively, every registrar shall make and deliver to the registrar-general of his district, a true copy, certified by him under his hand and seal, in the form of schedule (D) to this act annexed, of all the entries in the marriage register book kept by him since the last delivery, and the registrar shall verify the same, and if found to be correct shall certify the same to be a true copy; and if there shall have been no delivery of the last certified copy, the registrar shall deliver a certificate shall be delivered to the superintendent registrar.

7 Gul. 4 & 1 Vict. c. 22, s. 23, contains provisions for marriages in the Welsh tongue.

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trar as aforesaid, and countersigned by him; and the registrar shall keep safely the said register book until it shall be filled, and shall then deliver it to the superintendent registrar to be kept by him with the records of his office.

"XXV. And be it enacted, that after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the *actual dwelling* (1) of either of the parties previous to the marriage within the district wherein such marriage was solemnized for the time required by this act, or of the consent of any person whose consent thereunto is required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

"XXVI. And whereas it is expedient that provision should be made, under proper restrictions, for relieving the inhabitants of populous districts remote from the parish church, or from any chapel wherein marriages may be lawfully celebrated according to the rites and ceremonies of the church of England, from the inconvenience to which they may be thereby subjected in the solemnization of their marriages; be it therefore enacted, that, with the consent under the hand and seal of the patron and incumbent respectively of the church of the parish or district in which may be situate any public chapel with or without a chapelry thereunto annexed, or any chapel duly licensed for the celebration of divine service according to the rites and ceremonies of the church of England, or any chapel the minister whereof is duly licensed to officiate therein according to the rites and ceremonies of the church of England, or without such consent after two calendar months' notice in writing given by the registrar of the diocese to such patron and incumbent respectively, the bishop of the diocese may, if he shall think it necessary for the due accommodation and convenience of the inhabitants, authorize by a licence under his hand and seal the solemnization of marriages in any such chapel for persons residing within a district the limits whereof shall be specified in the bishop's licence, and under such provisions as to the amount, appropriation, or apportionment of the dues, and as to other particulars, as to the said bishop may seem fit, and as may be specified in the said licence; provided that it shall be lawful for any patron or incumbent who shall refuse or withhold consent to the grant of any such licence to deliver to the bishop, under his or her hand and seal, a statement of the reasons for which such consent shall have been so refused or withholden; and no such licence shall be granted by any bishop, until he shall have inquired into the matter of such reasons; and every instrument of consent of the patron and incumbent, or, if such consent be refused or withholden, a copy of the notice under the hand of the registrar, and every statement of reasons alleged as aforesaid by the patron or incumbent, with the bishop's adjudication thereupon under his hand and seal, shall be registered in the registry of the diocese; and thenceforth and until the said licence be revoked marriages solemnized in such chapel shall be as valid to all intents and purposes as if the same had been solemnized in the parish church, or in any chapel where marriages might heretofore have been legally solemnized.

"XXVII. And be it enacted, that all fees, dues, and other emoluments on account of the solemnization of marriages which belong to the incumbent or clerk respectively of any church or chapel in any parish or district within which the solemnization of marriages shall be authorized as aforesaid shall respectively be received, until the avoidance of such church or chapel next after the passing of this act, for and on account of such incumbent, and, until the vacancy in the office of clerk next after the passing of this act, for and on account of such clerk, and be paid over to them, except such portion of the fees, dues, or other emoluments as the said bishop of the diocese, with the consent of the said incumbent and clerk respectively, shall in such aforesaid licence assign to the minister and clerk respectively of the chapel in which the solemnization of marriages shall be authorized as aforesaid; and that it shall be lawful for the said bishop in and by such licence, without any such consent, to declare that from and after such next avoidance or vacancy

(1) *Actual dwelling*:—Vide Stat. 4 Geo. 4, c. 76, s. 26 (*ante* 1241).

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rt of the fees, dues, and other emoluments on
riages in such last-mentioned chapel as shall be
receivable, and the same shall thenceforth be
clerk of such chapel respectively.

that when the said bishop shall authorize the
such chapel as aforesaid, without the consent
n and incumbent respectively, it shall be lawful
al within one calendar month to the archbishop
e same in a summary manner, and shall make
r varying the licence so given, as to him shall
order shall be registered in the registry of the
l binding on all parties whatsoever.

hat there shall be placed in some conspicuous
l(1) in respect of which such licence shall be
ords following: 'Marriages may be solemnized

at all provisions which shall from time to time
and to providing, keeping, and transmitting
s of marriages solemnized in any parish church,
h the solemnization of marriages shall be autho-
er as if the same were a parish church, and every-
relating thereto by the rector, vicar, curate, or
parish church shall be done by the officiating
erson exercising analogous duties in such chapel

l be it enacted, that notwithstanding any such
riages in any such chapel, the parties may, if
e solemnized in the parish church, or in any
riages of such parties or either of them might

hat any such licence or order may at any time
and and seal of the bishop of the diocese, with
ishop of the province; and such revocation and
gistry of the diocese, the registrar whereof shall
minister officiating in the chapel, and shall also
tisement in some newspaper circulating within
ette, and thenceforth the authority to solemnize
e and determine.

that in case of the revocation of the licence to
apel all registers of marriages solemnized therein
in the custody or possession of the minister of
vocation shall forthwith be transmitted to the
of the parish church, and shall thenceforth be
dealt with in the same manner, and be of the
its and purposes, as if they had been originally
umbent or officiating minister; and that such
he next transmits to the superintendent regis-
riages solemnized in such parish church, also
h entries as shall have been made in such first-
the date of the last entry a copy whereof was
registrar, and shall also transmit to him one
nmitted to him of which no copy shall have
uperintendent registrar, having first signed his
herein.

that the registrar of every diocese shall within
of March, and also within fifteen days after the

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first day of January in every succeeding year, make out and send through the post office, directed to the registrar-general of births, deaths, and marriages, at his office, a list of all chapels belonging to the church of England within that diocese wherein marriages may lawfully be solemnized according to the rites and ceremonies of the church of England, and shall distinguish in such list which have a parish, chapelry, or other recognised ecclesiastical division annexed to them, and which are chapels licensed by the bishop under this act, and shall state therein the district for which each of such chapels is licensed according to the description thereof in the licence; and the registrar-general shall in every year make out and cause to be printed a list of all such chapels, and also of all places of public worship registered under the provisions of this act, and shall state in such list the county and registrar's district within which each chapel or registered building is situated, and shall add also the names and places of abode of the registrars and deputy registrars of each district, and of the superintendent registrars; and a copy of such list shall be sent to every registrar and superintendent registrar.

“XXXV. And be it enacted, that every marriage solemnized under this act shall be good and cognizable in like manner as marriages before the passing of this act according to the rites of the church of England.

“XXXVI. And be it enacted, that it shall be lawful for the registrar⁽¹⁾ before whom any marriage is solemnized according to the provisions of this act to ask of the parties to be married the several particulars required to be registered touching such marriage.

“XXXVII. And be it enacted, that every person who shall enter a *caveat*⁽²⁾ with the superintendent registrar against the grant of any licence or issue of any certificate on grounds which the registrar-general shall declare to be frivolous, and that they ought not to obstruct the grant of the licence, shall be liable for the costs of the proceedings, and for damages to be recovered in a special action upon the case by the party against whose marriage such caveat shall have been entered.

“XXXVIII. And be it enacted, that every person who shall knowingly and wilfully make any false declaration or sign any false notice or certificate required by this act, for the purpose of procuring any marriage, and every person who shall forbid the issue of any superintendent registrar's certificate, by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall suffer the penalties of perjury.

“XXXIX. And be it enacted, that every person who after the said first day of March shall knowingly and wilfully solemnize any marriage in England, except by special licence, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the church of England, or than the registered building or office specified in the notice and certificate as aforesaid, shall be guilty of felony, (except, in the case of a marriage between two of the society of friends commonly called Quakers, according to the usages of the said society, or between two persons professing the Jewish religion, according to the usages of the Jews;) and every person who in any such registered building or office shall knowingly and wilfully solemnize any marriage in the absence of a registrar of the district in which such registered building or office is situated shall be guilty of felony; and every person who shall knowingly and wilfully solemnize any marriage in England after the said first day of March (except by licence) within twenty-one days after the entry of the notice to the superintendent registrar as aforesaid, or if the marriage is by licence within seven days after such entry, or after three calendar months after such entry, shall be guilty of felony.

“XL. And be it enacted, that every superintendent registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the notice shall have been entered by him as aforesaid, or any certificate for marriage by licence before the expiration of seven days after the entry of the notice, or any certificate for marriage without licence before the expi-

(1) Registrar:—Vide Stat. 6 & 7 Gul. 4, c. 86, s. 40. (2) Caveat:—Vide Stat. 7 Gul. 4 & 1 Vict. c. 22, s. 5.

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Name.	Con- dition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which Mar- riage is to be solemnized.	District and County in which the other Party resides when the Parties dwell in different Districts.
James Smith	Widower	Carpenter	Of full Age	16, High Street.	23 Days	Sion Chapel, West Street,	Tonbridge, Kent.
Martha Green	Spinster	- -	Minor	Grove Farm.	More than a Month.	Hendon, Middlessex.	

"Witness my hand this *sixth* day of *May*, 1837.

"(Signed) *James Smith.*

"[The *italics* in this schedule to be filled up as the case may be.]

"Schedule (B).

No. 14.

"Registrar's Certificate.

"I, *John Cox*, registrar of the district of *Stepney*, in the county of *Middlessex*, do hereby certify, that on the *sixth* day of *May* notice was duly entered in the marriage notice book of the said district, of the marriage intended between the parties therein named and described, delivered under the hand of *James Smith*, one of the parties; (that is to say,)

Name.	Con- dition.	Rank or Condition.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which Mar- riage is to be solemnized.	District and County in which the other Party dwells where the Parties dwell in different Districts.
James Smith	Widower	Carpenter	Of full Age	16, High Street.	23 Days	Sion Chapel, West Street,	Tonbridge, Kent.
Martha Green	Spinster	- -	Minor	Grove Farm.	More than a Month.	Stepney, Middlessex.	

"Date of notice entered,
6th May, 1837.

"Date of certificate given,
27th May, 1837.

} The issue of this certificate has not been forbidden by
any person authorized to forbid the issue thereof.

"Witness my hand this *twenty-seventh* day of *May*, *one thousand eight hun-
dred and thirty-seven*.

"(Signed) *John Cox*, registrar.

"This certificate will be void unless the marriage is solemnized on or before
the *sixth* day of *August*, 1837.

"[The *italics* in this schedule to be filled up as the case may be.]

"Schedule (C).

"Licence of Marriage.

registrar of _____ to C.D., of _____
 sendeth greeting.
 , as it is said, to enter into a contract of marriage
 ct made in the seventh year of the reign of his
 ourth, intituled [here insert the title of this act],
 ne may be speedily and publicly solemnized; and
 [L.F.] have made and subscribed a declaration under
 ere is no impediment of kindred or alliance, or other
 marriage, and that you, C.D. [or E.F.] have [or has]
 l place of abode for the space of fifteen days last past
], and that you, C.D. [or E.F.], not being a
 is] under the age of twenty-one years, and that the
 nt to your [or his or her] marriage is required by
 to [or that there is no person having authority to
 why grant unto you full licence, according to the
 to me by the said act, to proceed to solemnize such
 r of the district of [here insert the name of the
 ge is to be solemnized] to register such marriage
 at the said marriage be publicly solemnized in the
 and of two witnesses within three calendar months
 te of the entry in the notice book of the super-
 here describe the building in which the marriage is
 e hours of eight and twelve in the forenoon. Given
 day of _____ one thousand eight

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act passed in the fifty-second year of the reign of his late majesty King George the Third, intituled, 'An Act for the better regulating Pariah and other Registers of Births, Baptisms, Marriages, and Burials in England,' and also an act passed in the fourth year of the reign of his late majesty King George the Fourth, intituled, 'An Act for amending the Laws respecting the Solemnization of Marriages in England,' are insufficient for the purpose aforesaid; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the first day of March in the year one thousand eight hundred and thirty-seven so much of the said acts as relates to the registration of marriages shall be repealed.

"II. And be it enacted, that it shall be lawful for his majesty to provide a proper office in London or Westminster, to be called, 'The General Register Office,' for keeping a register of all births, deaths, and marriages of his majesty's subjects in England, and to appoint for the said office under the great seal of the United Kingdom a registrar-general of births, deaths, and marriages, in England, and from time to time at pleasure to remove the said registrar-general, and appoint some other person in his room.

"III. And be it enacted, that the lord treasurer or lords commissioners of his majesty's Treasury, or any three of them, or the registrar-general, subject to the approval of the said lords commissioners, shall appoint from time to time such officers, clerks, and servants as they shall deem necessary to carry on the business of the general registry office, and at pleasure remove them or any of them; and the said lord treasurer or lords commissioners shall fix the salary of the registrar-general, so that the same shall not at any time exceed the sum of one thousand pounds yearly, and shall fix the salaries of the officers, clerks, and servants in fit proportion according to the duties they may have to perform.

"IV. And be it enacted, that the salaries of the registrar-general, and of the said officers, clerks, and servants, and the amount of the sums hereinafter provided to be paid to the superintendent registrars for every entry in the certified copies of the registers, and all expenses of carrying on the business of the general registry office not herein otherwise provided for, shall be paid by the said lord treasurer or lords commissioners of his majesty's treasury out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

"V. And be it enacted, that one of his majesty's principal secretaries of state, or the registrar-general with the approbation of such principal secretary, from time to time may make regulations for the management of the said register office, and for the duties of the registrar-general, clerks, officers, and servants of the said office, and of the registrars, deputy registrars, and superintendent registrars hereinafter mentioned, in the execution of this act, so that they be not contrary to the provi-

receive it for the purpose, &c. whereof defendant had notice; and that defendant unlawfully, and in abuse of his office, without legal authority or excuse, and against the will of the executors, detained the body a long time in the gaol, to wit from, &c. until, &c., when defendant, unlawfully and indecently, &c. and against the will, &c. buried the body, without any rite of Christian burial, or any funeral ceremony or observance, in a place not being a consecrated burial ground, or a customary or fit place for burial, to wit, a yard of and within the precincts of the gaol. There were other counts, slightly varying the statement. The second count alleged a refusal to deliver up, &c. unless the executors would account with defendant concerning certain claims of money which he pretended to have against Foster's estate, and pay defendant what should appear due; and that defendant wrongfully detained, &c. under pretext of such claims

(the executors not accounting, &c.) until, &c. when he buried, &c. Plea, not guilty.

"The case was tried before Mr. Justice Maule, at the York summer assizes, 1842. The defendant's counsel contended that some necessary allegations were wanting in the indictment, but did not object that an indictment would not lie. The case for the prosecution having been gone through, it was suggested by the learned judge, and agreed, that the defendant should withdraw his plea, submit to a verdict of guilty, and enter into his own recognizance to appear for judgment when called upon."

But his lordship said, at the close of the case, "that the notion of a gaoler being authorized to detain a dead body on account of pecuniary claims, was a mistake, and that a gaoler doing so, was guilty of a misconduct in his public character, for which he was liable to prosecution."

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he regulations so made and approved shall be binding
clerks, officers, and servants, and on the registrars,
intendent registrars.

hat the registrar-general shall send once in every year
ies of state a general abstract of the number of births,
ed during the foregoing year, in such form as the said
hall require; and every such annual general abstract
t within one month after receipt thereof, or after the

that the guardians of every union declared under the
the fifth and sixth years of his present majesty, inti-
diment and better Administration of the Laws relating
Wales,' and also of every parish or place in which a
been established under the provisions of the last-
the first day of October in this year, if the said board
established before the passing of this act, or within
fter the establishment of the board, if the said board
d before the passing of this act, divide the union or
hey are the guardians into such and so many districts
al of the registrar-general, shall think fit; and every
all be published by the guardians within the union,
r are guardians, in such manner as the said registrar-
y such district shall be called by a distinct name, and
t; and the guardians *shall appoint a person*, with
istrar-general may by any general rule declare to be
births and deaths (1) within each district, and in every
of registrar shall forthwith fill up the vacancy; and
every such union, parish, or place shall, if he shall
, and have such qualifications as the registrar-general
lare to be necessary, be the superintendent registrar
his refusal or disqualification to act in that capacity,
a person, with such qualifications as the registrar-
ule declare to be necessary, to be the superintendent
such parish or place, and in every case of vacancy of
registrar shall forthwith fill up the vacancy; and
ident registrar shall hold his office during the pleasure

and be it enacted, that in every case in which the
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registers to be deposited therein, as hereinafter provided; and the care of the said office and the custody of the registers deposited therein shall be given to the superintendent registrar of the union or parish or place having a board of guardians as aforesaid.

"X. And be it enacted, that the poor law commissioners for England and Wales shall, as soon as may be after the said first day of October, form all the parishes, townships, and places in England in or for which a board of guardians shall not have been then established under the provisions of the said act for the amendment of the laws relating to the poor, into temporary districts, having regard in the formation thereof to the boundaries of parishes and townships, and shall appoint a registrar to each of such temporary districts, subject to being displaced as hereinafter provided; and the registrar-general shall appoint a sufficient number of fit persons to be superintendent registrars for such temporary districts, subject to being displaced as hereinafter provided, and shall appoint the districts which each shall superintend.

"XI. And be it enacted, that in every case in which a board of guardians shall be established, under the provisions of the said act for the amendment of the laws relating to the poor, in or for any parish, township, or place forming part of any temporary district in or for which a registrar or superintendent registrar shall have been previously appointed as last aforesaid, and as soon as a registrar or registrar shall have been appointed for the districts into which the guardians shall have divided the union or parish or place of which they are guardians as aforesaid, and the clerk of the guardians of such union, parish, or place shall have accepted the office of superintendent registrar, or the said guardians shall have appointed a superintendent registrar for such districts, in like manner as in the unions formed before the passing of this act, every such parish or place shall cease to be a part of the temporary district to which it was so annexed by the poor law commissioners, and every registrar, deputy registrar, and superintendent registrar, appointed before the election of such board of guardians as aforesaid in or for such parish, township, or place, shall cease to hold their respective offices, so far as relates to such parish, township, or place, unless re-appointed.

"XII. And be it enacted, that for every district for which a registrar of births and deaths shall be appointed by the guardians as aforesaid, the registrar shall have power, subject to the approval of such guardians, and for every district for which a registrar shall be appointed by the said poor law commissioners, such registrar shall have power, subject to the approval of such commissioners, to appoint by writing under his hand a fit person to act as his deputy in case of the illness or unavoidable absence of such registrar; and every such deputy registrar whilst so acting shall have all the powers and duties, and be subject to all the provisions and penalties herein declared concerning registrars, and in case of the death of the registrar shall act as registrar until another registrar is appointed; and every registrar shall be civilly responsible for the acts or omissions of his deputy.

"XIII. And be it enacted, that the appointments of registrars, deputy registrars, and superintendent registrars, and the duplicates and certified copies of registrars hereinafter mentioned, shall be exempt from all stamp duties.

"XIV. And be it enacted, that the registrar-general shall furnish to every superintendent registrar, for the use of the registrars under his superintendence, a sufficient number of strong iron boxes to hold the register books to be kept by such registrar; and every such box shall be furnished with a lock and two keys, and no more; and one of such keys shall be kept by the registrar, and the other key shall be kept by the superintendent registrar; and the register books of each district, while in the custody of the registrar and not in use, shall be always kept in the register box, and the register box shall always be left locked.

"XV. And be it enacted, that in every case in which any registrar or superintendent registrar shall be removed from or cease to hold the said office, all register boxes, keys, books, documents, and papers in his possession as such registrar or superintendent registrar, shall be given as soon as conveniently may be to his successor in office; and if any person shall refuse to give up any such box, key, books,

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according to the forms of schedules (A) (B) (C) to this act annexed; and the said register books shall be of durable materials, and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of births, deaths, and marriages respectively; and every page of each of such books shall be numbered progressively from the beginning to the end, beginning with number one; and every place of entry shall be also numbered progressively from the beginning to the end of the book, beginning with number one; and every entry shall be divided from the following entry by a printed line.

"XVIII. And be it enacted, that the registrar-general shall furnish to every superintendent registrar, for the use of the registrars under his superintendence, a sufficient number of register books of births and of register books of deaths, and of forms for certified copies thereof, as hereinafter provided, at a reasonable price, to be fixed from time to time by one of his majesty's principal secretaries of state, the cost whereof shall be borne by the union, parish, or place in or for which the superintendent registrar is appointed, and shall be paid by the guardians or by the churchwardens and overseers (as the case may be) out of the monies coming to their hands or control as such guardians or churchwardens and overseers, to the registrar, and shall be accounted for by him to the registrar-general; and every registrar shall be authorized and is hereby required to inform himself carefully of every birth and every death which shall happen within his district after the said first day of March, and to learn and register, as soon after the event as conveniently may be done, without fee or reward, save as hereinafter mentioned, in one of the said books, the particulars required to be registered according to the forms in the said schedules (A) and (B) respectively touching every such birth or every such death, as the case may be, which shall not have been already registered, every such entry being made in order from the beginning to the end of the book.

"XIX. And be it enacted, that the father or mother of any child born, or the occupier of every house or tenement in England in which any birth or death shall happen, after the said first day of March, may, within forty-two days next after the day of such birth or within five days after the day of such death respectively, give notice of such birth or death to the registrar of the district; and in case any new-born child or any dead body shall be found exposed, the overseers of the poor in the case of the new-born child, and the coroner in the case of the dead body, shall forthwith give notice and information thereof, and of the place where such child or dead body was found, to the registrar; and for the purposes of this act the master or keeper of every gaol, prison, or house of correction, or workhouse, hospital, or lunatic asylum, or public or charitable institution, shall be deemed the occupier thereof.

"XX. And be it enacted, that the *father or mother of every child* born in England after the said first day of March, or in case of the death, illness, absence, or inability of the father and mother, the occupier of the house or tenement in which such child shall have been born, *shall*, within forty-two days next after the day of every such birth, *give information*, upon being requested so to do, *to the said registrar*, according to the best of his or her knowledge and belief, *of the several particulars hereby required to be known and registered* (1) touching the birth of such child.

And that under Stat. 6 & 7 Gul. 4, c. 86, we have any authority to do so. The case, therefore, rests on the same footing as the case of a registration made before the act passed."

(1) *Father or mother of every child . . . shall . . . give information . . . to the said registrar . . . of the several particulars hereby required to be known and registered*:—Under Stat. 6 & 7 Gul. 4, c. 86, s. 20, the father of a child, if requested by the registrar within forty-two days after the birth, is bound to inform the registrar of the particulars required by the act to be

registered touching the birth, and if he refuse the information on such request, he is indictable for a misdemeanor.

In *Regina v. Price*, (11 A. & E. 727,) (which was an indictment against Benjamin Price for a misdemeanor in refusing to register the birth of his child, pursuant to Stat. 6 & 7 Gul. 4, c. 86,) it appeared, that Benjamin Price, the defendant, was a house-keeper residing in High street, Birmingham, in the year 1838; and, on 30th May in that year, his wife was delivered at his house of the child mentioned in the indictment. High street was situate within Saint

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ing the death of such person: provided always, that in case shall be held on any dead body the jury shall therein required to be registered concerning the death, the registrar of the finding of the jury, and the registrar accordingly.

ed, that if any of his majesty's English subjects shall
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a copy thereof under his hand in the marine register
with the other registers, according to the provision

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sacted, that every person by whom the information birth or death under this act shall have been given on, and place of abode in the register; and no person by this act shall be given in evidence which shall not be the informant, and to be such party as a informant to the registrar.

ted, that every registrar shall make out an account of the number of births and deaths which he shall have to account, and the superintendent registrar shall send the guardians or *overseers of the parish* (1). To which he shall be registrar, on production of the said account, shall pay to the said registrar, out of the monies which the guardians or overseers, such sums as he shall be required to account according to the following scale; (that is to say) one shilling for every birth and one shilling for every death in every year which he shall be required to account, and the said sums shall be paid to the registrar, and one shilling for every subsequent entry of burial in the case of an union the said several sums shall be

—The ap-
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-sions, under Stat. 43 Eliz. c. 2, s. 6 *Re*
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charged to the account of the parishes in which such births or deaths respectively shall have occurred.

“XXX. And be it enacted, that the registrar-general shall furnish or cause to be furnished to the rector, vicar, or curate of every church and chapel in England wherein marriages may lawfully be solemnized, and also to every person who is the recording clerk of the society of friends commonly called quakers, at the central office in London, shall from time to time certify in writing under his hand to the registrar-general to be a registering officer in England of the said society and also to every person whom the president for the time being of the London committee of deputies of the British Jews shall from time to time certify in writing under his hand to the registrar-general to be the secretary of a synagogue in England of persons professing the Jewish religion, a sufficient number in duplicate of marriage register books, and forms for certified copies thereof, as hereinbefore provided; and the cost of all such books and forms shall be paid by the churchwardens and overseers of the parish or chapel out of the monies in their hands as such churchwardens and overseers, or by the registering officer or secretary respectively to whom the same shall be furnished.

“XXXI. And be it enacted, that every clergyman of the church of England immediately after every office of matrimony solemnized by him, shall register in duplicate in two of the marriage register books the several particulars relating to that marriage according to the form of the said schedule (C); and every such registering officer of the quakers, as soon as conveniently may be after the solemnization of any marriage between two quakers in the district for which he is registering officer; and every such secretary of a synagogue, immediately after every marriage solemnized between any two persons professing the Jewish religion, whom the husband shall belong to the synagogue whereof he is secretary, shall register or cause to be registered in duplicate in two of the said marriage register books the several particulars relating to that marriage according to the form of the said schedule (C); and every such registering officer or secretary, whether he shall or shall not be present at such marriage, shall satisfy himself that the proceedings in relation thereto have been conformable to the usages of the said society, or the persons professing the Jewish religion, as the case may be; and every such entry as hereinbefore is mentioned (whether made by such clergyman or by such registering officer or secretary respectively as aforesaid) shall be signed by the clergyman or by the said registering officer or secretary, as the case may be, and by the parties married, and by two witnesses, and shall be made in order from the beginning to the end of each book, and the number of the place of entry in each duplicate marriage register book shall be the same.

“XXXII. And be it enacted, that in the months of April, July, October, and January, on such days as shall from time to time be appointed by the registrar-general, every registrar shall make, and deliver to the superintendent registrar of his district, on durable materials, a true copy, certified by him under his hand according to the form of schedule (D) to this act annexed, of all the entries of births and deaths in the register book kept by him since the last certificate, the first of such certificates to be given in the month of July in the year one thousand eight hundred and thirty-seven, and to contain all the entries made up to that time; and the superintendent registrar shall verify the same, and if found to be correct shall certify the same under his hand to be a true copy; and if there shall have been no birth or death registered since the delivery of the last certificate, the registrar shall certify the fact, and such certificate shall be delivered to the superintendent registrar as aforesaid, and countersigned by him; and the registrar shall keep safely each of the said register books until it shall be filled, and shall then deliver it to the superintendent registrar, to be kept by him with the records of his office.

“XXXIII. And be it enacted, that the rector, vicar, or curate of every such church and chapel, and every such registering officer and secretary, shall, in the months of April, July, October, and January respectively, make and deliver to the superintendent registrar of the district in which such church or chapel is

known and registered touching the death of such person: provided always, that in every case in which an inquest shall be held on any dead body the jury shall inquire of the particulars herein required to be registered concerning the death, and the coroner shall inform the registrar of the finding of the jury, and the registrar shall make the entry accordingly.

"XXVI. And be it enacted, that if any of his majesty's English subjects shall die at sea on board of a British vessel, the captain or commanding officer of the vessel on board of which such death shall have happened shall forthwith make a minute of the several particulars hereinbefore required to be inserted in the register touching such death, so far as the same may be known, and the name of the vessel wherein the death took place, and shall, on the arrival of such vessel in any port of the United Kingdom, or by any other sooner opportunity, send a certificate of the said minute through the post-office to the registrar-general, who shall file the same and enter a copy thereof under his hand in the marine register book, and keep the same with the other registers, according to the provisions of this act.

"XXVII. And be it enacted, that every registrar, immediately upon registering any death, or as soon thereafter as he shall be required so to do, shall, without fee or reward, deliver to the undertaker or other person having charge of the funeral a certificate under his hand, according to the form of schedule (E) to this act annexed, that such death has been duly registered, and such certificate shall be delivered by such undertaker or other person to the minister or officiating person who shall be required to bury or to perform any religious service for the burial of the dead body, and if any dead body shall be buried for which no such certificate shall have been so delivered, the person who shall bury or perform any funeral or any religious service for the burial shall forthwith give notice thereof to the registrar: provided always, that the coroner, upon holding any inquest, may order the body to be buried, if he shall think fit, before registry of the death, and shall in such case give a certificate of his order in writing under his hand, according to the form of schedule (F) to this act annexed, to such undertaker or other person having charge of the funeral, which shall be delivered as aforesaid; and every person who shall bury or perform any funeral or any religious service for the burial of any dead body for which no certificate shall have been duly made and delivered as aforesaid, either by the registrar or coroner, and who shall not within seven days give notice thereof to the registrar, shall forfeit and pay any sum not exceeding ten pounds for every such offence.

"XXVIII. And be it enacted, that every person by whom the information contained in any register of birth or death under this act shall have been given shall sign his name, description, and place of abode in the register; and no register of birth or death according to this act shall be given in evidence which shall not be signed by some person professing to be the informant, and to be such party as is herein required to give such information to the registrar.

"XXIX. And be it enacted, that every registrar shall make out an account four times in every year of the number of births and deaths which he shall have registered since the last quarterly account, and the superintendent registrar shall verify and sign the same; and the guardians or overseers of the parish (1), township, or place in or for which he shall be registrar, on production of the said account so verified and signed, shall pay to the said registrar, out of the monies in their hands or power as such guardians or overseers, such sums as he shall be entitled to receive on the said account according to the following scale; (that is to say,) for the first twenty entries of births and deaths in every year which he shall have registered, whether the same be of births or of deaths indiscriminately, two shillings and sixpence each, and one shilling for every subsequent entry of births or deaths in each year; and in the case of an union the said several sums shall be

(1) *Overseers of the parish*.—The appointment of a person who is registrar of births, deaths, and marriages, as overseer of the poor, is not void; and in order to render it so, the overseer must appeal to the sessions, under Stat. 43 Eliz. c. 2, s. 6. *Boyd v. Cheshire (Justices of)*, 4 Jurist. 484.

and Good Friday, and to have a certified copy of any entry in the said certified copies of the registers; and for every general search of the said indexes shall be paid the sum of twenty shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence, and no more, shall be paid to the registrar-general or such other officer as shall be appointed for that purpose on his account.

STAT. 6 & 7
GUL. 4, c. 86.

"XXXVIII. And be it enacted, that the registrar-general shall cause to be made a seal of the said register office, and the registrar-general shall cause to be sealed or stamped therewith all certified copies of entries given in the said office; and all certified copies of entries purporting to be sealed or stamped with the seal of the said register office shall be received as evidence (1) of the birth, death, or marriage to which the same relates, without any further or other proof of such entry, and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid.

Certified copies
given at general
registry office
to be sealed.

"XXXIX. And be it enacted, that every sum received under the provisions of this act by or on account of the registrar-general shall be accounted for and paid by the registrar-general, at such times as the lords commissioners of the treasury from time to time shall direct, into the bank of England, to the credit of his majesty's exchequer, according to the provisions of an act passed in the fourth and fifth years of his majesty, intituled, 'An Act to regulate the Office of the Receipt of His Majesty's Exchequer at Westminster.'

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4 & 5 Gul. 4,
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"XL. And be it enacted, that it shall be lawful for every clergyman of the church of England who shall solemnize any marriage in England, and for every registering officer of the quakers, and every secretary of a synagogue, after the said first day of March to ask the parties married the several particulars herein required to be registered touching such marriage.

Clergymen,
&c. may ask
parties married
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required.

"XLI. And be it enacted, that every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of birth, death, or marriage, any false statement (2) touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury.

Penalty for
wilfully
giving false
information.

"XLII. And be it enacted, that every person who shall refuse or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register, and every registrar who shall refuse or without reasonable cause omit to register any birth or death of which he shall have had due notice as aforesaid,

Penalty for not
duly register-
ing births,
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(1) *Certified copies of entries* shall be received as evidence:—In *Tomlins v. Tomlins*, (3 Jurist, 167,) where the registrar of a court of Equity refused to draw up an order upon a certificate of death by the district registrar, on the ground, that the registrar-general's certificate was the only legal evidence: it was held, that no clause in Stat. 6 & 7 Gul. 4, c. 86, makes the district registrar's certificate good evidence, but that an affidavit by a person present at the death was sufficient, without resorting to a certificate under such statute.

margin of the register a statement, that the entry of such birth had been made by him upon the fraudulent representation of certain parties named in the affidavits, on which the motion was founded:—but Lord Denman observed, "We shall certainly do what is asked, if we possess the power, but, at present, we doubt, whether we do possess it. The statute does not seem to have been framed to meet a case of this kind. The only provision relating to the correction of errors in the register, is contained in the 44th section, and that section merely speaks of errors committed in the form or substance of the entry, which are to be corrected in the presence of certain persons therein named, the parents of the child being expressly mentioned. We will consider the application, and state in a day or two our opinion."

(2) *False statement*:—Stat. 6 & 7 Gul. 4, c. 86, s. 41, which directs that a register of all births, &c., shall be kept, does not give the court of Queen's Bench any power to interfere by *mandamus* to correct a false entry on the registry; thus, *In re the Registrar of Births, &c., at Brixton*, (9 Dowl. P. C. 927,) an application was made for a *mandamus* to the superintendent registrar of births, &c., at Brixton, to command him to erase from the register an entry, recording the birth of a male child as having taken place in February last, and therein described as the lawful son of two married persons, or to command him to insert on the

Lord Denman afterwards stated, "The facts of this case are certainly such, as to make us desirous of interposing to prevent what appears to be an attempt, by some parties, to commit a gross fraud. But upon full consideration of the provisions of the statute, we think we have not the power to interfere in the way proposed. There will, consequently, be no rule."

situated, or which may be assigned by the registrar-general to such registering officer or secretary, on durable materials, a true copy certified by him under his hand of all the entries of marriages in the register book kept by him since the last certificate, the first of such certificates to be given in the month of July, one thousand eight hundred and thirty-seven, and to contain all the entries made up to that time, and if there shall have been no marriage entered therein since the last certificate, shall certify the fact under his hand, and shall keep the said marriage register books safely until the same shall be filled; and one copy of every such register book, when filled, shall be delivered to the superintendent registrar of the district in which such church or chapel may be situated, or which shall have been assigned as aforesaid to such registering officer or secretary, and the other copy of every such register book kept by any such rector, vicar, or curate shall remain in the keeping of such rector, vicar, or curate, and shall be kept by him with the registers of baptisms and burials of the parish or chapelry within which the marriages registered therein shall have been solemnised; and the other copy of every such register book of marriages among the people called quakers, and among persons professing the Jewish religion respectively, shall remain under the care of the said people or persons respectively, to be kept with their other registers and records, and shall, for the purposes of this act, be still deemed to be in the keeping of the registering officer or secretary for the time being respectively.

"XXXIV. And be it enacted, that every superintendent registrar shall, four times in every year, on such days as shall be therefore named by the registrar-general, send to the registrar-general all the certified copies of the registers of births, deaths, and marriages which he shall have so received during the three calendar months next preceding such quarterly days of transmission respectively: and if it shall appear, by interruption of the regular progression of numbers or otherwise, that the copy of any part of any book has not been duly delivered to him, he shall procure, as far as possible, consistently with the provisions of this act, that the same may be remedied and supplied; and every such superintendent registrar shall be entitled to receive the sum of two-pence for every entry in such certified copies; and every superintendent registrar shall make out an account four times in every year of the number of entries in the certified copies sent to him during the last quarter, and the certified copies so sent to the general registry office shall be thereafter kept in the said office in such order and manner as the registrar-general, under the direction of the secretary of state, shall think fit, so that the same may be most readily seen and examined.

"XXXV. And be it enacted, that every rector, vicar, or curate, and every registrar, registering officer, and secretary, who shall have the keeping for the time being of any register book of births, deaths, or marriages, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or entries in the same, on payment of the fee hereinafter mentioned; (that is to say,) for every search extending over a period not more than one year the sum of one shilling, and sixpence additional for every additional year, and the sum of two shillings and sixpence for every single certificate.

"XXXVI. And be it enacted, that every superintendent registrar shall cause indexes of the register books in his office to be made, and kept with the other records of his office; and that every person shall be entitled at all reasonable hours to search the said indexes, and to have a certified copy of any entry or entries in the said register books under the hand of the superintendent registrar, on payment of the fees hereinafter mentioned; (that is to say,) for every general search the sum of five shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence.

"XXXVII. And be it enacted, that the registrar-general shall cause indexes of all the said certified copies of the registers to be made and kept in the general registry office; and that every person shall be entitled, on payment of the fees hereinafter mentioned, to search the said indexes between the hours of ten in the morning and four in the afternoon of every day, except Sundays, Christmas Day,

and Good Friday, and to have a certified copy of any entry in the said certified copies of the registers; and for every general search of the said indexes shall be paid the sum of twenty shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence, and no more, shall be paid to the registrar-general or such other officer as shall be appointed for that purpose on his account.

"XXXVIII. And be it enacted, that the registrar-general shall cause to be made a seal of the said register office, and the registrar-general shall cause to be sealed or stamped therewith all certified copies of entries given in the said office; and all certified copies of entries purported to be sealed or stamped with the seal of the said register office shall be received as evidence⁽¹⁾ of the birth, death, or marriage to which the same relates, without any further or other proof of such entry, and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid.

"XXXIX. And be it enacted, that every sum received under the provisions of this act by or on account of the registrar-general shall be accounted for and paid by the registrar-general, at such times as the lords commissioners of the treasury from time to time shall direct, into the bank of England, to the credit of his majesty's exchequer, according to the provisions of an act passed in the fourth and fifth years of his majesty, intituled, 'An Act to regulate the Office of the Receipt of His Majesty's Exchequer at Westminster.'

"XL. And be it enacted, that it shall be lawful for every clergyman of the church of England who shall solemnize any marriage in England, and for every registering officer of the quakers, and every secretary of a synagogue, after the said first day of March to ask the parties married the several particulars herein required to be registered touching such marriage.

"XLI. And be it enacted, that every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of birth, death, or marriage, any false statement⁽²⁾ touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury.

"XLII. And be it enacted, that every person who shall refuse or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register, and every registrar who shall refuse or without reasonable cause omit to register any birth or death of which he shall have had due notice as aforesaid,

STAT. 6 & 7
GUL. 4, c. 86.

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margin of the register a statement, that the entry of such birth had been made by him upon the fraudulent representation of certain parties named in the affidavits, on which the motion was founded:—but Lord Denman observed, "We shall certainly do what is asked, if we possess the power, but, at present, we doubt, whether we do possess it. The statute does not seem to have been framed to meet a case of this kind. The only provision relating to the correction of errors in the register, is contained in the 44th section, and that section merely speaks of errors committed in the form or substance of the entry, which are to be corrected in the presence of certain persons therein named, the parents of the child being expressly mentioned. We will consider the application, and state in a day or two our opinion."

Lord Denman afterwards stated, "The facts of this case are certainly such, as to make us desirous of interposing to prevent what appears to be an attempt, by some parties, to commit a gross fraud. But upon full consideration of the provisions of the statute, we think we have not the power to interfere in the way proposed. There will, consequently, be no rule."

PUTA GULIELMI IV. A.D. 1830—1837.

ving the custody of any register book, or certified copy thereof, of, who shall carelessly lose or injure the same, or carelessly injured whilst in his keeping, shall forfeit a sum not exceed every such offence.

it enacted, that every person who shall wilfully destroy or destroyed or injured, any such register book, or any part or part thereof, or shall falsely make or counterfeit, or cause to counterfeited, any part of any such register book or certified wilfully insert or cause to be inserted in any register book or any false entry of any birth, death, or marriage, or shall wilfully certify any writing to be a copy or extract, knowing the same register to be false in any part thereof, counterfeit the seal of the register office, shall be guilty of felony. and always, and be it enacted, that no person charged with the any birth, death, or marriage, who shall discover any error in the form or substance of any such entry, shall be there the penalties aforesaid if within one calendar month next after error, in the presence of the parents of the child whose birth registered, or of the parties married, or of two persons attending his or her last illness whose death may have been so registered, with or absence of the respective parties aforesaid, then in the presence of the registrar and of two other credible witnesses who test the same, he shall correct the erroneous entry according to the entry in the margin, without any alteration of the original sign the marginal entry, and add thereunto the day of the month when such correction shall be made; provided also, that in the register he shall make the like marginal entry, attested in like manner in the marriage register book to be made by him as aforesaid, and make the like alteration in the certified copy of the register by him as aforesaid, or in case such certified copy shall be made, copy of t

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STATUTA GULIELMI IV. A.D. 1830—1837.

victed may appeal to the next court of general or quarter sessions which shall be holden not sooner than twelve days after the day of such conviction for the county or other district wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizances being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs, to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

STAT. 4
GUL. 4

"XLVII. And be it enacted, that no such conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by certiorari or otherwise into any of his majesty's superior courts of Record, and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same.

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"XLVIII. And be it enacted, that the registrar-general may receive and send by the general post from and to places in England all letters and packets relating exclusively to the execution of this act free from the duty of postage, provided that such letters and packets as shall be sent to the registrar-general be directed to the 'Registrar-General of Births, Deaths, and Marriages,' at his office, and that all such letters and packets as shall be sent by the registrar-general shall be in covers, with the words 'Registrar-General of Births, Deaths, and Marriages,' printed on the same, and be sealed with the seal of the said register office, and be signed on the outside thereof under such words with the name of such person as the said registrar-general, with the consent of the lords commissioners of the treasury, or any three or more of them, shall appoint, in his own handwriting, (such name to be from time to time sent to the secretary of the general post-office, in London,) and under such other regulations as the said lords commissioners, or any three or more of them, shall think fit; and if the person so to be appointed shall subscribe or seal any letter or packet whatever, except such only concerning which he shall receive the special direction of his superior officer, or which he shall himself know to relate exclusively to the execution of this act, or if the person so to be appointed, or any other person, shall send or cause to be sent under any such cover any letter, paper, or writing, or any inclosure, other than shall relate exclusively to the execution of this act, every person so offending shall forfeit and pay the sum of one hundred pounds, and be dismissed from his office; one moiety of such penalty to be paid to the use of his majesty, his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same; to be sued for and recovered in any of his majesty's courts of Record at Westminster.

Correspondence of registrar-general relating act to 1 of post

"XLIX. Provided always, and be it enacted, that nothing herein contained shall affect the registration of baptisms or burials as now by law established, or the right of any officiating minister to receive the fees now usually paid for the performance or registration of any baptism, burial, or marriage.

Registrar baptisms burials kept as before.

"L. And be it further enacted, that the said registrar-general shall, within three calendar months after his appointment to such office, furnish to the respective guardians of every union, parish, or place, printed notices, which the said guardians shall, as soon as conveniently may be after the receipt thereof, cause to be fixed or placed on the outside of the several church and chapel doors, or other public and conspicuous buildings or places, within their respective unions, parishes, or places, and which said notices shall specify the several acts required to be done

Registrar general furnish to guardians unions, specify require done by register

STATUTA GULIELMI IV. A.D. 1830—1837.

"Schedule (D).

STAT.
GUL. 4

"I, *John Cox*, registrar of births and deaths in the *district of Marylebone, North*, in the county of *Middlesex*, do hereby certify, that this is a true copy of the registrar's book of births [or deaths] within the said *district*, from the entry of the birth [or death] of *James Green*, No. 1, to the entry of the birth [or death] of *William Strange*, No. 34. Witness my hand this *seventh* day of *March*, 1838.

"*John Cox*, registrar.

"Schedule (E).

"I, *John Cox*, registrar of births and deaths in the *district of Marylebone, North*, in the county of *Middlesex*, do hereby certify, that the death of *Henry Hastings* was duly registered by me on the *seventh* day of *March*, 1836. Witness my hand this *eighth* day of *March*, 1836.

"*John Cox*, registrar.

"Schedule (F).

"I, *James Smith*, coroner for the county of *Dorset*, do hereby order the burial of the body now shown to the inquest jury as the body of *John Jones*. Witness my hand this *eighth* day of *March*, 1836.

"*James Smith*, coroner.

"Schedule (G).

"I, *Gilbert Elliott*, vicar of *Barming*, in the county of *Kent*, do hereby certify, that I have this day baptized by the name of *Thomas* a male child, produced to me by *William Green*, as the son of *William Green* and *Rebecca Green*, and declared by the said *William Green* to have been born at *Marylebone*, in the county of *Middlesex*, on the *seventh* day of *January*, 1836. Witness my hand this *first* day of *December*, 1838.

"*Gilbert Elliott*, vicar.

"[The words and figures in *italics* in the above schedules to be filled in as the case may be.]"

CXLII. STAT. 6 & 7 GULIELMI 4, c. 87 (1). A.D. 1836.

STAT.
GUL.

"An Act for extinguishing the Secular Jurisdiction of the Archbishop of York and the Bishop of Ely in certain Liberties in the Counties of York, Nottingham, and Cambridge."

"Whereas it is expedient to put an end to the secular jurisdiction of the Archbishop of York in the liberty of Ripon in the west and north ridings of the county of York, and in the liberty of Cawood, Wistow, and Otley in the said west riding, and in the soke of Southwell in the county of Nottingham, and to the secular jurisdiction of the Bishop of Ely in the isle of Ely in the county of Cambridge; be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all the secular authority of the Archbishop of York in the said liberty of Ripon, in the said liberty of Cawood, Wistow, and Otley, and in the said soke of Southwell, shall, from and after the passing of this act, cease and determine, and shall become and be transferred to and vested in his majesty, his heirs and successors.

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"II. And be it further enacted, that the several towns, parishes, and places within the said liberty of Ripon, and the said liberty of Cawood, Wistow, and Otley respectively, shall severally be deemed and taken to be distinct liberties, in the same way as they have heretofore been, and shall enjoy all the same rights, privileges, and exemptions which they have heretofore enjoyed, save only that all

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UTA GULIELMI IV. A.D. 1830-1837.

authorities heretofore exercised by the Archbishop of York, or either of them, shall henceforth be exercised by his successors; and all persons now holding any office in the of them shall continue to hold the same in the same way been passed.

Further enacted, that no new commission of the peace shall be the said soke of Southwell, but the justices of the peace for Nottingham shall within the said soke of Southwell exercise the in and out of sessions, as within every other part of such or custom to the contrary notwithstanding.

Further enacted, that all the secular authority of the Bishop of in the county of Cambridge, and all authority of the chief are appointed by the Bishop of Ely, shall, from and after the assize and determine; and all the secular authority of the said and be vested in his majesty, his heirs and successors; nothing herein contained shall prevent any justice of the peace and liberties, soke, and isle respectively from continuing to act aits of their respective jurisdictions as if this act had not been

Further enacted, that the county rates for the said liberty of id isle of Ely shall remain, as heretofore, distinct from the is counties of York and Cambridge respectively, and shall be id paid and applied by and under the order and direction of ace for the said liberty and isle respectively as if the same s, but in all other respects under the same regulations as are s of other counties in England.

Further enacted, that the custos rotularum of the said west riding of me the keeper of the records of the court of sessions of the ty of Ripon, and of the said liberty of Cawood, Wistow, and istos rotularum of the said county of Nottingham shall become rds of the court of sessions of the peace of the said soke of he records of the said several courts shall be delivered to the s accordingly.

Further enacted, that it shall be lawful for his majesty, his heirs and from time to time such person as he and they shall think fit n of the said isle of Ely.

Further enacted, that the assizes and sessions under the commissions other commissions for the despatch of civil and criminal busi y of Cambridge, including the said isle of Ely, shall be held at such place or places as shall be directed by his majesty in visions of an act passed in the third and fourth years of his gn, intituled, 'An Act for the Appointment of convenient ; of Assizes in England and Wales.'

Further enacted, that separate commissions of the peace shall for the said two liberties and isle respectively as heretofore. he peace for the said liberties and isle respectively shall be the justices of the peace for the time being acting in and for isle respectively in like manner as the same have hitherto

Further enacted, that the present clerks of the peace for the said l for the said liberty of Cawood, Wistow, and Otley, and e spectively, shall continue clerks of the peace for the said libe ely during their lives, or until resignation or other determi s, and that thenceforth the clerks of the peace for the said for the said liberty of Cawood, Wistow, and Otley, shall be ea rotularum of the said west riding for the time being, and for the said isle of Ely shall be appointed by the custos r time being, and

in all respects as the clerks of the peace in other counties of England; and that the present coroner of the liberty of Ripon shall continue coroner during his life, or so long as he shall well behave himself; and upon the death, removal, or resignation of such coroner, and upon every future vacancy of the office, a coroner shall be chosen by the freeholders of the said liberty of Ripon in like manner as coroners are chosen in the case of other counties or divisions of counties in England.

STAT. 6
GUL. 4,
Coroner
Ripon.

"XI. And be it enacted, that all persons residing within the said liberty of Ripon, who by the laws now in force would be qualified and liable to serve on grand juries in courts of sessions of the peace, and on petty juries for the trial of issues in courts of sessions of the peace, holden for the county of York, if the said liberty were destroyed and the district comprised therein made for all purposes part of the said county, shall be qualified and liable to serve on such juries in courts of sessions of the peace holden within the said liberty; and all persons who by the laws now in force would be exempted from serving on such juries, if the said district were for all purposes made part of the said county, shall in like manner be exempted from serving on such juries within the said liberty.

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"XII. And be it further enacted, that the present chief bailiff for the said isle of Ely shall continue chief bailiff of the said isle until resignation or other determination of his office, and that thenceforth it shall be lawful for his majesty, his heirs and successors, to appoint from time to time such person as he or they shall think fit to be chief bailiff of the said isle.

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"XIII. And be it further enacted, that no person shall from and after the passing of this act be committed to the gaol at Ely, but all persons who, if this act had not passed, might have been committed to or confined in such gaol, may be committed to and confined in the gaol at Cambridge, and the justices of the said isle of Ely shall have full power to commit to the said gaol at Cambridge; and all persons who at the time of the passing of this act shall be confined in the said gaol at Ely shall, as soon as may be after the passing of this act, be delivered up by the keeper of the said gaol at Ely to the keeper of the said gaol at Cambridge, together with the warrant or instrument under or by virtue whereof every such person shall be then detained in custody, and the keeper of the said gaol at Cambridge shall receive and detain such persons in custody in the same way as if such persons had originally been committed to his custody.

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gaol.

"XIV. And be it enacted, that the houses of correction at Ely and Wisbech in the said isle shall remain, and the present keepers thereof shall be continued in office during the pleasure of the justices of the peace for the said isle in quarter sessions assembled; and the keepers thereof shall be appointed by the said justices so assembled as in other counties of England.

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"XV. And be it enacted, that all the regulations respecting juries and jurors for counties in England shall after the passing of this act be applied to the isle of Ely as well as to the rest of the county of Cambridge, and the sheriff of the counties of Cambridge and Huntingdon shall have the same power of summoning jurors in the said isle of Ely which he has in the rest of the said county of Cambridge, and all persons residing in the said isle shall be liable to serve on juries for the said county in the same manner as persons residing in other parts of the same county.

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"XVI. And be it enacted, that the present coroners of the said isle of Ely shall continue coroners respectively during their respective lives, or so long as they shall respectively well behave themselves; and that upon the death, removal, or resignation of either of them, and upon every future vacancy of the office, a coroner shall be chosen by the freeholders of the said isle in like manner as coroners are chosen in the case of other counties or divisions of counties of England; and the said coroners for the time being shall be entitled to demand and take the same fees, recompense, and benefit as are given to or provided for the coroners by an act made and passed in the twenty-fifth year of the reign of his late majesty King George the Second, intituled, 'An Act for giving a proper Reward to Coroners for the due Execution of their Office, and for the Removal of Coroners on lawful Conviction of certain Misdemeanors,' and shall as such coroners be subject to all the provisions of the said act.

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STAT. 6 & 7
GUL. 4, c. 87.
Compensation
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provisions of
the act.

Restrictions as
to compensa-
tions.

Reservation of
patent fees to
patentees for
life.

Reservation of
all profits to
the sees.

The Bishop of
Ely to take
and hold sub-
ject to future
provisions.

Chief justice
of Ely to act
under commis-
sion of assize,
&c. already
issued.

"XVII. And whereas it is expedient that due provision shall be made for the compensation of any persons holding offices which have been usually held for life, for the loss they may sustain by the abolition of their offices by virtue or in consequence of this act; be it therefore enacted, that from and after the commencement of this act there shall be issued, paid, and payable out of and charged upon the consolidated fund of the United Kingdom of Great Britain and Ireland to the said officers respectively, free and clear of all taxes and deductions whatever, such sum of money at such times, by way of annuity or otherwise, as shall be adjudged and determined to be due to them by the commissioners of his majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, who shall have full power to inquire into and ascertain the amount of such compensation, having regard to the nature and value of the office, the mode of appointment thereto, the tenure thereof, and all the circumstances of the case.

"XVIII. Provided always, and be it enacted, that no such officer shall be entitled to receive any such compensation unless he shall previously make a full and true statement to the said commissioners of his majesty's treasury, to be verified on oath before a judge or master or master extraordinary in Chancery, if they shall think fit so to direct, of the amount of his salary and fees, and of the disbursements and outgoings of the same, for the space of ten years before the passing of this act; and that such compensation shall cease altogether or be reduced in amount, as the case may be, whenever he shall be placed in any other public office of which the salary and emoluments shall be equal to the whole or to part of such compensation; nor in the last-mentioned case shall he be entitled to receive more of such compensation than shall be equal to the difference between the full amount thereof and the amount of the salary and emoluments of the office in which he may be hereafter placed.

"XIX. And be it further enacted, that nothing in this act contained shall affect the right of any person holding a patent for his life of any office, whether abolished by this act or not, to receive during his life any fee or stipend granted by such patent out of the revenues of the said respective sees.

"XX. And be it further enacted, that nothing hereinbefore contained shall have the effect of severing or separating from the said archbishopric or bishopric any lordships, manors, houses, lands, tenements, tithes, rents, collieries, mines, minerals, rectories, advowsons, profits or emoluments of any kind or description whatsoever, whether held in right of the said sees, other than and except only any profits and emoluments hereinbefore expressly mentioned and directed to be severed therefrom.

"XXI. And be it enacted, that from and after the passing of this act the Bishop of Ely for the time being shall take and hold the said bishopric, and all the property, patronage, and rights belonging thereto, except as hereinbefore provided, subject to and under any provisions which shall be made by or under the authority of parliament with respect to the said bishopric within the space of three years next after the passing of this act; any law, statute, or canon to the contrary notwithstanding.

"XXII. Provided always, and be it further enacted, that, notwithstanding anything hereinbefore contained, the present chief justice of the said isle of Ely shall have full power, under any commission of assize, or of oyer and terminer or gaol delivery, which has already issued, to exercise all such jurisdiction as he has heretofore exercised in the said isle."

STAT. 6 & 7
GUL. 4, c. 92.

CXLIII. STAT. 6 & 7 GULIELMI 4, c. 92. A.D. 1836.

"An Act to render valid certain Marriages solemnized in the Church of St. Clement, Oxford."

"Whereas the ancient parish church of Saint Clement in the city and docks of Oxford, being not only very much decayed, but insufficient in size and accommodation for a due proportion of the inhabitants of the said parish to attend divine service, the same was some time since taken down, and a new church was erected

on a different site within the said parish, and the same was duly consecrated by the then Lord Bishop of Oxford, and has since been used as the parish church of the said parish of Saint Clement, and public worship has been regularly performed, and many marriages solemnized therein, according to the rites and ceremonies of the church of England: and whereas it is considered that the said new church is not legally the parish church of the said parish of Saint Clement; and it is expedient to remove all doubts which may thereby arise touching the validity of marriages already solemnized therein: may it therefore please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all marriages which have been solemnized within the said new church according to the rites and ceremonies of the church of England since the consecration thereof, shall be good and valid in the law to all intents and purposes whatsoever, as if such marriages had been solemnized in the old church of the said parish of Saint Clement.

STAT. 6
GUL. 4,

All marriages solemnized in the church of St. Clement, Oxford, declared valid.

"II. And be it further enacted by the authority aforesaid, that all parsons, vicars, ministers, and curates who have solemnized any such marriages, shall not be liable to any ecclesiastical censures, or to any other proceedings or penalties whatsoever, by reason of his or their having so as aforesaid solemnized the same marriages respectively.

Ministers to be liable to penalties.

"III. And be it further enacted, that the registers of such marriages so solemnized in the said new church shall be received in all courts of law and equity as evidence of such marriages respectively, in the same manner as they would have been receivable in evidence in case the said marriages respectively had been solemnized in the said old church of the parish of Saint Clement aforesaid."

Registers to be evidence.

CXLIV. STAT. 6 & 7 GULIELMI 4, c. 95 (1). [IRELAND.] A.D. 1836. STAT. 6

"An Act to suspend, until the sixth day of April, One thousand eight hundred and thirty-seven, Proceedings for recovering Payment of the Money advanced under the Acts for establishing Tithe Compositions in Ireland."

GUL. 4,
[IR.]

CXLV. STAT. 6 & 7 GULIELMI 4, c. 96 (2). A.D. 1836. STAT. 6

"An Act to regulate Parochial Assessments."

GUL. 4,

CXLVI. STAT. 6 & 7 GULIELMI 4, c. 99. [IRELAND.] A.D. 1836. STAT. 6

"An Act to amend two Acts passed respectively in the third and fourth, and in the fourth and fifth years of His present Majesty, for altering and amending the Laws relating to the Temporalities of the Church of Ireland."

GUL. 4,
[IR.]

"Whereas an act was passed in the third and fourth years of the reign of his present majesty, intituled, 'An Act to alter and amend the Laws relating to the Temporalities of the Church in Ireland,' which act was amended by another act passed in the fourth and fifth years of the reign of his said majesty: and whereas it is expedient to extend, explain, and amend, in certain respects, the provisions of the said acts: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful for any inferior tenant or lessee, holding any lands, tenements, or hereditaments by virtue of any lease or contract containing a *toties quoties* covenant for renewal, and whose next immediate landlord has or shall have acquired a perpetual estate or interest in such lands, tenements, or hereditaments under the provisions of the said recited acts or of this act, to apply to such next immediate

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c. 37.

4 & 5 G
c. 90.
Inferior tenants to apply to immediate landlord having acquired a perpetual estate, like common law.

(1) Vide Stat. 1 & 2 Vict. c. 109.

(2) In *Regina v. Capel (Clerk)*, (12 A. & E. 382.) it was held that, where under Stat. 6 & 7 Gul. 4, c. 96, s. 1, the vicar of a parish was receiving composition for small tithes, he

was to be rated on such receipt, in the same way as the occupier of land; that is, on the sum for which the same would let, free from tenants' rates and taxes, and ecclesiastical dues.

STATUTA GULIELMI IV. A.D. 1830—1837.

landlord for a conveyance of a perpetual estate and interest in such lands, tenements, or hereditaments, which conveyance such next immediate landlord is hereby required to make and execute to such inferior tenant, his heirs and assigns; provided that such tenant shall previously have paid or tendered to such landlord or his known agent such sum or sums of money as shall be payable by such tenant as or for contribution to the purchase money paid or secured by such landlord for the purchase of a perpetual estate or interest in such lands, tenements, or hereditaments, pursuant to the said recited acts and this act, together with all rent, and fines and fees for renewal, and all arrears thereof, then due and payable by such tenant by virtue of such lease or contract.

"II. And be it enacted, that the yearly rent to be reserved on every such last-mentioned conveyance shall be ascertained in manner following; that is to say, when the fine and fees payable by such inferior tenant upon each renewal of his interest in such lands, tenements, or hereditaments shall be a fixed and ascertained sum, then, in the case of leases or interests renewable every year, the amount of such fine and fees, or, in the case of leases renewable at longer intervals than every year, the annual average amount of such fine and fees computed as by the said first-recited act directed for the purposes of that act, shall be added to the yearly rent reserved and made payable by the lease or contract under which such lands, tenements, or hereditaments are held by such inferior tenant; and when the fine and fees payable by such inferior tenant upon every such renewal as aforesaid shall be a fixed proportion of or dependent upon the renewal fine payable by the immediate superior tenant of said lands, tenements, or hereditaments, then there shall be added to the yearly rent reserved upon such lease or contract a sum of money bearing a like proportion to the average annual amount of the renewal fine so payable by such immediate superior tenant, as the same shall have been ascertained by the ecclesiastical commissioners for Ireland pursuant to the said recited acts; and such yearly rent reserved upon such lease or contract, together with such sum of money so to be added thereto as aforesaid, shall be the future rent to be reserved on the conveyance of a perpetual estate or interest in such lands, tenements, or hereditaments to such inferior tenant.

"III. And be it enacted, that in case of any dispute or difference between such inferior tenant and his next immediate landlord, or in case such landlord shall not execute to such tenant a conveyance of the fee-simple and inheritance of and in such lands, tenements, and hereditaments within one calendar month after the same shall have been duly tendered to him or to his known agent, or in case such next immediate landlord shall be an infant or lunatic, or shall not be resident in the United Kingdom of Great Britain and Ireland, then and in every such case it shall and may be lawful for such inferior tenant to apply to the court of Chancery or court of Exchequer in Ireland by petition setting forth the facts and circumstances of the case; and it shall and may be lawful for such court to hear such petition in a summary manner, and to make such order thereon as such court shall think fit, and to appoint a person to execute such conveyance to such tenant in the name of such landlord, in case such landlord shall reside out of the jurisdiction of such court or shall labour under any legal disability, or in case such court for any other reason shall think it expedient to appoint such person; and every such conveyance so executed shall be valid and effectual to all intents and purposes.

"IV. And be it enacted, that it shall and may be lawful for every such next immediate landlord, and he is hereby authorized and required, although he shall be tenant for life or for any other limited interest of such lands, tenements, or hereditaments, or although he shall labour under any legal incapacity or disability, (except infancy or lunacy,) to execute such conveyance to his next inferior tenant, subject to the provisions hereinbefore contained, and every such conveyance shall be valid and effectual to all intents and purposes.

"V. And be it enacted, that in case any portion of the yearly rent reserved on such conveyance of any lands, tenements, or hereditaments shall be a proportion or dependent upon the average annual amount, as ascertained by the said recited acts

STATUTA GULIELMI IV. A.D. 1830—1837.

tial commissioners, of the renewal fine payable by the first and immediate tenant of such lands, tenements, or hereditaments, then and in every such case such yearly rent shall be subject to variation in like manner and at such times as the rents reserved upon the immediate conveyance of any lands, tenements, or hereditaments by the said ecclesiastical commissioners, or by the archbishop, bishop, or other sole ecclesiastical corporation under whom the said lands, tenements, or hereditaments are held; and all the provisions in the said recited acts contained relative to the variation of such last-mentioned rents shall be applicable to rents reserved on conveyances to be made under the provisions of this act, so far as the nature and circumstances of each case will admit.

"VI. And whereas certain portions of the lands belonging to the sees of Armagh and Clogher have been or may be conveyed to the Ulster Canal Company under or by virtue of an act of parliament made and passed in the eighth year of the reign of his late majesty George the Fourth, intituled, 'An Act for making and maintaining a navigable Canal from Lough Erne, in the County of Fermanagh to the River Blackwater near the Village of Charlemont in the County of Armagh;' and of a certain other act of parliament made and passed in the ninth year of the reign of his late majesty George the Fourth, intituled, 'An Act to amend an Act for making and maintaining a navigable Canal from Lough Erne in the County of Fermanagh to the River Blackwater near the Village of Charlemont in the County of Armagh;' and of a certain other act of parliament made and passed in the tenth year of the reign of his late majesty George the Fourth, intituled, 'An Act to explain the Acts for making the Ulster Canal in the Counties of Fermanagh and Armagh;' and of a certain other act of parliament made and passed in the first and second years of the reign of his present majesty King William the Fourth, intituled, 'An Act to amend the several Acts for making and maintaining the Ulster Canal in the Counties of Fermanagh and Armagh;' and of a certain other act of parliament made and passed in the present session of parliament, intituled, 'An Act to amend and enlarge the Powers and Provisions of the several Acts for making and maintaining the Ulster Canal in the Counties of Fermanagh, Monaghan, and Armagh, in Ireland;' for which compensation has been already awarded or is provided by said acts to be awarded to the said sees of Armagh and Clogher; be it enacted that the ecclesiastical commissioners, or the arbitrators, as the case may be, are hereby authorized and required to make such abatement in the reserved rents hereafter to be charged in the perpetuity sought to be acquired, or in the rent and renewal fine of any lease sought to be renewed, as to them may appear reasonable and just in proportion to the value of the lands so conveyed or which may hereafter be so conveyed to said Ulster Canal Company as aforesaid.

"VII. And be it enacted, that every such next immediate landlord shall and may have all such and the like remedies for the recovery of the rent reserved upon any such conveyance to his inferior tenant or tenants as any landlord or lessor now has, or may, can, or shall have by virtue of any law now or hereafter to be in force in Ireland for the recovery of rent payable under a demise by which a reversion is reserved to or remains in such landlord or lessor; and every person who shall have acquired the fee-simple or inheritance in any lands, tenements, or hereditaments pursuant to the provisions of this act, shall and may have all such and the like remedies against his under-tenants as in and by the said recited acts are provided in cases of persons who shall have acquired the fee-simple and inheritance of any lands, tenements, or hereditaments under the provisions of the said recited acts.

"VIII. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to alter or affect the provisions of the said recited acts with respect to the renewals to be made to inferior tenants holding under leases or contracts containing *coties quoties* covenants for renewal in the case of any such inferior tenant who shall not apply to his next immediate landlord, pursuant to the provisions of this act, for a conveyance of the fee-simple and inheritance of and in the lands, tenements, or hereditaments held by him under such next immediate landlord.

"IX. And be it enacted, that it shall and may be lawful for the said ecclesias-

STAT. 4
GUL. 4
[1a.]
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6 Geo.
c. cxviii

9 Geo.
c. xlvii

10 Geo.
c. cix.

1 & 2 (1)
c. lvi.

6 Gul.
c. lxxii.

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"XII. And be it enacted, that so much of the said first-recited act as provides that any archbishop, bishop, or person, other than the said ecclesiastical commissioners, shall cause any such deed or deeds to be enrolled, shall be and the same is hereby repealed; and that the said ecclesiastical commissioners shall defray the costs and expenses of making such transcript for enrolment, and for enrolling the same in manner aforesaid, out of the purchase money paid for the purchase of the fee-simple and inheritance of and in the lands, tenements, or premises comprised in such transcript.

"XIII. And be it enacted, that if any tenant or under tenant shall be the purchaser of any lands, tenements, or hereditaments held under or by virtue of two or more leases, it shall be lawful for the said ecclesiastical commissioners, if in their discretion they shall so think proper, to accept of a mortgage on the lands comprised in any one or more of such leases for the purchase money of the whole, provided that the yearly value of the portion or portions of such lands so proposed to be mortgaged, clear of all rents, charges, and outgoings whatsoever, shall be at least three times the amount of the yearly interest payable in respect of such mortgage.

"XIV. And be it enacted, that the said ecclesiastical commissioners shall, with all convenient speed, cause proper forms of the conveyances, mortgages, leases, and other documents required for the purposes of the said acts and this act to be prepared, and such forms shall be authenticated by the corporate seal of the said commissioners, and deposited in their office, there to be kept and preserved, and such forms may be used for the purposes aforesaid, subject to such exception or variation as from time to time or in any particular case the said ecclesiastical commissioners may find necessary or convenient; and such forms so authenticated, or such amended forms in like manner authenticated, as the said commissioners shall from time to time cause to be prepared, shall be alike good and effectual as if the same were inserted in this act; and copies of all such forms shall be printed under the directions of the said commissioners, and given to any person demanding the same on payment of the reasonable expense of providing the same.

"XV. And be it enacted, that the said ecclesiastical commissioners shall cause all such monies as may hereafter accrue to their credit in the perpetuity purchase fund account mentioned in the said last-recited act to be invested from time to time in such public securities as the said ecclesiastical commissioners shall think fit; and the said ecclesiastical commissioners shall have power to sell and dispose of the same as occasion shall arise, and apply the proceeds thereof, and the dividends and interest arising therefrom, to the purposes authorized and directed by the said last-recited act.

"XVI. And be it enacted, that it shall and may be lawful for the said ecclesiastical commissioners, in any demise or lease to be made by them, pursuant to the said first-recited act, of the see-house, offices, and messuages or demesne lands of or belonging to any archbishopric or bishopric, to cause to be inserted, instead of such clause or covenant against assigning or subletting, as by the said act is required, a clause or covenant making void such demise or lease in case the premises thereby demised, or any part thereof, shall be sublet or assigned without the previous consent of the said ecclesiastical commissioners testified in writing under their common seal; which consent the said ecclesiastical commissioners are hereby authorized and empowered, if they shall so think fit, to give, upon such terms and subject to such restrictions or conditions as they shall deem expedient: provided always, that such consent shall not be construed to authorize or empower any person deriving under the person to whom the said ecclesiastical commissioners shall have given such consent as aforesaid to assign or sublet the premises so demised or leased by the said commissioners, or any part thereof.

"XVII. And be it enacted, that it shall and may be lawful for the lessee named in any lease or demise heretofore made by the said ecclesiastical commissioners of any such see-house, offices, messuages or demesne lands, or for the heirs, executors, administrators, or assigns, of such lessee, by and with the consent, testified in writing under their common seal, of the said commissioners, and

STAT. 6 & 7
GUL. 4, c. 99.
[12.]

Provision as to archbishops, &c. causing enrolments to be made, repealed. Payment of expenses of transcript and enrolment.

If tenants purchase lands held by two or more leases, a mortgage may be accepted of the lands held by any one of them.

Forms of conveyances, mortgages, &c. to be prepared by the commissioners.

Ecclesiastical commissioners shall invest the monies arising in the perpetuity fund account.

In leases of see houses, &c. covenants not to sublet, except with consent of commissioners, may be inserted, instead of absolute covenants against subletting.

Lessees of see houses, &c. under leases already made, may sublet with consent of commissioners.

6 & 7
4, c. 99.

subject to such terms, conditions, and restrictions, as shall be expressed therein, to assign or sublet such see-house, offices, and lands, or such part or parts thereof as shall be specified in such consent; and that no such lease or demise shall be or become void or voidable by reason of such assigning or subletting with such consent as aforesaid, anything in such demise or in the said recited act contained to the contrary hereof notwithstanding.

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“XVIII. And be it enacted, that whenever, under the provisions of the said acts or this act, the appointment, presentation, or collation, to any dignity, office, rectory, or benefice, has been or shall be suspended, the said ecclesiastical commissioners shall, for and during such period as such dignity, office, rectory, or benefice, shall remain vacant, have, and at their discretion exercise, by and in their own name and right, all such powers of leasing and demise any lands or premises whatsoever belonging or appertaining or appropriated to or usually enjoyed with such dignity, office, rectory, or benefice, as in case no suspension had taken place, any person filling the same might have had or exercised; and it shall be lawful for the said commissioners, in the case of lands or premises demised by leases customarily renewed from time to time, to accept surrenders of such leases, and to make new leases or renewals of the same respectively, in like manner to all intents and purposes as the said commissioners are authorized and required to do in respect of any lands or premises at any time belonging to any bishopric, and which may have been transferred to and vested in them by virtue of the said acts; and that it shall be lawful for the respective tenants, leasees, or under-tenants, of any such lands or premises, during the suspension of such appointment, presentation, or collation, as aforesaid, to apply to the said commissioners for the purchase of a perpetual estate and interest of and in any such lands or premises, in like manner as such tenants, leasees, or under-tenants respectively could or might have done, by virtue of the said recited acts or this act, in case the appointment, collation, or presentation to such dignity, office, rectory, or benefice, had not been so suspended; and in case of any such application all such and the like proceedings shall be had as by the said acts prescribed in the case of any application for the purchase of the fee-simple and inheritance of and in any lands or premises at any time belonging to any bishopric, and which may have been transferred to and vested in the said commissioners by virtue of the said acts.

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“XIX. And be it enacted, that in case of the removal of any such suspension as aforesaid, all leases, demises, renewals, or conveyances theretofore made as aforesaid by the said ecclesiastical commissioners shall be and remain valid and binding to all intents and purposes whatsoever: provided that in the case of the removal of such suspension all rents, covenants, and reservations made payable by or contained in such lease, demise, renewal, or conveyance, shall from and after the time when such dignity, office, rectory, or benefice, shall have been filled, become and be payable to and enure for the benefit of the person appointed, collated, or presented to such dignity, office, rectory, or benefice, and his successors, who shall have all such and the like remedies for enforcing payment or performance of such rent, covenants, and reservations, as if the same had been expressly made payable to or reserved or covenanted with or by the person filling such dignity, office, rectory, or benefice, and his successors.

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“XX. And whereas it is expedient to make more effectual provision for enforcing payment of stipends or salaries for the maintenance of officiating clergymen in parishes whereof the tithes are appropriate or inappropriate, and the owners thereof are bound to maintain such clergymen; and whereas by the said recited act of the third and fourth years of his present majesty's reign it was provided, that in any case where the owners of impropriations or inappropriate tithes are by law bound, but refuse or neglect to repair the chancel of any church, or to maintain an officiating minister, it should be lawful for the said ecclesiastical commissioners, or for the archbishop or bishop of the diocese, to present a petition to the court of Chancery or Exchequer in Ireland, praying relief, and such courts were authorized and required to hear such petition in a summary way, and to make such order thereon

as should appear just: and whereas it is expedient to extend the said recited provisions of the said act, be it therefore enacted, that the same shall be deemed and taken to extend and shall extend to cases where the owners of appropriations or appropriate tithes are by law bound, but refuse or neglect to repair the chancel of any church or to maintain an officiating minister, in like manner and as fully to all intents and purposes as to cases where the owners of impropriations or impropriate tithes are so bound and so refuse or neglect to repair the chancel of any church, or to maintain an officiating minister.

STAT. 6 &
GUL. 4, c.
[1a.]

“XXI. And be it enacted, that in any case in which any petition shall be presented pursuant to the said recited act or this act for the repair of any chancel, or for recovery of any stipend or salary of an officiating minister, or any arrears thereof, the certificate of the archbishop or bishop of the diocese in which the church or parish is situate, that such chancel has been repaired, or such salary usually paid to the officiating minister of such parish, or that such chancel has at any time been agreed to be repaired or such salary to be paid by the owner or owners of the impropriation or appropriation or appropriate or impropriate tithes, as the case may be, of such parish, shall be *prima facie* evidence of the liability of such owner or owners to pay such stipend or salary or repair such chancel, as the case may be; and every such stipend or salary shall be a charge upon such appropriate or impropriate tithes, paramount to all other charges whatsoever.

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“XXII. And be it enacted, that it shall and may be lawful for the court to which any such petition shall be presented to appoint a receiver over any such appropriate or impropriate tithes for payment of any such repairs, stipend, or salary, or arrears thereof, or to direct that any receiver already appointed over such tithes shall pay such repairs, stipend, or salary to the person entitled to receive the same, in preference and priority to all other charges whatsoever.

Court may
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receiver.

“XXIII. And be it enacted, that whensoever the impropricator or appropriator or owner of the appropriate or impropriate tithes of any parish, not having a vicar or curate endowed, shall not maintain an officiating minister in such parish, or shall not have agreed to pay a stipend or salary for or towards the maintenance of such officiating minister, being by law bound to maintain such minister, then and in every such case it shall and may be lawful for the archbishop or bishop of the diocese in which such parish is situate to certify to the ecclesiastical commissioners that there is no vicar endowed, nor any stipend paid to any curate, or other provision made by such appropriator or impropricator for the discharge of the spiritual duties of such parish, and that it is fit and proper that an officiating minister should be maintained within the same; and thereupon the said ecclesiastical commissioners, if they shall deem it expedient so to do, shall fix and ascertain a proper and reasonable stipend to be paid by the impropricator or appropriator or owner of the appropriate or impropriate tithes of such parish, having regard to the annual value of such impropriate tithes, and to the extent of the duty to be performed in such parish; and the said ecclesiastical commissioners shall cause to be lodged in the registry of the diocese in which such parish shall be situate a certificate under their seal of the amount of the stipend so ascertained, and shall also transmit to the owner, or, if more than one, to each of the owners of the impropriate or appropriate tithes of such parish, a copy of the said certificate.

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“XXIV. And be it enacted, that the amount of the stipend so fixed and ascertained as aforesaid shall be a charge on the impropriate tithes of such parish paramount to all other charges whatsoever, and shall, from and immediately after the lodging of such certificate in the registry of the diocese, be paid and payable to the officiating clergyman of such parish for the time being by equal half-yearly payments; and such officiating clergyman shall be nominated and appointed from time to time in such manner and subject to such provisions and regulations as the curate of any curacy augmented by the trustees and commissioners of first-fruits pursuant to any statutes heretofore in force in Ireland; provided always, that the amount of the salary so to be fixed and ascertained by the said ecclesiastical commissioners shall not exceed ten pounds for every hundred pounds of the annual value of the impropriate or appropriate tithes of such parish, as the same shall have been ascer-

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tained by the certificate of the commissioners appointed to carry into effect the composition for tithes in the said parish.

"XXV. And whereas it appears by the report of certain commissioners constituted and appointed by his majesty for inquiring into ecclesiastical revenues and patronage in Ireland, bearing date the fifteenth day of April one thousand eight hundred and thirty-four, that there are in certain cathedral churches divers subordinate corporations known by various names, and that some of such corporations have dwindled down to a single individual in each, who appears to be wholly discharged of any duty whatever, and that some such offices would long since have become wholly obsolete and extinct but for the emoluments which still attach and are enjoyed by the individuals who fill them; be it therefore enacted, that the right, title, and interest in and to all lands, tithes, rents, profits, and other emoluments heretofore held and enjoyed by the vicars choral of the cathedral church of Saint Patrick's Cashel, or by any corporation of or belonging to any cathedral church in Ireland, known by the names of minor or petty canons, vicars choral, vicars choral and organists, prebendaries and vicars, or vicars and choirmen, or by any other name, and whether sole or aggregate, who shall not discharge any duty, or shall not discharge duties commensurate with the extent of their emoluments, shall, in the case of the said vicars choral of the cathedral church of Saint Patrick's Cashel, from and after the passing of this act, and in the case of each and every such other corporation as aforesaid whenever the lord lieutenant in council shall on the recommendation of the said ecclesiastical commissioners think fit so to direct, vest in the said ecclesiastical commissioners, subject nevertheless to all valid leases, charges, and incumbrances now affecting the same, and that the rents, issues, and profits thereof shall be by the said ecclesiastical commissioners applied during the lives of the present members of such corporations respectively to their use, in the same manner and proportions as the same may now be enjoyed by or dividable amongst each and every of them; and that on the demise or cession of the respective members of such corporations adequate provision be made out of such rents, issues, and profits for the due maintenance of such and so many of his or their successors as may in the judgment of the said commissioners be required for the effectual discharge of the duties, if any, appertaining to the members of such corporations respectively, in cases where such provision is not made from other sources; and that the surplus of such rents, issues, and profits from time to time accruing to the said ecclesiastical commissioners shall be carried to the general fund under the administration of the said commissioners, who shall have all and every the like powers of leasing and demise the lands and tithes so vesting in them as such corporations may now respectively have, and be in all respects subject to such and the like restrictions and conditions.

"XXVI. And whereas by the herein before-recited act passed in the fourth and fifth years of his majesty's reign the lord lieutenant or other chief governor or governors of Ireland, and his majesty's privy council there, are empowered, on the recommendation of the said ecclesiastical commissioners, to order and direct that the appointment to any ecclesiastical dignity or office under the rank of an archbishopric or bishopric, the person holding which shall not have actual care of souls within any parish appropriated thereto, shall be suspended upon the next avoidance until such lord lieutenant and council shall think fit otherwise to direct, and that for and during such period as such dignity or office shall remain vacant all and every the tithes, glebes, lands, rents, profits, and emoluments whatsoever belonging or appertaining thereto, and all arrears of such tithes, rents, profits, and emoluments which may have accrued due since the same may have become void as aforesaid, shall be vested in and received by the said ecclesiastical commissioners, to be by them applied towards the like purposes as the other monies and funds accruing to or vested in them under the provisions of the said act: and whereas doubts have arisen whether the provisions of the said act apply to the case of the precentorship of the church of the holy and undivided Trinity, otherwise called Christ Church, in Dublin, now vacant, by reason of the cure of souls in certain parishes belonging in contemplation of law to the said precentor, although in fact

such cure has not been served by the occupant of such dignity, nor by any resident curate employed at a sufficient stipend; and whereas it is expedient to remove such doubts, and also further to explain the said act; be it therefore enacted, that the herein before-recited provisions of the said act shall be taken to extend to the said precentorship, and also to all dignities or offices the occupants whereof, although having in contemplation of law cure of souls, habitual or actual, in any parish or parishes appropriated or in anywise belonging thereto, shall not for three years next preceding the first day of January last have continuously served the cure of souls in such parish or parishes, either personally or by a curate licensed thereto, or in case the appointment, presentation, or collation of any clerk to such parish or parishes shall have been suspended or hereafter shall be suspended under and by virtue of the said recited act of the third and fourth years of his present majesty's reign; and also that the said provisions of the said act shall be taken to extend to all such offices or belonging to cathedral churches as in the said act mentioned, although the same may not be ecclesiastical offices nor held by ecclesiastical persons, and also to all cases where tithes may have been held or enjoyed by the occupants of such dignities or offices, though not in law appropriated to them, and also to cases where lands only, or land as well as tithes, may have been so held and enjoyed or appropriated, or where the same may be under lease: provided always, that if it shall appear to the said ecclesiastical commissioners that there are any curates, perpetual or stipendiary, serving the cure of souls within any parish appropriated to any such dignity or office, and that the stipends allowed to such curates are insufficient, then and in such case it shall be lawful for the said ecclesiastical commissioners, from and out of the profits or emoluments of the parish so appropriated, to allow such stipend to any such curate, not exceeding one hundred pounds per annum, as they may think necessary with regard to the duties to be by him discharged.

Stat. 6
Gul. 4,
[In.]

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"XXVII. And whereas by the said recited act of the third and fourth years of his present majesty's reign, as the same is amended by the said act of the fourth and fifth years of his majesty's reign, authority is given to the said lord lieutenant or other chief governor or governors, and council, on the next avoidance of any archbishopric, bishopric, deanery, archdeanery, dignity, prebend, or canonry, or with the consent of the incumbent thereof, to disappropriate, disunite, and divest from and out of the same any rectory, vicarage, tithes or portion of tithes, and glebes or part or parts thereof, and to unite any such rectory, vicarage, tithes or portion of tithes, or glebes or part thereof, to the vicarages or perpetual or other curacies of such parishes respectively, or to any adjoining or neighbouring rectory, vicarage, or curacy, or to erect the same into a distinct parish or benefice: and whereas difficulties have arisen in carrying the provisions of the said acts into effect by reason of the existence of leases of tithes or portions of tithes and lands, sometimes included in one and the same demise, and sometimes situate in or arising out of several parishes, and doubts have arisen whether the said provisions extend to mesuagial or demesne lands; for remedy whereof be it enacted, that the said provisions shall be deemed and taken to extend to and comprise all and every tithes or portions of tithes, whether under lease or otherwise, and all lands, mesuagial, demesne, or otherwise, belonging or appertaining or anywise held or enjoyed in right of any archbishopric, bishopric, deanery, archdeanery, dignity, prebend, or canonry, whether such tithes or lands shall arise out of or be situate in one or more parishes.

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"XXVIII. And be it enacted, that in any case where the said lord lieutenant or other chief governor or governors and council shall think fit, in the exercise of the powers conferred upon them by the said acts and this act, to disappropriate, disunite, and divest from and out of any archbishopric, bishopric, deanery, archdeanery, dignity, prebend, or canonry, any rectory, vicarage, tithes or portion of tithes, or lands or part or parts thereof, which by reason of the existence of any such leases as aforesaid, or for any other reason, cannot be conveniently appropriated or united to any adjoining or neighbouring rectory, vicarage, or curacy, or in case such rectories, vicarages, or curacies may be already sufficiently endowed, it shall be lawful for the said lord lieutenant or other chief governor or governors and

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council to order that such rectory, vicarage, tithes or portions of tithes, or land or part or parts thereof, so disappropriated, disunited, and divested as aforesaid, shall be transferred to the said ecclesiastical commissioners; and the right and interest in and to the same, and all arrears thereof, shall thereupon vest in the said ecclesiastical commissioners, and be by them carried to the general fund under their administration, but charged with and subject nevertheless to the payment of such annual or periodical sum or sums of money, if any, as the said lord lieutenant or other chief governor or governors and council shall think fit to direct to be paid to any rector, vicar, or curate, their or his successors, whose rectory, vicarage, or curacy he and they shall deem not to be sufficiently endowed, or which he and they may think fit to erect, and to which, under the provisions of the said act, any such disappropriated rectory, vicarage, tithes or portions of tithes, or lands, might have been appropriated and united.

"XXIX. And be it enacted, that the said ecclesiastical commissioners shall have all such and the like powers of making or renewing leases, or of conveying a perpetual estate or interest of and in any lands or premises which may become vested in them by virtue of any such disappropriation order as aforesaid, as heretofore conferred upon them in respect of any lands or premises which may become vested in them by virtue of any such suspension order as hereinbefore mentioned; and all and every the provisions hereinbefore contained in respect of such lands or premises as may be vested in the said commissioners by any such suspension order, and the making leases and renewals and conveyances thereof, shall apply and extend to lands or premises vested in them by any such disappropriation order, and be making leases, renewals, and conveyances thereof.

"XXX. Whereas by reason of the insufficiency of the endowment of the vicarages in several parishes the rectorial tithes whereof are appropriated to archbishops, bishoprics, and other ecclesiastical dignities, prebends, and canonries, in Ireland, by reason whereof it has become necessary from time to time to unite two or more of such vicarages into one benefice, to the disadvantage of the spiritual interests and concerns of such vicarages respectively; be it therefore enacted, that from and after the passing of this act it shall not be lawful for the said ecclesiastical commissioners acting in pursuance of the provisions of said recited acts, in the same and on the behalf of any archbishop, bishop, dignity, prebendary, or canon, to grant a perpetual estate or interest to any tenant now holding or who may hereafter hold any tithes or compositions for tithes appropriated to such archbishopric, bishopric, dignity, prebend, or canonry, under or by virtue of any lease or contract.

"XXXI. And be it further enacted, that at any time from and after the next avoidance of any archbishopric, bishopric, dignity, prebend, or canonry as aforesaid, in which it may be deemed expedient so to do, it shall and may be lawful for the said ecclesiastical commissioners, in case any tithes or compositions for tithes shall be disappropriated therefrom, by instrument under their common seal to declare that the lease or contract by which such tithes or compositions for tithes are now or hereafter may be held shall not be renewed; and in order to prevent any lease or bargain to the tenant or tenants now holding or who may hereafter hold such tithes or compositions for tithes by virtue of such lease or contract, by reason of the same not being capable of being renewed as heretofore, it shall and may be lawful for the said commissioners, upon the application of any such tenant or tenants declaring his or their readiness to accept the value in money of his or their estate or interest in such lease or contract as if the same were still capable of renewal, to estimate and compute the value thereof accordingly; and in case such tenant or tenants shall think fit to accept the same, he or they shall thereupon convey his estate and interest in such lease or contract to the said ecclesiastical commissioners, and such tithes or compositions for tithes shall thereupon be freed and discharged from all debts, liabilities, and incumbrances, of such tenant or tenants, or of any person or persons deriving under him, her, or them, or of any person or persons under whom he, she, or they may derive: provided nevertheless, that the purchase money for such estate and interest shall become subject and liable to all such and the like

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engagements, liabilities, uses, trusts, intents, and purposes, as may affect the estate or interest of such tenant or tenants in the lease or contract of said tithes or compositions for tithes, and shall be paid to such tenant or tenants on his making out title thereunto; and if he, she, or they, shall not make out a sufficient title thereto such purchase money shall be paid into the bank of Ireland to the credit of the accountant-general of the court of Chancery in Ireland, and to the credit of the matter, upon an order for that purpose to be obtained upon petition in a summary way, and shall be disposed of by such court by order in like manner to be obtained, as may be just.

STAT.
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“XXXII. And be it further enacted, that from and after the conveyance of the estate or interest of every such tenant or tenants in and to such tithes or compositions for tithes to the said ecclesiastical commissioners as aforesaid, the same shall be and remain for ever vested in the said ecclesiastical commissioners, and be by them applied, as and when the same shall be received, in the first instance in liquidation and discharge of the purchase money and expenses incurred by them in the purchase thereof, with legal interest, until the same shall be fully and entirely paid off, and from thenceforward in the augmentation of small benefices under the provisions of the said recited acts.

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“XXXIII. And whereas, by and under the provisions of the said recited act of the third and fourth years of his present majesty's reign, the bishopric of Cork and Ross has become united to the bishopric of Cloyne, and Doctor Samuel Kyle being at the time of the passing of the said act, and at the time when the said bishoprics became united as aforesaid, bishop of Cork and Ross, has become and now is bishop of the said united bishoprics of Cork and Ross and Cloyne: and whereas upon such union as aforesaid all and singular the lands, tenements, and hereditaments, with all and singular the tithes, rents, and emoluments, appertaining or belonging to the said bishopric of Cork and Ross, were by virtue of the said act transferred to and vested in the said ecclesiastical commissioners, saving and excepting the see-house and offices and mensal and demesne lands to the said bishopric of Cork and Ross belonging, which became thereafter by the said act the see-house and offices and mensal or demesne lands of the said united bishoprics of Cork and Ross and Cloyne, and the said Doctor Samuel Kyle became possessed of and entitled to the revenues of the said bishopric of Cloyne, saving and excepting to the see-house and mensal or demesne lands thereunto belonging, which the said ecclesiastical commissioners were authorized to let or demise for such rent or fine as they should think fit: and whereas the said ecclesiastical commissioners are authorized and required by the said act, out of the revenues of the said bishopric of Cork and Ross so vested in them as aforesaid, to make good to the said Doctor Samuel Kyle the sum or sums of money, if any, whereby the revenues of the said bishopric of Cloyne shall fall short of the revenues of the said bishopric of Cork and Ross: and whereas the revenues of the said respective bishoprics, being in great measure dependent on fines paid on the renewal of leases, are liable to uncertainty and variation, and an annual valuation of the said several bishoprics would be troublesome and inconvenient: and whereas it has been found, upon a comparison of the relative average value of the said several bishoprics, that the revenues of the said bishopric of Cloyne fall short of the revenues of the said bishopric of Cork and Ross by the annual sum of one thousand five hundred pounds, or thereabouts, and the said Doctor Samuel Kyle consents to receive such annual sum of one thousand five hundred pounds in full acquittance and discharge of the payment which the said ecclesiastical commissioners ought to make to him under the provisions of the said act; be it therefore enacted, that the said annual sum of one thousand five hundred pounds shall be deemed and taken to be the sum whereby the revenues of the said bishopric of Cloyne fall short of the revenues of the said bishopric of Cork and Ross, and that the said ecclesiastical commissioners shall pay to the said Doctor Samuel Kyle, in each and every year during his incumbency of the said united bishoprics of Cork and Ross and Cloyne, the said annual sum of one thousand five hundred pounds, commencing from the fourteenth day of September one thousand eight hundred and thirty-five, and that the first payment thereof shall be made on

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on the fourteenth day of September in this current year one thousand eight hundred and thirty-six, by one entire payment, and that the future payments thereof shall be made by equal moieties, one moiety on the fourteenth day of March, and the other moiety on the fourteenth day of September, in each and every succeeding year during the incumbency of the said Doctor Samuel Kyle, in the said united bishoprics: provided always, that the said annual payment shall be apportioned so as to be paid in such manner that on the demise or translation of the said Doctor Samuel Kyle, or other determination of his said incumbency, the said ecclesiastical commissioners shall pay to him, or his executors, administrators, or assigns, a proportion of such annual sum according to the time which shall have elapsed from the commencement or last period of payment thereof respectively, (as the case may be,) including the day of the demise or translation of the said Doctor Samuel Kyle, or other determination of his said incumbency in the said united bishoprics: provided also, that the income of the present Bishop of Cork and Ross and Cloyne during his incumbency be free from the tax chargeable under the provisions of the said recited act of the third and fourth years of the reign of his present majesty.

“XXXIV. And whereas it is provided by the said act of the fourth and fifth years of the reign of his present majesty, that no sum shall be paid by the said ecclesiastical commissioners to any attorney or solicitor as and for costs, charges, or expenses, unless the amount of such payment shall first have been approved of by the lords of the treasury, and that no sum exceeding one thousand pounds shall be allowed in any one year by the lords of the treasury as and for the costs, charges, or expenses of any such attorney or solicitor, and that before any such sum shall be allowed by the said lords commissioners of the treasury on such account as aforesaid the particulars of all such costs and expenses shall be laid before them: and whereas it is necessary to explain the said hereinbefore recited provision; be it therefore hereby enacted and declared to be the intent and meaning of the said act, that no sum exceeding one thousand pounds shall be allowed in any one year for the personal services of any such attorney or solicitor, but that no disbursements or expenses actually and properly made or incurred by such attorney or solicitor in and about the affairs and business of the said ecclesiastical commissioners, and by their authority and direction, shall be deemed or taken to be included in the said sum of one thousand pounds, or form part thereof.

“XXXV. And be it further enacted, that the said several recited acts of parliament shall continue in full force and effect, save and except so far as they or either of them are or is expressly repealed or altered by this act, and that the said recited acts and this act shall be construed and taken together as one act to all intents and purposes; and that this act may be altered, amended, or repealed by any act or acts to be passed in the present session of parliament.

“XXXVI. And whereas it is enacted by the said first-recited act, that in all cases where, under and by virtue of an act made in the twenty-first of the reign of King George the Second, intituled, ‘An Act for disappropriating Benefices belonging to Deans, Archdeacons, Dignitaries, and other Members of Cathedral Churches, and for appropriating others in their stead, and also for the Removal of the Sites of ruined Cathedral Churches,’ any parochial church shall have been or shall be made or shall become by usage or custom cathedral and parochial, and in all cases where, under and by virtue of an act made in the parliament of Ireland in the thirty-ninth year of the reign of King George the Third, intituled, ‘An Act for the repairing of Cathedral Churches in Cases where the Parish Churches have been long in Ruins,’ any cathedral church shall have been or shall be made as of as a parish church, it shall and may be lawful for the said commissioners and they are thereby required to contribute to the repairs of such cathedral and parochial churches in such proportion as has been agreed upon by and between the dean and chapter or chapters of such cathedral church, and by the protestant inhabitants of the parish or union in which such church is situate, that the inhabitants thereof should contribute to the rebuilding, enlarging, and putting into and keeping

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in repair of such cathedral and parochial churches; and if it shall happen that no such agreement as aforesaid shall have been made by and between the parties aforesaid, it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland and the privy council thereof, upon petition of the dean and chapter or of the said commissioners, finally to adjust and ascertain the proportions in which such deans and chapters or chapters and said commissioners shall so respectively contribute for the purposes aforesaid; and the sums necessary and sufficient for such purposes shall be from time to time apportioned and paid accordingly by the said deans and chapters and the said commissioners respectively; and whereas it is just and reasonable that such deans and chapters should in certain cases be relieved in the whole or in part from the burthen of contributing to the repairs of such cathedral churches; be it therefore enacted, that in case there shall be no economy fund or chapter or other property appropriated to the purpose of rebuilding, enlarging, and putting into and keeping in repair of any such cathedral church, or no such economy fund, chapter or other property adequate or sufficient for such purpose, it shall and may be lawful for the said ecclesiastical commissioners, if they shall so think fit, by writing under their seal to certify to the lord lieutenant or other chief governor or governors of Ireland in council that there is no such economy fund, chapter or other property appropriated to the purpose of repairing such cathedral church, or no such fund or property adequate and sufficient for such purpose, and that it is just and reasonable that the said commissioners should defray the whole of the sums necessary for such purpose, or that the said commissioners and the dean and chapter or chapter should contribute for such purpose in such proportions as shall in such writing be specified; and in case the lord lieutenant or other chief governor or governors of Ireland and the privy council thereof shall signify his and their approval of the matters specified in such certificate, then and in such case it shall and may be lawful for the said commissioners and they are hereby authorized and required from time to time to pay the whole of the sums necessary for such purpose as aforesaid, or such proportion thereof as shall be specified in such certificate, subject to such regulations as in the said recited acts and this act or any or either of them are contained with respect to monies to be expended for such purposes; provided always, that such dean and chapter or chapter shall from time to time contribute for such purpose as aforesaid such proportion as shall be specified in such certificate as just and reasonable to be contributed by such dean and chapter or chapter."

CXLVII. STAT. 6 & 7 GULIELMI 4, c. 115 (1). A.D. 1836.

"An Act for facilitating the Inclosure of Open and Arable Fields in England and Wales."

"II. And be it further enacted, that whenever any inclosure shall be proposed to be made or consented to under the authority of this act, or any agreement for compensation in pursuance of the provisions in that respect hereinafter contained shall be entered into, by any person or persons who being necessary to make up, and without whom there shall not be consenting parties sufficient to make up, the proportion of two third parts in number and value hereinbefore required, or other the proportion hereinafter required in the case of an inclosure without the assistance of commissioners, and who shall have a less estate or interest in the land to be inclosed, or the said rights therein, than a fee-simple or an estate in tail, or be an holder of a copyhold or customaryhold tenant right or other tenure in such lands or rights for any less estate than an estate or interest in fee or in tail, or shall be under any disability, such consent shall not be available for the purposes of this act unless the person to whom the next immediate vested estate of freehold or of copyhold or customaryhold tenant right or other tenure of inheritance, in remainder or reversion, shall have been limited, (provided such person shall be of the full age of twenty-one years, and being a female shall be unmarried,) shall consent thereto in writing; and such consent shall be sufficient for the purposes of this

(1) *Vide Stat. 41 Geo. 3, c. 109 (ante 974); and Stat. 1 & 2 Geo. 4, c. 23 (ante 1162).*

notwithstanding the person giving the same may have an equitable estate only in a land intended to be inclosed, or may have previously charged or incumbered a reversionary estate therein: provided always, that if the person to whom such immediate vested estate in remainder or reversion may have been limited, at the time such inclosure is proposed to be made, happen to be an infant, covert, idiot, or lunatic, it shall be lawful for the guardian or husband or next of kin of such infant, feme covert, idiot, or lunatic to consent to such inclosures on his or her stead: provided always, that in respect to any land held in right of a benefice, no consent of the incumbent thereof shall alone be available for the purposes of this act, where such consent shall be necessary to make up the proportion of two third parts in number and value hereinbefore required, or other proportion hereinafter required in the case of an inclosure without the assistance of the commissioners, without the concurrence of the patron of such benefice, and of the archbishop or bishop to whose ordinary or peculiar jurisdiction the said benefice shall be subject; and if the patron of such benefice shall happen to be a feme covert, idiot, lunatic, or feme covert, it shall be lawful for the guardian, committee, or husband of such patron to consent to such inclosure in the stead of such patron, on his or her behalf: provided always, that if the patronage of such benefice shall happen to be in the crown, and the benefice shall exceed the yearly value of twenty pounds in the King's Books, no consent of the incumbent thereof shall be available for the purposes of this act, where such consent shall be necessary to make up either of the proportions aforesaid, without the concurrence of the lord treasurer or the first lord commissioner of the Treasury for the time being, who are respectively hereby authorized so to concur; but if such benefice shall not exceed the yearly value of twenty pounds in the King's Books, then no consent of the incumbent thereof shall be available for the purposes of this act, where such consent shall be necessary to make up either of the proportions aforesaid, without the concurrence of the lord high chancellor, lord keeper or lords commissioners of the great seal for the time being, who is and are hereby authorized to give such consent on behalf of the crown.

XXI. Provided also, and be it further enacted, that in case any such lands shall have been taken or used at any time before the passing of this act for the erection of a school-house or school-houses, or the appurtenances thereto, or for other charitable purposes, such lands so taken, or the erections made thereon, shall not be deemed to be of the nature of an encroachment within the meaning of this act.

XXX. And whereas the allotments made to any rector or vicar who may be entitled to any glebe lands in such open and common arable, meadow, or pasture, or fields, or some of such allotments, may probably require some additional divisions, by reason whereof, and in order to render the same of greater value to the said rectors and vicars respectively, and their respective successors, it may be necessary that some buildings should be erected thereon, and some necessary divisions as well as interior or subdivision fences may be necessary to be made, planted, raised in and upon the said allotments or some of them: and whereas the making of such further buildings, and the making, planting, and raising such divisions, will be attended with considerable expense, and as the same will probably be beneficial to the successors of such rectors and vicars respectively then to be rector and vicar in whose incumbency such allotment and inclosure may take place; be it therefore further enacted, that it shall and may be lawful to and for the said rectors and vicars respectively, and their respective successors, by and with the consent in writing of the respective patrons of the said rectories and vicarages, and the ordinary of the diocese for the time being, to erect or cause to be erected for utilitarian purposes such further buildings upon the allotment or allotments, or on buildings the said rectors and vicars respectively, and their respective successors, are hereby required to cause to be insured equal to the value thereof (as ascertained in some of the offices in London established for insurance against fire,) or to be set out unto the said rectors and vicars and their respective successors as aforesaid, and also to make, plant, and raise such outer division as well

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as interior or subdivision fences in and upon the said allotment or allotments as the said commissioner or commissioners shall judge necessary and proper for the occupation of the lands so to be allotted to the said rectors and vicars respectively, and their respective successors, and by any deed or deeds, writing or writings, under the respective hand and seal of such rectors or vicars respectively, and their respective successors, and attested by two or more credible witnesses, by and with the consent in writing of the bishop of the diocese for the time being, to charge such allotment or allotments so as aforesaid to be set out for the said rectors and vicars respectively, and their respective successors as aforesaid, and the buildings so to be erected thereon, with such sum or sums of money, not exceeding in the whole two years' annual value of the respective allotments so to be set out to the said rectors and vicars respectively, as the said commissioners shall think necessary for the purposes of and in order to be applied to paying and defraying the charges and expenses of erecting the said further buildings, and of making, planting, or raising such division or subdivision fences, or for either of the said purposes, and in applying for and obtaining the consent of the said bishop, and in exercise of the powers given to and vested in the said rectors and vicars respectively by virtue of this act and the said recited act; which sum or sums of money shall be paid to such person or persons as the said commissioners shall nominate and appoint, in order to be applied or disposed of accordingly; and for securing the repayment of such sum or sums of money, with interest for the same, to grant, mortgage, lease, or demise the allotments so as aforesaid to be set out unto and for the said rectors and vicars respectively, and their respective successors, as aforesaid, and the buildings so to be erected thereon, unto such person or persons who shall advance and lend the same, his, her, and their executors, administrators, or assigns, for any term or number of years, so that every such grant, mortgage, lease, or demise be made with a proviso to cease and be void, or with an express trust to be surrendered, when the sum or sums of money thereby to be secured, with the interest thereof, shall be respectively fully paid and satisfied; and such mortgagee or mortgagees advancing and lending the money so to be borrowed shall not be obliged to see to the application or be in anywise answerable for the misapplication of such monies or any part thereof; and the said rectors and vicars respectively, and their respective successors for the time being, shall be and are hereby required and made liable, at the end of every year after the date of such mortgage, to pay to the person or persons to whom such grant, mortgage, lease, or demise shall be made, his, her, or their executors, administrators, or assigns, one thirtieth part of the respective principal monies so to be borrowed, until the whole thereof shall by such annual payments be paid off and discharged, and also to pay and keep down the interest of the said respective monies so to be borrowed, so that the future rectors and vicars of the said respective parishes or townships becoming possessed of such respective lands and fields shall not be subject or liable (and they are hereby respectively discharged from being subject or liable) to pay any further or larger share of such monies than his or their proportion thereof according to such last-mentioned condition, or any interest for the same save only from the day of the death, resignation, or cession of the preceding incumbent of the said rectories or vicarages respectively; and that it shall and may be lawful to and for the person or persons who shall advance and lend such monies, his, her, or their heirs, executors, administrators, and assigns, for the more easily recovering the said one thirtieth part of the said principal and the whole of the interest which is enacted annually to be paid, to have, use, exercise, and take such and the same powers and remedies, by entry and distress upon the premises so to be charged, mortgaged, and demised, and sale of such distress, as by the laws now in force are provided for and given to landlords, or as they can use and take for the recovery of rack rents in arrear.

"XXXI. And be it further enacted, that it shall and may be lawful for the rectors of the said rectories and the vicars of the said vicarages respectively for the time being, by indentures under their respective hands and seals, with the consent and approbation of the bishop of the diocese for the time being, and of the patron of the said rectories and vicarages, from time to time to lease and demise all or any

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allotments to be set out and allotted to them respectively by virtue of any person or persons whomsoever, for any term not exceeding twenty-years that the rent or rents for the same shall be thereby reserved to such persons for the time being by four equal quarterly payments in every year that there be thereby reserved to such rectors and vicars the best and highest rent or rents that can be reasonably gotten for the same, without fine, foregift, premium, sum of money, or other consideration for grant-lease, and so that no such lease by any such lease or demise be made for waste by any express words to be therein contained, and so that reserved in every such lease power of re-entry on nonpayment of rent or thereby reserved within a reasonable time, to be therein limited, after the same become due, and so that a counterpart of such lease be duly made to the lessee or lessees to whom such lease shall be made as aforesaid; and such lease shall be valid and effectual, any law or usage to the contrary notwithstanding.

. And be it further enacted, that it shall be lawful for the said commissioners to set out, allot, and award any lands, tenements, or hereditaments whatsoever, whether situate within the boundary of such open lands or fields as aforesaid, or adjoining thereto, within the parishes, or places in which the lands to be allotted and inclosed are situated, or in lieu of and in exchange for any other lands, tenements, or hereditaments within the same parishes, townships, or places respectively, or any of them within any parish, township, or place adjoining to the said parishes, or places respectively, or any of them; provided that all such exchanges be retained, specified, and declared in the award of the said commissioners, and be made with the consent in writing of the proprietor or proprietors of the hereditaments and premises which shall be so exchanged, who shall be a body or bodies politic, corporate, or incorporation aggregate or sole, rector, parson, vicar, or other ecclesiastical person, or a tenant or tenants in fee-simple, or for life, or in fee-farm, or by the courtesy of England, or for years determinable or lives, by and with the consent of the lessor or lessors, but not otherwise the consent of the guardians, husbands, committees, or attorneys of any such proprietor or proprietors who at the time of making such exchanges shall be respectively infants, females covert, idiots, lunatics, or any other legal disability, or who shall be beyond the seas, or otherwise unable to act for themselves, himself, or herself, or of the trustees or trustees of any such parochial, or other uses, or of the person or persons having power to dispose of the hereditaments and premises which shall be so exchanged; and it to be testified in writing under the common seal of the body politic, collegiate, and under the hands of the other consenting parties respectively, that all and every such exchange and exchanges so to be made respectively shall be good, valid, and effectual in the law to all intents and purposes provided nevertheless, that no exchange shall be made of any lands, or hereditaments held in right of any church, chapel, or other ecclesiastical, without the consent, testified as aforesaid, of the patron thereof, or bishop of the diocese in which such benefice shall be situate.

I. Provided always, and be it further enacted, that the lands, grounds, or premises which shall be allotted or exchanged by virtue of this act shall be in the same manner, under and by virtue of the same terms and rents, and shall be deemed to be of the same quality and tenure, as the lands, tenements, or premises in respect of which such allotment or allotments or exchanges were held or deemed to be of immediately before the making of such allotment or exchange respectively; provided always, that when the lands or fields agreed to be allotted or inclosed under the provisions of this act belong to different persons or do not extend over the whole of any manor lands or fields it shall be lawful for the commissioners or commissioners to apportion the tithes as well as the land, in order that all persons may have their allotments in lieu of lands which were before exempted from tithes."

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CXLVIII. STAT. 6 & 7 GULIELMI 4, CAP. CXXIX. A.D. 1836.

"An Act for establishing a Cemetery for the Interment of the Dead southward of the Metropolis, to be called, 'The South Metropolitan Cemetery.'"

CXLIX. STAT. 6 & 7 GULIELMI 4, CAP. CXXXVI. A.D. 1836.

"An Act for establishing Cemeteries for the Interment of the Dead, northward, southward, and eastward of the Metropolis, by a Company to be called 'The London Cemetery Company.'"

CL. STAT. 7 GULIELMI 4 & 1 VICTORIA, c. 1(1). A.D. 1837.

"An Act to suspend, for a limited Time, the operation of two Acts passed in the last Session of Parliament, for registering Births, Deaths, and Marriages in England, and for Marriages in England."

"Whereas two acts were passed in the last session of parliament, intituled, 'An Act for registering Births, Deaths, and Marriages in England,' and 'An Act for Marriages in England;' and by reason of the provisions therein contained the said acts would come into force on the first day of March now next ensuing; but it being expedient that the full operation of the same should be further delayed; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, subject to the provisions hereinafter contained, the said two acts respectively shall be construed as if the words 'last day of June' had been inserted in the said acts instead of the words 'first day of March,' in every place where the last-mentioned words are found in the said acts respectively; provided always, that the registrar of every diocese at or within fifteen days after the first day of March now next ensuing, make out and send, through the post-office, directed to the registrar-general of births, deaths, and marriages at his office, a list of all chapels belonging to the church of England within that diocese wherein marriages may be solemnized according to the rites and ceremonies of the church of England, as if this act had not been passed.

"II. And be it enacted, that notwithstanding anything in the said acts contained, or either of them, the first certified copies of all the entries of births and deaths, or first certificate that there has been no birth or death registered in the register book to be kept by any registrar of births and deaths, and the first certified copy of all the entries of marriages, or first certificate that there has been no marriage entered in the register book kept by any rector, vicar, curate, registrar of marriages, registering office of the society of friends, or secretary of a synagogue shall be made and given to the superintendent registrar in the month of October now next ensuing, and shall contain and certify all the entries made up to the time at which the same shall be so certified to be a true copy, or that there have been no entries up to that time, as the case may be.

"III. And be it enacted, that this act may be altered, amended, or repealed by any act passed in this session of parliament."

CLI. STAT. 7 GULIELMI 4 & 1 VICTORIA, c. 4. A.D. 1837.

"An Act to continue, until the first day of July, One thousand eight hundred and thirty-seven, the Powers of the Commissioners for inquiring concerning Charities in England and Wales."

[Stat. 5 & 6 Gul. 4, c. 71, continued until first of July, 1837.]

(1) Amended and explained by Stat. 7 Gul. 4 & 1 Vict. c. 22.

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VICT.
[Sc.] CLII. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 5. [SCOTLAND.] A.D. 1837.
"An Act for amending an Act of His late Majesty, for restricting the Punishment of Leasing-making, Sedition, and Blasphemy, in Scotland."
- 7 GUL.
VICT.
E. CLIII. STAT. 7 GULIELMI 4 & 1 VICTORIAE, cap. XL. A.D. 1837.
"An Act for vesting an Estate belonging to the Dean and Chapter of the Cathedral and Metropolitcal Church of Saint Peter in York in Trustees for Sale, and for laying out the Monies arising from such Sales in the Purchase of other Estates, to be settled to the same Uses; subject nevertheless to making Compensation to the Dean and Chapter for the time being for certain Fines payable on Renewal of the Leases of the said first-mentioned Estate, and also for Payment of certain Debts due on account of the said Cathedral Church."
- 7 GUL.
VICT. CLIV. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 22 (1). A.D. 1837.
"An Act to explain and amend two Acts passed in the last Session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages, in England."
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- "Whereas by an act made in the last session of parliament, intituled, 'An Act for Marriages in England,' and by another act, intituled, 'An Act for registering Births, Deaths, and Marriages in England,' sundry provisions were made for the duties of superintendent registrars and also of registrars and deputy registrars of births, deaths, and marriages, which several provisions require to be further explained and amended: and whereas the recited acts require amendment in other respects, be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commoners in this present parliament assembled, and by the authority of the same, that where in the said act for marriages in England provision is made for giving notice of marriage to any registrar, and where in the last recited act, or any schedule thereunto annexed, mention is made of any such notice, or of the registrar's certificate of any such notice, the same shall be construed respectively to mean the notice to be given to the superintendent registrar, and the certificate thereof to be issued by the superintendent registrar, according to the provisions for that purpose contained in the last recited act.
- "II. And whereas by the said act for registering births, deaths, and marriages, it is provided, that in the case of any child to which any name shall be given in baptism after its birth shall have been registered under the provisions of the said act, a certificate shall be delivered in manner provided by the said act, signed by the minister who shall have performed the rite of baptism, and that the registrar shall certify upon the said certificate the additional entry in the register book thereupon required by the said act to be made, and shall forthwith send the said certificate through the post-office to the registrar-general; be it enacted, that the certificate that such additional entry has been made shall be made and sent as aforesaid by the registrar or superintendent registrar, as the case may be, to whom the minister's certificate shall have been delivered, according to the provisions of the said act.
- "III. And be it enacted, that every superintendent registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the superintendent registrar, as provided by the said act for marriages, or who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage in the last recited act declared to be null and void, shall be guilty of felony.
- "IV. And whereas in that part of the said act for registering births, deaths, and marriages in England which provides for the recovery of penalties, the word 'offender' has been once inserted by mistake instead of the word 'offence'; be it enacted, that in all cases in which any justices are by the last recited act author-

ised to imprison any offender against the last recited act, the place of imprisonment shall be the common gaol or house of correction for the county, city, or place where the offence shall be committed.

"V. And be it enacted, that for the purpose of enabling any person to recover costs and damages in any action, as provided by the said act for marriages, from any person who shall have entered a caveat on frivolous grounds with the superintendent registrar, a copy of the declaration of the registrar-general purporting to be sealed with the seal of the general register office shall be evidence that the registrar-general has declared such caveat to have been entered on frivolous grounds, and that they ought not to obstruct the grant of the licence or issue of the certificate, as the case may be; and such declaration shall have the effect of the declaration required in such case by the said act for marriages.

"VI. And whereas it hath been doubted, under the provisions of the said act for registering births, deaths, and marriages in England, when the registration of the births and deaths of persons born and dying at sea ought to begin; be it enacted, that the marine register books shall begin with the birth and death respectively which shall happen of persons born or dying at sea after the last day of June, one thousand eight hundred and thirty-seven, and of which a certificate shall be first sent to the registrar-general according to the provisions of the last recited act, and shall not contain any registry of the birth or death of any person born or dying at sea before the first day of July, one thousand eight hundred and thirty-seven.

"VII. And be it enacted, that the registrar-general may receive and send by the general post from and to all ports and places in the United Kingdom of Great Britain and Ireland, all letters and packets relating exclusively to the execution of the said acts for marriages, and for registering births, deaths, and marriages, or of this act, free from the duty of postage, subject to the provisions and conditions of the said act for registering births, deaths, and marriages, with respect to letters and packets so received or sent by him from and to places in England.

"VIII. And be it enacted, that it shall be lawful for the registrar-general, if he shall think fit, to direct that the place of birth or death of any person whose birth or death shall be registered under the said act for registering births, deaths, and marriages, shall be added to the entry in such manner as the registrar-general shall direct; and such addition, when so made, shall be taken to all intents to be part of the entry in the register.

"IX. And be it enacted, that it shall be lawful for the registrar-general, with the consent of the poor law commissioners, to direct that any place lying wholly within but not being part of any union, parish, or place for which a board of guardians shall have been established under the provisions of an act passed in the fourth and fifth years of his late majesty King William the Fourth, intituled, 'An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales,' shall be part of any one or more registrar's districts within such union, parish, or place, and within the superintendence of the superintendent registrar thereof, or if not lying wholly within any one such union, parish, or place as last aforesaid, then to be for those purposes annexed to such union, parish, or place as last aforesaid, as the registrar-general, with the consent of the poor law commissioners, shall direct.

"X. And be it enacted, that it shall be lawful for the registrar-general, if he shall see fit, with the approval of one of her majesty's principal secretaries of state, to unite any two or more unions, parishes, or places for which a board of guardians shall have been established under the act last aforesaid, or any two or more superintendent registrar's districts, into one superintendent registrar's district; and in every such case of union the registrar-general shall declare by which board of guardians the superintendent registrar shall thenceforward be appointed; and the superintendent registrar of the union, parish, or place for which such board is established shall from the time of such union be the sole superintendent registrar of such united district; and every provision of the said acts for marriages, and for registering births, deaths, and marriages, relating to superintendent registrars, and

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Commencement of marine register bo

Privilege of franking extended to the United Kingdom.

Place of birth or death to be inserted in the register

Provision including extra-parochial places in registrar districts 4 & 5 Gul c. 76.

Registrar-general may unite districts

appoint a registrar or superintendent registrar properly qualified, the appointment shall lapse to the registrar-general.

“XV. And be it enacted, that the registrar-general shall have power, subject to the approval of the commissioners of the Treasury, to appoint by writing under his hand a fit person to act as his assistant in the case of the illness of the registrar-general; and every such assistant, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties declared by the said acts for marriages, and for registering births, deaths, and marriages, in England, and by this act, or any of them; except that such assistant shall not have power to make or declare any general rule, or to rescind or alter any order, regulation, or approval signified and made by the registrar-general in writing under his hand, or to dismiss any person from any office holden during the pleasure of the registrar-general.

“XVI. And be it enacted, that every superintendent registrar shall have the power, subject to the approval of the registrar-general, to appoint by writing under his hand a fit person to act as his deputy in case of the illness or absence of such superintendent registrar; and every such deputy superintendent registrar, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties declared by the said acts for marriages, and for registering births, deaths, and marriages, in England, and by this act, concerning superintendent registrars; and in case of the death of the superintendent registrar shall act as superintendent registrar until another be appointed; and every superintendent registrar shall be civilly responsible for the acts and omissions of his deputy.

“XVII. And be it enacted, that whenever there are two or more clerks to the guardians of any union, parish, or place, established under the provisions of the said act for amending the laws relating to the poor, one only of whom shall possess such qualifications as the registrar-general by any general rule hath declared or shall declare to be necessary, or one only of whom shall think fit to accept the office of superintendent registrar of such union, parish, or place, such one shall be the superintendent registrar of such union, parish, or place; and if two or more of such clerks shall possess such qualifications as aforesaid, and be willing to accept such office, then such guardians shall elect and choose one of such clerks (possessing such qualifications as aforesaid) to be the superintendent registrar of such union, parish, or place; and that no other person shall be or be elected or appointed to be superintendent registrar of any such union, parish, or place, unless all the clerks to the board of guardians (possessing such qualifications as aforesaid) shall not think fit to accept such office.

“XVIII. And be it enacted, that every registrar of births and deaths, and every registrar of marriages appointed under the provisions of the said acts or either of them, shall be freed and exempted from being returned and from serving on any jury or inquest, and from every parochial and corporate office whatever.

“XIX. And be it enacted, that for better enabling fit register offices to be provided, it shall be lawful for any such board of guardians to borrow money for that purpose, and to charge the amount of the sum borrowed on the future poor rates of the parish, union, or place of which they are the guardians, in the manner provided by the said act for amending the laws relating to the poor with respect to monies borrowed for building workhouses for the relief of the poor; save only that the yearly instalments by which any money borrowed as aforesaid shall be repaid shall not be less than one twentieth of the sum borrowed, with interest on the same, and need not be more in any one year.

“XX. And be it enacted, that in any case in which any such board of guardians shall neglect or refuse to provide and uphold a register office according to the provisions of the said act for registering births, deaths, and marriages, it shall be lawful for the commissioners of the Treasury, or any three of them, on the application of the registrar-general, to give directions for providing and upholding the same, and to expend a sum not exceeding three hundred pounds in providing the same, and also all sums needful for the repair and maintenance thereof from time to time, in case the guardians shall continue to refuse or neglect to repair and

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d the same; and it shall be lawful for the said commissioners, or any three of them, to make an order from time to time on such guardians for the repayment, the monies coming to their hands as such guardians, of all sums so to be from time to time expended, and such order shall be binding upon the said guardians; and the guardians shall also be bound to pay out of the monies coming to their hands as such guardians all costs and expenses incurred by or under the authority of the said commissioners in making and enforcing such order.

XXI. And be it enacted, that until a register office shall be provided in any superintendent registrar's district, the superintendent registrar shall appropriate his room or rooms to be approved by the registrar-general, as the superintendent registrar's office of that district.

XXII. And be it enacted, that the registrar-general shall be authorized to fix from time to time the number of registrars of marriage to be appointed by any superintendent registrar; and no superintendent registrar shall have power to appoint more than the number so fixed for him to appoint.

XXIII. And be it enacted, that the registrar-general, under the direction of his majesty's principal secretaries of state, shall take order that the solemn declaration and form of words provided to be used in the case of marriages under the said act shall be truly and exactly translated into the Welsh tongue, and shall cause the same so translated to be furnished to every registrar of marriages throughout Wales, and in all places where the Welsh tongue is commonly used; and it shall be lawful to use the declaration and form of words so translated, and published by authority, in all places where the Welsh tongue is commonly used or read, in such manner and form and to the same intents and purposes as by the said act is prescribed in the English tongue.

XXIV. And whereas by the said act for marriages in England, provision is made for the transmission of notices of marriage to the clerk to the guardians of the poor, or of the parish or place comprising the district of a superintendent registrar, and for the reading of the same at certain meetings of such guardians: and whereas it may happen in certain superintendent registrar's districts that there may be no such guardians; be it therefore enacted, that in every such district, but only until the election of such board of guardians and of a clerk to the board, every notice of marriage given according to the provisions of the said act, or a true and exact copy thereof, under the hand of the superintendent registrar, shall be suspended in some conspicuous place in the office of the superintendent registrar during seven successive days, if the marriage is to be solemnized by licence, or twenty-one successive days if the marriage is to be solemnized without licence, before any marriage shall be solemnized in pursuance of the said act; and the particulars of every such notice shall be sent by the superintendent registrar to every registrar of marriages within his district, and shall be open to the inspection of every one who shall apply at reasonable times to such registrar to inspect the same.

XXV. And whereas by the said act for registering births, deaths, and marriages, it is provided that the cost of all marriage register books and forms for certified copies thereof, furnished to the rector, vicar, or curate of every church and chapel in England wherein marriages may lawfully be solemnized, shall be paid by the churchwardens and overseers of the parish or chapelry out of the monies coming to their hands as such churchwardens or overseers, and that the cost of register books and of register books of deaths, and of forms for certified copies thereof, shall be paid by the guardians or by the churchwardens and overseers, (as the case may be,) out of the monies coming to their hands or control as such guardians or churchwardens and overseers; be it enacted, for removing doubt as to the true intent and meaning therewith, that the cost of all such books and forms shall be borne by the rector, vicar, or curate, or by the churchwardens and overseers, of the parish, or place in and for which the superintendent registrar is appointed, or to whose superintendence the registrar for whose use such books were provided, or to whose jurisdiction the registrar is by the said act directed to deliver one copy of such notices; and such cost shall be paid to the said superintendent registrar by the rector, vicar, or curate, or by the churchwardens and overseers, as the case shall be, out of the

monies coming into their hands as such guardians or such churchwardens and overseers for the relief of the poor.

"XXVI. And be it enacted, that the certified copies of the entries of births, deaths, and marriages, required by the said acts for marriages, and for registering births, deaths, and marriages, or by an act passed in this session of parliament, intituled, 'An Act to suspend for a limited time the Operation of two Acts passed in the last Session of Parliament for registering Births, Deaths, and Marriages in England, and for Marriages in England,' to be made and delivered to the superintendent registrar, and also the certificates to be made and delivered to the superintendent registrar that there has been no birth, death, or marriage, registered since the delivery of the last certificate, shall in every case be made up and refer respectively to the last days of March, June, September, and December then next preceding, and not to the time of the making or delivery of such certified copy or certificate when made on any subsequent day.

"XXVII. And whereas it is required by the said act for registering births, deaths, and marriages, that every rector, vicar, and curate shall register in duplicate the particulars of every marriage solemnized by him, one of which registers he is also required to deliver when filled to the superintendent registrar of the district in which such church or chapel may be situated, and also four times in every year to deliver to the said superintendent registrar a true copy, certified by him under his hand, of all the entries of marriages in the register book kept by him since the last certificate; be it enacted, that the said superintendent registrar shall pay or cause to be paid to the said rector, vicar, or curate, the sum of sixpence for every entry contained in such certified copy, which sum shall be reimbursed to the said superintendent registrar by the guardians or overseers of the union, parish, or place for which he shall be appointed superintendent registrar as aforesaid, in like manner as by the said act is provided for the payment of the registrar on production of his accounts to the superintendent registrar.

"XXVIII. And be it enacted, that every person who under the provisions of the said acts for marriages, and for registering births, deaths, and marriages, or either of them, as amended by this act, is required to make and deliver to any superintendent registrar a certified copy of the entries of any births, deaths, or marriages registered by him, or the certificate required by the said acts as amended by this act that there have been no entries since the last certificate, and who after being duly required to deliver such certified copy or such certificate as aforesaid shall refuse or during one calendar month neglect so to do, shall be liable for every such offence to forfeit a sum not exceeding ten pounds, to be recovered as other penalties for offences against the said acts are made recoverable: provided always, that in such case a moiety of the penalty shall not go to the informer, but the whole shall go to the registrar-general, or such other person as the commissioners of the Treasury shall appoint, for the use of her majesty.

"XXIX. And be it enacted, that in every case in which any rector, vicar, or curate is required by either of the said acts for marriages, and for registering births, deaths, and marriages, or by this act, to give or deliver any notice, certificate, or certified copy to any superintendent registrar, it shall be sufficient for such rector, vicar, or curate to give or deliver the same to some registrar under the superintendence of such superintendent registrar; and every registrar on receiving any such notice, certificate, or certified copy shall give or deliver the same to the superintendent registrar; and each superintendent registrar shall direct the registrars of births and deaths under his superintendence quarterly or oftener if he shall think fit or shall be so ordered to do by the registrar-general to collect the notices, certificates, and certified copies from every rector, vicar, and curate within his district.

"XXX. And for removing of all doubt with regard to the administration of oaths, be it enacted, that every person before whom by the said acts or either of them an oath is directed to be taken is hereby authorized to administer the same.

"XXXI. And be it enacted, that the prosecution for every offence punishable

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upon summary conviction by virtue of the said acts or this act shall be commenced within three months after the commission of such offence.

"XXXII. And be it enacted, that no stamp duty shall be required nor shall any duty be chargeable on any licence under the hand and seal of any bishop, or any other instrument necessary for authorizing the solemnization of marriages in any chapel according to the provisions of the said act for marriages.

"XXXIII. And be it enacted, that the banns of marriage of any persons may be published in any chapel licensed by the bishop, according to the provisions of the said act for marriages, for the solemnization of marriages, in which those persons might lawfully be married; and instead of the notice required by the said act the words 'banns may be published and marriages may be solemnized in this chapel' shall be placed in some conspicuous part in the interior of every such chapel.

"XXXIV. And whereas doubts may arise whether under the said recited acts it is lawful for the bishop to license chapels for marriages between parties one only of whom resides within the district specified in such licence; be it therefore enacted and declared, that all such licences shall be construed to extend to and authorize marriages in such chapels between parties one or both of whom is or are resident within the said district: provided always, that where the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts the banns for such marriage shall be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of the said recited act for the other district within which one of the parties is resident, and if there be no such chapel then in the church or chapel in which the banns of such last-mentioned party might be legally published if the said recited act had not been passed.

"XXXV. And whereas certain provisions are made in the act, intitled, 'An Act for Marriages in England,' relating to the celebration of marriages in separate buildings; be it enacted, that any building which shall have been licensed and used during one year next before registration for public religious worship as a Roman catholic chapel exclusively shall be taken to be a separate building for the purpose of being registered for the celebration of marriages, notwithstanding the same shall be under the same roof with any other building, or shall form a part only of a building.

"XXXVI. And whereas it is enacted in the said recited act for marriages in England, that where by any law or canon in force before the passing of the said act it is provided that any marriage may be solemnized after publication of banns, such marriage may be solemnized in like manner on production of the registrar's certificate as thereafter provided; be it enacted, that the giving of notice to the superintendent registrar, and the issue of the superintendent registrar's certificate, as in the said act and by this act provided, shall be used and stand instead of the publication of banns to all intents and purposes where no such publication shall have taken place; and every parson, vicar, minister, or curate in England shall solemnize marriage after such notice and certificate as aforesaid in like manner as after due publication of banns: provided always, that the church wherein any marriage according to the rites of the church of England shall so be solemnized shall be within the district of the superintendent registrar by whom such certificate as aforesaid shall have been issued."

CLV. STAT. 7 GULIELMI 4 & 1 VICTORIAE, cap. xxiv. A.D. 1837.

"An Act to enable the Rector of the Parish of Wigan, in the County Palatine of Lancaster, to grant Leases of the Mines, and Building Leases, subject to Ground Rents, of the Glebe Lands belonging to the said Rectory; and for other Purposes."

STATUTA GULIELMI IV. A.D. 1830—1837.

CLVI. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 26. A.D. 1837.

"An Act for the Amendment of the Laws with respect to Wills."

"Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the word 'will' shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an act passed in the twelfth year of the reign of King Charles the Second, intituled, 'An Act for taking away the Court of Wards and Liveries, and Tenures *in capite* and by Knights' Service, and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof,' or by virtue of an act passed in the parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled, 'An Act for taking away the Court of Wards and Liveries, and Tenures *in capite* and by Knights' Service,' and to any other testamentary disposition; and the words 'real estate' shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words 'personal estate' shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money, (not being real estates,) debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor (1) or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

"II. And be it further enacted, that an act passed in the thirty-second year of the reign of King Henry the Eighth, intituled, 'The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise Two Parts of his Land;' and also an act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled, 'The Bill concerning the Explanation of Wills;' and also an act passed in the parliament of Ireland, in the tenth year of the reign of King Charles the First, intituled, 'An Act how Lands, Tenements, etc., may be disposed by Will or otherwise, and concerning Wards and Primer Seisins;' and also so much of an act passed in the twenty-ninth year of the reign of King Charles the Second, intituled, 'An Act for Prevention of Frauds and Perjuries,' and of an act passed in the parliament of Ireland in the seventh year of the reign of King William the Third, intituled, 'An Act for Prevention of Frauds and Perjuries,' as relates to devises or bequests of lands or tenements, or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise, or bequest therein; and also so much of an act passed in the fourth and fifth years of the reign of Queen Anne, intituled, 'An Act for the Amendment of

(1) *Executor*.—Next of kin are not barred by mere lapse of time, by acquiescence, or by the receipt of legacies, from requiring executors to prove a will in solemn form. But, where a will had been declared well proved in the court of Chancery after an order for an issue *devoutur vel non*, had been discharged on the petition of the heir at law, (also sole

next of kin,) and her husband, and an annuity bequeathed to her regularly received during fourteen years, the Prerogative court of Canterbury refused, at the prayer of the heir at law and her husband, to call on the executors to prove that will in solemn form. *Merryweather v. Turner*, 3 Curt. 802. 3 Eccles. Notes of Cases, 55.

the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money, as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling, such surrender, if the same real estate had been surrendered to the use of the will of such testator: provided also, that where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money, as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money, as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling, such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid.

“V. And be it further enacted, that when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this act had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall as against the devisee of such estate have the same remedy for recovering and enforcing such fine, heriot, dues, duties, and services, as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

“VI. And be it further enacted, that if no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee-simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

“VII. And be it further enacted, that no will made by any person under the age of twenty-one years shall be valid.

“VIII. Provided also, and be it further enacted, that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this act.

“IX. And be it further enacted, that no will (1) shall be valid unless it shall be

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Every will shall

(1) *No will*:—In *Coventry v. Williams*, (3 Curt. 788; 3 Eccles. Notes of Cases, 164;) was refused probate, in consequence of its paper propounded as a codicil on behalf of

Mrs. Chase, of which the following is a copy, was refused probate, in consequence of its not being of a testamentary character.

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presence and by his direction (1); and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses (2) present at the same

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have signed the will, or have acknowledged his signature in the presence of two witnesses, present at the same time, and that they should have attested it in the presence of the testator, though not of each other. The interpretation which the court has put upon the section is, that the testator must sign or acknowledge his signature, before the witnesses attest, and that if the witnesses attest before the signature of the deceased is affixed to it, the will is not duly executed within the provisions of the act. The words of the section are very precise, and I think it would be attended with dangerous consequences, if the court were to hold a will valid which has been signed in the presence of two witnesses, who have attested it before the signature of the testator was affixed to the will; for where is the court to draw the line? Suppose the witnesses attested an hour before the testator signed, or a day, or a week, or any other time; where is the court to stop, if it gave a latitude of construction to this section of the act? Suppose it were one month, or six months, or a twelve-month, after the testator had signed the will; and whether it be, at the time of the transaction, or some time before, makes no difference. The words of the act are prospective, 'such witnesses shall attest, and shall subscribe the will in the presence of the testator.' It does not appear to me, that the requisites of the act would be complied with, if the court were to hold that a testator might sign after the witnesses had subscribed, either at the same time, or two hours, or two weeks afterwards. I am, therefore, of opinion that, if it appear, from the evidence of the witnesses, and the *res gestæ* of the case, clear, that the will was signed by the testator, after the witnesses attested, it is not a good execution of the will"

In *the Goods of Olding*, (2 Curt. 865,) a motion for probate of a will, signed by the testator after the witnesses had subscribed their names, was rejected; and a motion for probate of a will which was signed by the deceased after the witnesses had subscribed their names, the witnesses having, subsequently to the signing by the deceased, placed seals opposite to their names, was also rejected, as in *the Goods of James Byrd*, 3 Ibid. 117.

(1) *Or by some other person in his presence and by his direction*.—Where a testator being too ill to sign his will, requested the drawer thereof to sign it for him, which he did in his own name, but not in the name of the testator: it was held to be sufficient. Sir Herbert Jenner remarking, "The statute allows a will to be signed for the testator by another person, and it does not say, that the signature must be in the testator's name; here, this gentleman, at the testator's request, signed the will for him, not in the testator's name, but using his own name. I incline to think, that this is a sufficient compliance with the act; the executrix is a good witness, but will lose her legacy." In *the Goods of Clark*, 2 Ibid. 329.

A will signed for the testator by one of the

witnesses who attested the execution, was held to be valid, under Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 9. In *the Goods of Bailey*, 1 Ibid. 914.

(2) *And such signature shall be made or acknowledged by the testator in the presence of two or more witnesses*.—The signature to a will, if acknowledged by the testator in the presence of two witnesses present at the same time, &c., is sufficient, whether the signature be made by the testator, or by another person for him. In *the Goods of Regan*, Ibid. 908.

A testator produced a will, in his own handwriting, with his name signed at the end thereof, to three persons, and requested them to put their names underneath his: it was held a sufficient acknowledgment of the signature, the court being satisfied, (although there was no express evidence of the fact,) that the signature was in the handwriting of the testator. *Gaze v. Gaze*, 3 Ibid. 451.

A will was written on three sides of a sheet of paper; on the fourth side was written a codicil. Both instruments were signed in the presence of, and attested by the same two witnesses, and at the same time; the witnesses were not informed of the fact, that they were attesting two separate instruments. The codicil to a great extent annulled the will: it was held, that this circumstance was not sufficient to discredit the will, it being proved to have been the voluntary act of a capable testatrix. *Biddles v. Biddles*, Ibid. 450.

In *Keigwin v. Keigwin*, (Ibid. 607,) it appeared, that a party showed a paper to two persons present at the same time, and requested them to sign it; both persons observed the signature of the party affixed to the paper, and both subscribed it in her presence. This paper, being a will, it was held to have been duly executed. Sir Herbert Jenner *Fust* stating, "The question comes to this, whether this will has been duly executed according to the requisites of the statute; the deceased did produce this paper having her signature affixed to it at the time, to two witnesses present at the same time, and the two witnesses did attest it in her presence; was this a sufficient acknowledgment? I am clearly of opinion that it was; it is not necessary, that the party should say in express terms, 'that is my signature;' it is sufficient, if it clearly appears that the signature was existent on the will when she produced it to the witnesses, and was seen by the witnesses when they did, at her request, subscribe the will. On these circumstances, I hold that this paper has been sufficiently executed."

Where a will was signed by the deceased after the attesting witnesses, (who were nude executors,) had signed; the defect was held to be cured by a regularly executed codicil on the same sheet, attested by the same witnesses. In *the Goods of William Claringbull*, 3 Eccles. Notes of Cases, 1.

To establish the will of a party totally blind, or so nearly so, as to be incapable of

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two witnesses
at one time.

time(1), and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary (2).

discerning writing, it must be proved, that the will was read over to the deceased in the presence of witnesses, or, that he was otherwise acquainted with the contents. *Fincham v. Edwards*, 3 Curt. 63.

A testatrix signed her will, and on a subsequent day sent for two witnesses to attest the same; upon their arrival they said, that they were come for the purpose of signing their names as witnesses to her will, which was then produced, upon which the testatrix said, "I am glad of it, thank God;" and they subscribed the will as witnesses: it was held, to be an acknowledgment of her signature by the deceased, under Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 9. *In the Goods of Warden*, 2 Ibid. 334.

Where the will of an aged testator, was prepared by a solicitor from instructions given by an executor and legatee in the will, the will not having been read over to the deceased, who did not sign the will in the presence of the attesting witnesses, but merely acknowledged his signature, it was pronounced for; there being no plea given in against the will, and nothing in the evidence to impeach the capacity of the deceased. *Goose v. Brown*, 1 Ibid. 707.

Positive affirmative evidence, by the subscribed witnesses, of the fact of signing or acknowledging the signature of a testator in their presence, is not absolutely essential to the validity of a will. The court may presume due execution by a testator upon the circumstances. *Blake v. Knight*, 3 Ibid. 547.

But where A. B. (deceased), requested two persons, present at the same time, "to sign a paper for him," which they did in his presence; the paper being so folded, that the witnesses did not see any writing whatever on it; and A. B. did not state, what was the nature of the paper in question: but on the death of A. B., it was found to be his intended will: it was held, that it was not entitled to probate, the provisions of the 9th section of Stat. 7 Gul. 4 & 1 Vict. c. 26, not having been complied with. *Holt v. Genge*, Ibid. 160.

In the Goods of Mary Harrison, (2 Ibid. 863,) probate was refused of a paper produced by the deceased, to three witnesses who subscribed their names thereto, two of the witnesses neither seeing the signature to the paper, nor knowing that it was signed, the third witness deposing, that she saw the signature of the deceased.

Where the deceased signed her will, not in the presence of witnesses, and subsequently produced her will before two witnesses, and said to them, "sign your names to this paper," it was held not to have been an acknowledgment of her signature under the 9th section of Stat. 7 Gul. 4 & 1 Vict. c. 26. *In the Goods of Rawlins*, Ibid. 326.

In the Goods of Richard Simmonds, (3 Ibid. 79,) the deceased having signed his will, acknowledged the signature in the presence of one witness, who subscribed his name to the will, and on a subsequent day acknowledged the signature to another wit-

ness, who subscribed his name, the former witness being present at the time, who did not again subscribe his name; motion for probate was rejected.

In the Goods of Jane Sotherton, (2 Ibid. 831,) motion for probate of a paper as part of the will, it being referred to in the will, and signed by testatrix, was rejected, the paper not having been attested by the witnesses nor produced before them.

A testator, previous to the 1st of January, 1838, had made a will and several codicils, some duly executed, others only signed by the testator. Subsequently to the 1st of January, 1838, he made and signed a codicil (B), but the same was not duly attested. Subsequently to this, by a codicil (C), duly executed and attested, he ratified and confirmed his will and "codicils;" it was held, that the codicil (B) was not so identified with (C) as to be ratified by, or incorporated with (C), the word "codicils" being more completely and properly applicable to the codicils made previously to the 1st of January, 1838. *Ferraris de Zichy (Consent of v. Hertford (Marquis of))*, 3 Ibid. 468.

A testator, by will duly executed in the year 1823, directed his executors to pay legacies, which he should give by any testamentary writings signed by him, whether witnessed or not: it was held, that such clause could not give effect to legacies bequeathed by an unattested paper made subsequently to Stat. 7 Gul. 4 & 1 Vict. c. 26. *Ibid.*

In Pennant v. Kingscote, (Ibid. 642) the will was pronounced against, both attesting witnesses, deposing against a signature according to the requisites of the 9th section of Stat. 7 Gul. 4 & 1 Vict. c. 26, and there being no circumstances on which the court could found a presumption, that the recollection of the witnesses was infirm on the subject.

The evidence of one witness, although *omni exceptione major*, is not sufficient to support a testamentary paper purporting to be duly executed and attested, where there are no adminicular circumstances tending to confirm it, and where the probabilities of the case incline against the *factum* of such an instrument. *Mackenzie v. Yeo*, Ibid. 125.

(1) *Present at the same time*.—A testator intending to execute a codicil, signed the same while lying in bed, there being present in the room the two witnesses who attested the codicil; the curtains at the foot of the bed being drawn at the time, one of the witnesses could not actually see the testator sign his name, nor could the testator see that the witness subscribed to the codicil as attesting it: it was held, that the testator and the witness signed their names in the presence of each other, as required by Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 9. *Newton v. Clarke*, 2 Ibid. 320.

Where one of the witnesses deposed, that the will was signed in the presence of himself and the other witness, the other witness being no recollection as to the fact, probate

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was allowed. *In the Goods of Summash Here*, 3 Curt. 54.

A paper was admitted to probate, on the testimony of one of the two attesting witnesses, although the other witness deposed, that it was not signed by the testator in his presence. The circumstances of the case inclining to favour the supposition of a due execution, *e. g.*, a formal attestation clause; and the first witness having, in an affidavit sworn a few days after the will was made, deposed to the due execution, the second witness not having been examined until two years and a half afterwards. *Gove v. Gove*, 151.

Where one of the attesting witnesses to a will, having deposed that the will was attested in the presence of the testatrix, and the other that it was not, the court rescinded the conclusion of the cause, for the purpose of examining other witnesses who were present at the time. *Young v. Richards*, 2 Ibid. 373.

A testatrix produced a codicil, in her own handwriting, and with her signature made thereto, to two witnesses, present at the same time, who, at her request, made their marks thereto; the testatrix wrote the names of the witnesses opposite their respective marks, and, by mistake, a wrong surname to one of them. Probate was granted. *In the Goods of Anne Ashmore*, 3 Ibid. 756.

Where a will was not signed in the presence of witnesses, but the signature was virtually acknowledged, it was admitted to probate. *In the Goods of William Philpot*, 3 Eccles. Notes of Cases, 2.

In *Moore v. King*, (3 Curt. 243,) it appeared that a testator signed a codicil in the presence of a witness, (his sister,) who, at his desire, attested, and subscribed it. On a subsequent day, when his sister and another person were present, he desired her to bring him the codicil, and requested the other person present to attest and subscribe it, saying in the presence of both parties, and pointing to his signature, "This is a codicil signed by myself and my sister, as you see; you will oblige me if you will add your signature, two witnesses being necessary." That party then subscribed in the presence of the testator and of his sister, the latter, who was standing by him, pointing to her signature and saying, "There is my signature, you had better place yours underneath." She did not, however, re-subscribe: it was held, that the instrument was not sufficiently attested, under Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 9. Sir Herbert Jenner *First* observing: "The question before the court is one of great importance with regard to the construction of the Will Act, (7 Gul. 4 & 1 Vict. c. 26.) It turns upon the due execution of a paper bequeathing personal property, which is now regulated by the same law as regulates the disposition of real property. The duty imposed upon the court is to find its way to a due and proper construction of the whole of the act; not of one single isolated clause, but of the entire intention of the legislature in passing the act. This case must form a leading case of its class; two other cases of a similar nature have been brought before the court, but only on *ex parte* motion; unfortunately they were

cases, where the property involved in the decision was so small, as to render them unable to bear the expense of litigating the point. As far as I am able to judge, the present case differs in some respects from both those cases. In the case of *Allen*, (2 Ibid. 331,) the paper was attested by the one witness alone present on one day, the deceased having then signed it in her presence; on a subsequent day it was signed in the presence of a second witness, and attested by that witness in the presence of the first, but the first witness was not called on to attest the second execution. The court was of opinion that the execution was not sufficient. The other case of *la re Simmonds*, (3 Ibid. 79,) was very similar. In this case, as has been observed, there is this material distinction; the deceased having in the first instance signed the paper in the presence of his sister alone, does on a subsequent day acknowledge his signature in the presence of his sister, and his sister pointed out her signature to the second witness, but I do not understand that the deceased desired her to re-attest the acknowledgment of his signature. I admit all that has been said as to the construction of statutes, and the interpretation put upon the Statute of Frauds as to signing by the testator, but in the same interpretation applicable to the subscription of the witnesses? It has been argued, under the present statute, as against the admission of this allegation, that although this might have been a good subscription under the Statute of Frauds, it is not sufficient under the altered language of the present act; on the other side, it has been said, that a construction is to be put on this act the same as if on the Statute of Frauds; but it must be remembered, that the doubts expressed by judges of courts of law and equity on the Statute of Frauds, led to the introduction of the present act. It has been well said, that the 7 Gul. 4 & 1 Vict. c. 26, is not an original act, but an act to amend a former law; so it is;—it is an act to amend a former law, for removing all doubts whatever existing with regard to that law, and I find in the 9th section of the new act, a considerable departure from the language of the corresponding section (5th) of the Statute of Frauds. The language of the 9th section of 7 Gul. 4 & 1 Vict. is expressly prohibitory, 'No will shall be valid unless it be in writing, and signed at the foot or end thereof,' clearly thereby intending to remove all doubts, in regard to the construction of the Statute of Frauds, as to signing by putting the testator's name at the beginning of the will; 'And such signature shall be made or acknowledged by the testator,' it had been formerly doubted, under the Statute of Frauds, whether an acknowledgment of the signature was sufficient, whether the will must not be actually signed in the presence of the witnesses; here again, all doubt is removed by the present section. Under the Statute of Frauds it had been held, that the witnesses need not be all present at the same time, the signature might be acknowledged to the three or more witnesses at different times; again, by the present act, all doubt on that

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at Berbice, was allowed to pass as that of a "soldier in actual military service," under Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 11, at the prayer of the party whose interest was prejudiced by such will.

A serjeant with his regiment at Malta, under orders for the West Indies, was, in the *Goods of James Norris*, (3 Eccles. Notes of Cases, 197,) held not to be a soldier in actual military service.

In *Drummond v. Parish*, (2 Ibid. 323,) Sir Herbert Jenner Pust observed, "This paper is all in the handwriting of the deceased; it is signed by him and sealed, but not attested; so that, under the general provisions of Stat. 1 Vict. c. 26, it is not entitled to probate. I say, 'under the general provisions' of the act, because it is contended that the paper contains a good and valid disposition of property, as coming within the exception of the 11th section, which, it has been argued, extends to soldiers of all degrees and under all circumstances, unless there may be a distinction between officers on full and those on half pay; otherwise, all persons belonging to the British army are to be considered as being on actual military service."

"Assuming this to be the construction of the statute, the effect would be to give a power of disposing of his personal property to every soldier on full pay, from the recruit of to-day to the oldest general in the service, not only by a writing unattested by witnesses, but by a will made by word of mouth. The exceptive clause in the present Will Act is the same as that in the Statute of Frauds, which first required that all wills of personal property should be in writing, and, therefore, this construction would give to all soldiers on full pay the power of disposing of property in any manner, by word of mouth, or by the most informal will. This is a most startling proposition, that it should be intended by the legislature to except from the operation of the present Will Act so large a body of persons as the British army consists of."

"It must be remembered that, as the exception was made at the time when the Statute of Frauds passed, (1676,) it must be considered with reference to the circumstances of that time, for the 11th section of the present act is only a continuation of the privilege granted to soldiers and mariners in the time of Charles the Second, and that, before the Statute of Frauds, a will might not only be made by word of mouth, but the most solemn will might be revoked by word of mouth: a will executed in the presence of witnesses might be revoked by parol. What would be the state in which the whole British army would be placed, if the exception contained in this clause were to have universal operation in that body? In the present case, the will is one which the court would be most anxious to support, if it can. It is holograph, and therefore not liable to the risk of being forged, as if it were a will in which only the signature were in the deceased's handwriting; it is written with great care; it was kept by the deceased in his private repository; there is no question that it is his act; the only question is, whether it is a will to which the law can give

effect. But if this holograph paper, unattested, can be supported, the decision of the court must include less formal papers, and wills by parol, for it is only by showing that the exception extends to all classes of the army, and to all descriptions of testamentary disposition, that this paper can be supported. I much doubt whether, if this privilege could be maintained, it would be for the benefit of the army at large; it would expose them to all the mischiefs against which the Statute of Frauds and the present Will Act were intended to guard, if the court were to hold that every soldier on full or half-pay might make a will by parol, or in writing without witnesses. The court must, therefore, look into the principles intended to be adopted into this act, as well as into the Statute of Frauds."

"The words of the 11th section are: 'Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this act.' These words, 'in actual military service,' must have some meaning; they cannot have been added to the word 'soldier' unless it were intended to impose some limitation as to the particular class of soldiers they applied to, otherwise it would be sufficient to have said 'any soldier in her majesty's service.' If the exception was intended to comprise all classes and all grades of persons in the service, the words 'in actual military service' are superfluous. The court must, therefore, endeavour to find some meaning for these words in the clause, and some reason for inserting them in the two statutes."

"In the elaborate arguments which have been addressed to the court, it was not referred to any case where this question has received a judicial decision, and, with the exception of a case to which I will presently advert, I am not aware of any decision on the point in respect to the will of a soldier. There have been decisions on the corresponding part of the clause, as to the wills of mariners at sea, and one case of this description was cited in the argument, that of Lord Hugh Seymour. *Euston (Earl of) v. Seymour (Lord H.)*, 2 Curt. 339. One or two other cases of that kind have occurred; but, with the exception of the case I shall refer to, I am not aware that there have been any decisions on this part of the section, except on motion, where the court has granted probate of a will on a certificate from the war-office; and it has now become a matter of great importance to determine whether persons in the military service are, under all circumstances, entitled to come within the exception contained in the 11th section."

"It certainly is, and ought to be, a matter of some surprise that so few cases should have occurred since the Statute of Frauds, in which it was necessary to consider the effect of this exception; but I think the circumstance is accounted for by the general feeling that it is unsafe to trust to wills made by word of mouth, when the mode of disposing of personal property prescribed by the law was so simple and required so few solemnities, and when the making of a will by word

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of mouth afforded such opportunities for fraud and imposition, as well as misapprehension, and the paucity of cases may, I think, be fairly accounted for by this circumstance.

"Now, in the absence of all authority as to the construction of these words, how is their proper interpretation to be ascertained? It was observed in the argument, and as a general observation it is true, that, in construing a British act of parliament, very little light can be gained by resorting to other codes of law, and I assent to this, as a general observation. But there are and must be cases in our courts of law, in which the principle or doctrine of a particular clause appears of doubtful interpretation, and the wording of the act and the context do not appear in exact harmony, wherein foreign codes or systems of law must be resorted to. In this case, the section in question was borrowed from the civil law; this fact cannot be denied; it is admitted on all hands, and the court has been referred (by Dr. Twiss) to the Life of Sir Leoline Jenkins, who claimed some merit for having, in the preparation of the Statute of Frauds, obtained for the soldiers of the English army, and the mariners of our navy, the full benefit of the testamentary privileges of the Roman law, and an exemption from the necessity of executing a will in writing. Now, that exemption having been avowedly borrowed from the civil law, in order to show the manner in which it should be applied, and the extent to which the exception should operate, I think that code may be fairly resorted to, in order to see whether it was the intention of the legislature, in the Stat. 29 Car. 2, c. 3, and Stat. 1 Vict. c. 26, to adopt the same exception with some limitation as to the persons whom it was to include. It becomes necessary, therefore, to refer to the civil law, and the court has been referred in the argument, not only to the text of the code, but to commentators on the text, and it is well known that very nice and subtle distinctions are made by those learned writers. I shall not enter into a long disquisition on the different points which those commentators have treated of in their expositions of the law; yet I have looked into a great many of their comments, in order to see to what extent they considered the text law dispensed with, in respect to the *testamentum militare*; and, as far as I can collect from the commentators, the only difference is, whether the privilege extended to soldiers in quarters or in garrison, *in stativis aut in hybernis*, as well as elsewhere; but all agree, as far as appears, on one point, namely, that it was not every soldier who was entitled, under all circumstances, to this privilege; but that it was confined to those who were *expeditionibus occupati*, and the only difference which prevailed amongst the commentators seems to be, whether a soldier was to be considered in *expeditione* when in garrison or winter quarters, or whether the expedition was then at an end; all agree that he must be *in expeditione*. In its origin, the testamentary privilege extended to all soldiers; we have it positively so expressed in the 29th book of the Digest, tit. 'De Tes-

tamento Militis,' and under the head 'De Origine Privilegii Militis,' (Dig. lib. xxix. tit. 1, l. 1.) wherein it is stated, (by Ulpian,) that the first full and free power of making a will was granted to soldiers by Julius Cæsar: 'Militibus liberam testamenti factionem primus quidem divus Julius Cæsar concessit.' This was the origin, according to many of the commentators, of the privilege of a soldier to make a will free from the necessity of having a certain number of witnesses to attest it, and other solemnities. The text goes on: 'Sed ea concessio temporalis erat. Postea vero primus Divus Titus dedit; post hoc, Domitianus; postea divus Nerva plenissimam indulgentiam in milites contulit; eamque et Trajanus secutus est; et exinde mandatis inseri cepit caput tale: and it quotes the chapter 'De Mandatis,' to show how very general the provision was in its first origin, and it continued so for some time after; the chapter is to this effect: 'Cum in nostram meam prolatum sit, subinde testamenta a commilitonibus relicta proferri que pueri in controversiam deduci, si ad diligentiam legum revocentur et observantiam; secutus animi mei integritudinem erga optimos excellentissimosque commilitones, simplicitati eorum consulendum existimavi; ut quoquoque testati fuissent, rata esset eorum voluntas. Faciant igitur testamenta quomodo vult, faciant quomodo poterint; sufficiatque ad bonorum suorum divisionem faciendam vera voluntas testatorum.' Nothing, therefore, can be clearer than that the privilege given to soldiers to make a will in any form extended to all ranks in the Roman army at this time. The interpretation which the Gloss. gives to the word 'simplicitas' is 'a want of knowledge,' the term used by Justinian, in the Institutes, ('Propter nimiam imperitiarum,' Lib. ii. tit. 11, s. 1.) being 'imperitia.' The Gloss. on the words 'nuda voluntas' is 'nisi domi sit; tunc enim jure communis tractari debet.' Therefore, according to the Gloss. on the text, there was an exception which confined the privilege to soldiers at home, where they were bound to conform to the general law. So stood the law at the time of the Digest. Various limitations were afterwards imposed. In the sixth book of the Code, (Codic. tit. 21, l. 11,) 'De testamento militis' is a passage which has no immediate bearing on the point the court is now discussing, but I cite it for the sake of the Gloss.: 'Quamquam militum testamentum a vinculis non subjiciantur, cum propter simplicitatem militarem;' the note in the Gloss. is, 'armatæ militiæ,' as if in contradistinction to 'togatæ.' The text goes on: 'Quod si velint, et quomodo possint, ea facere his concedatur: tamen in Valeriani quondam centurionis testamento instituto etiam jure communi accepit auctoritatem.' And the 17th law of the same title, headed, 'Quando noster testetur quomodo vult,' is as follows: 'Ne quidam putarent in omni tempore licere militibus testamenta quoquoque voluerint proponere; sancimus his solis qui in expeditionibus occupati sunt memoratum indulgentiam ultimas voluntates conficiendas benecivimus.' The Gloss. on 'expeditionibus occupati' is, 'in these words: 'Idque sive sint in castris, sive

in fossato, sive in hybernis, sive in præsiidiis, sive in stativis, seu sedibus sedetis ac sedibus.' That is the Gloss. on the phrase 'expeditionibus occupati.' And it goes on: 'Sufficit ergo ut fiat in expeditione, licet non in prociectu; alioquin nihil aut parum distabit miles a pagano;' and reference is made to the 49th Consultation of Cujacius, which was cited in the argument, and it appears from his comment, that Cujacius was of opinion that the privilege extended to soldiers who were in *castris* and in *stativis*. He says, (Consult. xlix. Op. t. 1, 699, Ed. Par. 1658,) 'Quod autem queritur, an non aliter valeat testamentum jure militari quam si fiat in prociectu; respondeo, etiam si non fiat in prociectu testamentum valere jure militari, modo fiat in expeditione, in castris, in stativis;' so that it was not indispensable that the testament should be made in *expeditione*, but it might be made in *castris* and in *stativis*. He adds: 'Alioquin nihil distaret paganus a milite, nam et a pagano in prociectu, in acie, in hostico quoquomodo factum testamentum valet.' Now, according to this opinion, a soldier in camp or in winter quarters, might make a will without observing the solemnities of the law: 'modo fiat in expeditione, in castris, in stativis,' according to Cujacius; but whether the exception extended to soldiers in *castris* and in *stativis*, is a matter of doubt amongst commentators. I do not, however, consider that General Drummond was in *castris* or in *stativis*; the question is, whether he was in *expeditione*. Cujacius goes on: 'Ergo, qui in expeditione testatur miles, in castris, in fossato, ut loquuntur, imo et qui in hybernis, ut meum judicium est, in stativis, in præsiidiis, jure militari, testamentum facere potest. Ac proinde non est necesse ut adhibeat legitimum numerum testium, ut est in principio tituli "De militari testamento," in Institut. ubi et unum testem sufficere Theophilus noster scripsit. Et equidem nullum testem necessario requiro, ac satis esse opinor si alia probationibus legitimis constare possit de voluntate militis.' Therefore, a soldier, in those circumstances, might make a will without the solemnities of the law, but he must be in *expeditione*; otherwise, in his opinion, the will would not be good. The question, therefore, again arises, what was the 'expedition?' Calvin (Kahl), in his Lexicon Juridicum, (In vocibus, Ed. Genev. 1645,) thus explains the word: 'propriè, protectio cum expeditis militibus;' and the term 'expediti milites' he defines, 'vel in expeditionibus existentes dicuntur, quicunque sunt in ipso exercitu aut castris, id est, eo loco quo, rei-publice causa est belli apparatus, seu in statione illi sunt, seu in hybernis, seu alibi, pro finibus imperii tuendis: imo quocunque in loco sit militum causa, ut si Romæ sint ad defensionem urbis collocati ac dispositi;' so that they might be 'on an expedition' even when in Rome itself, if they were called out to defend the city. He goes on: 'Falsum ergo stationarios ac limonarchas non recte testaturos jure militari, quia non sint in expeditionibus.' Therefore, it was not strictly those alone who were actually on an expedition who might make a military will, but

those who were at home, provided they were called out 'ad defensionem urbis.' And he refers for his authority to Ulpian, (De Bon. Possess. l. 1, s. ult.) 'Miles est,' he continues, 'etiam si in nostro non est; et nanarchi ac triarchi classium, jure militari testare possunt; et in classibus omnes remiges ac nautæ milites sunt; item et vigiles.'

"So far as we have gone, therefore, it is clear from the passages I have read from the Digest, and the Code, and the Comments, that the privilege did not extend to soldiers in every situation; that they must be in *expeditione*, or in *castris*, or in *hybernis*, or they must have been called out for the purpose of defending the city. Now we find by the second book of the Institutes, (Inst. lib. 2, tit. 11, s. 1,) which treats expressly of this subject, that the privilege was limited to persons in certain situations: 'Supradicta diligens observatio in ordinandis testamentis, militibus propter nimiam imperitiam eorum constitutionibus [principalibus] remissa est. Nam quamvis ii neque legitimum numerum testium adhibuerint, neque aliam testamentorum solennitatem observaverint; recte nihilominus testantur, videlicet, cum in expeditionibus occupati sunt; quod merito nostra constitutio introduxit;' that is the law he added to the Digest, as to the *testamentum militare*. 'Quocumque enim modo voluntas ejus suprema inveniat, sive scripta, sive sine scriptura, valet testamentum ex voluntate ejus. Illis autem temporibus, per quos citra expeditionum necessitatem in aliis locis vel suis sedibus degant, minime ad vindicandum tale privilegium adjuvantur; sed testari quidem, et si filii familiarum sint, propter militiam conceduntur.' Therefore, it is clear that by this later law, modifying the law as it originally existed, the privilege was confined to persons *expeditionibus occupati*, and that if a soldier made a will 'citra expeditionum necessitatem, in aliis locis, vel suis sedibus,' he must have complied with the general law as to the solemnities which were necessary to give effect to a will at Rome. In the next section (s. 3) it is said: 'Sed hactenus hoc illis de principalibus constitutionibus conceditur, quatenus militent, et in castris degant;' so long as they were engaged in actual war. 'Post missionem vero veterani, vel extra castra [alii] si faciant adhuc militantes testamentum: communi omnium civium Romanorum jure id facere debent;' therefore, the *veterani*, (who were not analogous, as suggested in the argument, to general officers in the English army, but persons who had served the time for which they had engaged, and had been discharged as *honestam causam*.) were excepted from the privilege. The section continues: 'Et quod in castris fecerint testamentum non communi jure, sed quomodo voluerint, post missionem intra annum tantum valebit;' after they had been discharged, if when *castris* and not in *castris*, they should make a will, it must be 'communi omnium civium Romanorum jure.' It goes on: 'Quid ergo, si intra annum quis decesserit, conditio autem heredi adscripta, post annum extiterit? an quasi militis testamentum valeat? Et placet valere, quasi militis.' So it only

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actual military service, or any mariner or seaman (1) being at sea, may dispose of his personal estate as he might have done before the making of this act.

"XII. And be it further enacted, that this act shall not prejudice or affect any of the provisions contained in an act passed in the eleventh year of the reign of his majesty King George the Fourth and the first year of the reign of his late majesty King William the Fourth, intituled, 'An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy,' respecting the wills of petty

the exemption was confined to soldiers in an engagement or actual danger, otherwise, it would include a soldier on duty at Whitehall. The words of the court are these: 'It is agreed, the will cannot be good unless within the privilege. A mariner on shore is not within the statute. Those who are enlisted in the service of the company have the same privilege as those in the service of the crown, and though he acted as cook, that does not take away the privilege of the soldier. He was not only a soldier, but was upon an expedition. The proof is not clear whether the expedition was over or not; one witness swears he died on the passage; he was certainly engaged in the service. Will pronounced for.' So that it appears doubtful on what particular ground the decision turned; whether because he was 'certainly engaged in the service,' or whether, because it was doubtful, 'whether the expedition was over or not,' and in returning to Moco Moco, he became ill, and died in the hospital.

"This is a decision on the question as far as it goes. If it had been decided on the ground of the deceased having been engaged in actual service at the time, it would have been in point; but, unfortunately, the words at the end of the sentence may render it doubtful on what point the decision turned. But I think it clear that the judge, who was Dr. *Bettensworth*, considered that the question had not received a judicial decision, and it appears that he had directed the allegation to be reformed by setting forth the expedition on which the party deceased had been engaged; so I presume that the allegation had been objected to on that ground. But I think it, on the whole, clear that the principle adopted in that case, with the limitation 'in actual military service,' is that every soldier was not entitled to the exemption contained in the clause of the statute of Charles 2, but that it was confined to such as were on an expedition—in actual military service, that is, in *expeditions*. The question, then, comes to be considered, what was the situation of General Drummond at the time when he made this will.

"The allegation pleads that the deceased, at the date of the will and of his death, was a major-general on full pay. Then, if this were sufficient to give the exemption, every major-general in the army on full pay, and every full-pay officer, would be in the same situation. Then it is pleaded that the duties of his office extended to the troops of the royal artillery abroad as well as in England; that he was subject to military law, and liable to be sent upon foreign service, when required, (so is every officer and every soldier in the corps;) and that he was as completely in the actual service of her majesty as if serving

with a British regiment on foreign service, but so is every officer and soldier; this is a general and universal description, applicable to all on full-pay or half-pay—all are in the actual service of her majesty. I do not consider that the words, 'in actual military service,' apply to a person in General Drummond's situation, not living within the walls of a garrison, as far as it appears, but *suis sedibus*; and even if he were, I am of opinion he was not 'in actual military service.' On this ground, therefore, I am of opinion that this is not a valid will, not being attested as required by the act. It would, consequently, be of no use to admit the allegation to proof, as all the facts are before the court, which could not come to a different conclusion if it had the evidence before it. I am of opinion, therefore, that I must reject this allegation. Of course, it is with very great pain that the court finds itself under the necessity of so doing; but I think it best to express my opinion of the law at once. Although this decision may place the family of General Drummond in an unpleasant situation, I am not prepared to say that the privilege would be advantageous to the great body of the army, which it would leave open to fraud, imposition, and malpractices; I think, therefore, I do not inflict a great injury upon them by delivering this opinion of the law. I am of opinion that I ought to reject this allegation, and I do reject it."

In 3 Eccles. Notes of Cases, 4, the following observations from the reporter occur: "It may perhaps be convenient to know, that one (at least) of our colonial courts, the Supreme court of Bengal, has taken the same view of this question as the Prerogative court of Canterbury, by adopting its decision in the case of *Drummond v. Parish*, and applying its construction of Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 11, to the corresponding section of the Indian Wills Act, (No. XXV. of 1838, s. 29.)"

The Supreme court of Madras has held that the exception applies "only to nuncupative wills of non-commissioned officers and soldiers." Gov. Notification, 5th March, 1840.

(1) *Seamen*—The will of a seaman, who went on shore, and there died by an accident, was, in *the Goods of Lay*, (2 Curt. 375,) allowed to pass as that of a seaman "at sea," under Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 11.

Probate was likewise allowed of an unattested codicil made at sea by a pursuer of a man-of-war, as that of a seaman, under the exception contained in the 11th section of the Stat. 7 Gul. 4 & 1 Vict. c. 26. In *the Goods of Hayes*, *Ibid.* 339.

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Creditor at-
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admitted a
witness.

Executor to be
admitted a
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officers and seamen in the royal navy, and non-commissioned officers of marines and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in her majesty's navy.

"XIII. And be it further enacted, that every will executed in manner hereinbefore required shall be valid without any other publication thereof.

"XIV. And be it further enacted, that if any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be *incompetent to be admitted a witness* (1) to prove the execution thereof, such will shall not on that account be invalid.

"XV. And be it further enacted, that if any person shall attest the execution of any will to whom or to whose *wife* (2) or husband any beneficial devise, legacy, estate, *interest* (3), gift, or appointment, of or affecting any real or personal estate, (other than and except charges and directions for the payment of any debt or debts,) shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

"XVI. And be it further enacted, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

"XVII. And be it further enacted, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove

(1) *Incompetent to be admitted a witness*:—Where the will of an aged person of doubtful capacity was prepared by a solicitor, who was appointed an executor and one of the residuary legatees, it was pronounced against, and the parties propounding it condemned in costs; bare execution in such a case not being considered sufficient. *Durling v. Loveland*, 2 Curt. 225.

(2) *Wife*:—In *Young v. Richards*, (Ibid. 374,) it was held, that the wife of an executor who was a party in the cause is not a competent witness to support the will.

An attesting witness to a codicil, having married a legatee therein, such legatee propounding the codicil, was held to be incompetent as a witness in support of it; and having joined his wife in the proxy in the suit, the court directed his answers to be given to an allegation on the other side, as a party in the cause. *Mackenzie v. Yeo*, Ibid. 509.

(3) *Interest*:—In *Allen v. McPherson*, (Ibid. 513,) an objection to the competency of a solicitor as a witness in support of a codicil, he having admitted, that in the first instance he retained the proctor in the cause for the parties who propounded the codicil, but who did not admit, that he was responsible for the costs, was overruled.

A legatee, at the request of the testator, signed her name to the will, the testator subsequently duly executed the will in the presence of two witnesses who attested it; a motion to strike out the name of the legatee was

rejected. *In the Goods of Logan Mitchell*, Ibid. 916.

A married woman, having under her marriage settlement a power to dispose of property "by will to be published by her in the presence of and to be attested by two credible witnesses," published her will in the presence of two witnesses, who attested the same, one of those witnesses being the wife of the executor, who was also a legatee under the will, and had not renounced or released his legacy. Probate was granted, leaving the question as to the due execution of the will open. *In the Goods of Biggar*, Ibid. 100.

An inofficious will, prepared from instructions given to the drawer by the party solely benefited, and who was in no way related to the testator, was pronounced void on proof of the capacity of the testator, and of the will having been read over to him. *Wrench v. Murray*, 3 Ibid. 623.

A paper of a testamentary nature was produced by a sole legatee named in it; it was reported to be signed by the testator and to be attested by two witnesses, one of whom was subsequently to the date of the paper, a question, married the legatee: it was held, that his sole testimony could not sustain the paper, there being no circumstances leading up to the probability of the transaction, there being, on the contrary, various facts and circumstances from which the court drew a conclusion unfavourable to its validity. *Mackenzie v. Yeo*, Ibid. 125.

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the execution of such will, or a witness to prove the validity(1) or invalidity thereof.

"XVIII. And be it further enacted, that every will made by a man or woman shall be revoked by his or her marriage(2), (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions.)

"XIX. And be it further enacted, that no will shall be revoked by any presumption of an intention(3) on the ground of an alteration in circumstances.

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Will to
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marriage

No will
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1) *Witness to prove the validity*:—A.B. an executor and one of the residuary legatees under a will, on the 20th of November, renounced probate of the will, (but the proxy of renunciation was not recorded until the 2nd of December,) and on the 22nd of November, by deed of gift, conveyed his interest in the personal estate of the deceased to C.D. (who was also an executor,) in order to render himself a competent witness to support the will. It was held, first, that the proxy of renunciation took effect from its date; and, secondly, supposing the renunciation to be invalid, that, as the interest under the will was conveyed by the deed of gift, the party was a competent witness under Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 17. *Munday v. Slaughter*, 2 Curt. 72.

(2) *Marriage*:—*In the Goods of Shirley*, (Ibid. 657,) probate was allowed to pass of a will made previously to 1st January, 1838, the testator having married in 1839, it not being revoked by Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 18.

(3) *Presumption of an intention*:—A testatrix duly executed a will, and, subsequently thereto, two other wills, in both of which was contained a clause revoking all former wills. She afterwards destroyed the latter two wills: it was held, that the first will was not thereby revived; and that parol evidence was not admissible to shew an intention to revive. *Major v. Williams*, 3 Ibid. 432.

A will, (dated 1841,) revoking all former wills, referred to a clause in a former will. Probate was refused, of so much of the former will as was necessary to explain the latter will. *In the Goods of Catherine Sinclair*, Ibid. 746.

In the Goods of Wilson, (2 Ibid. 853,) a motion to supply a legacy omitted by mistake, was rejected, the will being perfect, and having a clause revoking all former wills.

An allegation setting up parol evidence, in order to shew that two codicils were not intended to operate together, but that the latter revoked the former, was rejected; there being no ambiguity on the face of the papers themselves. *Thorne v. Roake*, Ibid. 799.

The testator having left two substantive wills, the latter disposing of the whole of his property, although not expressly revoking the former will, nor the appointment of executors therein: it was held to have revoked the former, and to be alone the will of the testator. *Henfrey v. Henfrey*, Ibid. 468.

In Wood v. Goodlake, (Ibid. 82,) it appeared, that the deceased died on 28th April, 1836, possessed of real and personal estate, together of the value of 1,000,000*l*. Two papers, A. and B., alleged to have been found, at the deceased's death, in his fast-locked repositories, annexed together by wafers, and sealed up in an envelope, endorsed, "The will of James Wood, Esq., 2nd and 3rd December, 1834," were propounded, as together containing the will.—A. which was headed, "Instructions for the will of me, James Wood, Esq. of Gloucester," was dated 2nd of December, 1834, and was signed by the deceased, but not attested, purported to appoint four gentlemen by name executors, to desire them to take possession of his personal estates, subject to the payment of debts and "such legacies as I may hereafter direct," and to declare he would dispose of his real estates by writing indorsed thereon. Paper B. a separate paper, dated 3rd December, 1834, signed by the deceased, and attested by three witnesses, began, "I James Wood, Esq. do declare this to be my will, for disposing my estates, as directed by my instructions," gave all his real and personal estates, "which I may not dispose of," and "subject to my debts, and to any legacies or bequests of any part thereof, which I may hereafter make," &c. "to my executors," not naming, or otherwise describing them. Both papers were very informal, were in the hand-writing of one of the executors, (the deceased's attorney,) and ultimately appeared to have been by such attorney annexed together, sealed up in the envelope, indorsed, and locked up in the deceased's bureau during his last illness, and, without his directions or knowledge, held that the presumption of law, that instructions are superseded by the execution of a will, was not repelled, that the two papers not being published together, as the will of the deceased, nor annexed with his knowledge; and A. not being unequivocally referred to in B., A. formed no part of the deceased's will, that consequently the interest of the four parties named in it as executors, was at an end, and that there was no party before the court with an admitted interest, who could propound B., pray probate of it, or administration with it annexed: the court, therefore, pronounced against A., made no decree as to B., and condemned the parties propounding A. and B. in the costs of one of the next of kin.

Another paper, propounded as a codicil by legatees named in it, opposed by the asserted

ted, that no will or codicil, or any part thereof, as aforesaid, or by another will or codicil executed, or by some writing declaring an intention to be in the manner in which a will is hereinbefore the burning (1), tearing (2), or otherwise destroying or by some person in his presence and by his avowing the same.

ted, that no obliteration, interlineation, or other the execution thereof, shall be valid or have any or effect of the will before such alteration shall ration shall be executed in like manner as herein of the will (4); but the will, with such alteration

n, dated referred to.

A testamentary paper (dated 1826 signed by a testator, having an attestation clause, but not subscribed by witnesses. The presumption of law against the final character of the paper was held to be rebutted and probate granted upon the evidence and circumstances. *Pett v. Hake*, Ibid. 612.

(1) *Burning*:—*In the Goods of Thorpe*, (2 Ibid. 913,) probate was allowed of a copy of a duly executed codicil, which had been burnt by mistake.

(2) *Tearing*:—*In the Goods of Shaw*, (Ibid. 905,) probate was granted of a will by the testator when in a delirious state.

A will being torn into four pieces by the testator, is *prima facie* revoked, and the executors will not, on motion, upon an affidavit that the deceased tore the paper in a fit of passion and did not intend to revoke it, decree probate of such a paper, in the absence of other next of kin. *In the Goods of Colberg*, (Ibid. 832.)

(3) *Otherwise destroying*:—Cancellation of a will is not a revocation thereof, unless the words "otherwise destroying" be used. *Stephens v. Taprell*, Ibid. 458.

(4) *Alteration shall be executed as hereinbefore is required for the execution of the will*:—A testator, by his will executed, devised certain real estates to R. in fee, subject to and charged with an annuity of six hundred pounds a year which he gave to his daughter E. J., for her life with powers of distress and entry on the devised estates, in case the annuity were in arrear. He subsequently erased with the word "six," and inserted over it the word "two," leaving, however, the word "six" legible in each place where it occurred, and on the same day he executed a deed, and on the same day he executed a deed or codicil to his will, in the presence of one witness, attesting the above alterations, it being the substitution of "two" for "six." It was, under these circumstances, decreed that the annuity of 600*l.* *Locke*, (Ibid. 901.)

A testator, after having partly erased and substituted the word "four" for "two," not being attested, a will passed, as it originally was, "four" being sufficient.

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STATUTA GULIELMI IV. A.D. 1830-1837.

as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

"XXII. And be it further enacted, that no will or codicil, or any part thereof, which shall be in any manner revoked (1), shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

paper. *In the Goods of Bevan*, 2 Curt. 369.

A testator executed his will, containing a legacy therein of fifty pounds to S. S. Subsequently to the execution, he erased the word "fifty," and substituted the word "thirty." The alteration not being attested, probate was granted with the original word "fifty" inserted. *In the Goods of Rippin*, 3 Curt. 121, *see* *vide* 2 *Ibid.* 332.

The appointment of the executors in a will, being made in a clause after the signature of the testator, administration with the will annexed granted to the residuary legatee, the clause appointing the executors not being part of the will. *In the Goods of Howell*, 2 Curt. 342.

A testatrix obliterated, *animo revocandi*, several passages of her will, so that none of the parts obliterated could be distinguished upon the face of the will: it was held, that this was a complete revocation within the meaning of Stat. 7 Gul. 4 & 1 Vict. c. 26, s. 21. *Townley v. Watson*, 3 *Ibid.* 761. 3 *Eccles. Notes of Cases*, 17. Sir Herbert Jenner *Just* observing, "I am of opinion that this allegation must be admitted.

"The 21st section of the present Wills Act provides, 'That no obliteration, interlineation, or other alteration made in any will, after the execution thereof, shall be valid or have any effect, except so far, as the words or effect of the will, before such alteration shall not be apparent, unless it be re-executed, as prescribed by the act,' and the construction which the court has, in a former case, put upon that word 'apparent,' is apparent on the face of the instrument itself.

"In the case of *Brooke v. Kent*, (3 Moore's P. C. Ca. 334, *vide post*. 1797, n. (2).) evidence *dehors* the will was admitted; but that was a question of intention, and was so treated by the Judicial Committee. There was no intention entirely to revoke a legacy, the wish was to substitute a sum of 100*l.* for 200*l.* In this case, there is no intention to substitute one legacy for another; the intention is to revoke the legacies *in toto*. The court being of opinion, that the proper construction of the 21st section is that to which I have just referred, considers this allegation admissible; and that if the facts pleaded be proved, this instrument will be entitled to probate without the obliterated parts."

In the Goods of Ibbetson (Sir Charles),

2 Curt. 337,) the testator, after the execution of his will, obliterated and erased certain parts thereof. Probate was granted of the will, with those parts in blank, the original words not being discernible on the face of the paper.

In the Goods of Brooke, (*Ibid.* 343, *vide post*. 1797, n. (2).) the testator, after the 1st January, 1838, erased certain words in a will executed in July, 1837, and wrote a memorandum, stating what the words erased originally were, but such memorandum was unattested. Motion for probate of the will as it originally stood, was rejected.

(1) *In any manner revoked*.—A testator, intending to destroy his will, threw it on the fire; but a devisee under the will snatched it off, and took it away, a corner of the envelope only being burnt. The testator was displeased at her having taken it, and she, being urged by him to give it back, promised to burn it; and pretended to do so in his presence, but did not. Testator afterwards told another person, that the devisee had thrown the will on the fire, but, on that party expressing a doubt, testator said that he did not care, and that, if he was alive and well, he would make another. He took no further step either to destroy the old will, or to make a new one; a jury having found that the testator had revoked the will by burning: it was held, in a case of copyhold to which the Statute of Frauds, (Stat. 29 Car. 2, c. 3, s. 6,) does not extend, and before Stat. 7 Gul. 4 & 1 Vict. c. 26, that the will was revoked by the attempt to burn, and was not revived after such revocation. *See d. Reed v. Harris*, 8 A. & E. 1.

A testator, in the year 1832, made a will and codicil, and, in March, 1836, a second codicil. In October, 1836, he executed a new will, prepared by his solicitor, and which was delivered into his possession. At his death, the will of 1836 could not be found: it was held, that the effect of the execution of the later will was to revoke the prior will and codicils, and that the subsequent destruction of the second will by the testator, (so presumed from it having been delivered into his possession and not being forthcoming,) did not *per se* operate to revive the first will and codicils. *James v. Cohen*, 3 Curt. 770. 3 *Eccles. Notes of Cases*, 30.

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ed, that no conveyance or other act made or
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es- who were ignorant of the difference between
ds- "between the bequest of personal estate and
ee, devise of land or real estate." *Lacey v. Lacey*
for *Mudge v. Bigham*, Cowp. 352.

cation arising from such words, a limitation of an estate tail to such person or issue, or otherwise: provided, that this act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

"XXX. And be it further enacted, that where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

"XXXI. And be it further enacted, that where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee-simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

"XXXII. And be it further enacted, that where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the life-time of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

"XXXIII. And be it further enacted, that where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the life-time of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

"XXXIV. And be it further enacted, that this act shall not extend to any will made before the first day of January, one thousand eight hundred and thirty-eight(1), and that every will re-executed or republished(2), or revived by any

STAT. 7 (4 & 1 VICT. c. 26.

No devise trustees or executors except for a presentation to a church shall pass chattel interest. Trustees: an unlimited devise, with the trust to endure to the life of person beneficially for life, to the fee.

Devises of estates to shall not

Gifts to children or issue who issue living the testator death shall not lapse. Act not to extend to made before 1838, nor estates to survive persons who die before 1838.

(1) *Shall not extend to any will made before the first day of January, one thousand eight hundred and thirty-eight*:—In *Hobbs v. Knight*, (1 Curt. 768,) a party duly executed a will in 1835, and after the first of January, 1838, cut therefrom his signature: it was held, first, that the effect of such act was to be considered with reference to the provisions of Stat. 7 Gul. 4 & 1 Vict. c. 26; the 34th section of that statute enacting, that the act "shall not extend to any will made before the 1st of January, 1838," not applying to any act done to a will after that date. Secondly, that the cutting out the signature amounted to a revocation of the will under the terms "tearing or otherwise destroying the same," in the 20th section of the statute.

Where a testator, after the 1st of January, 1838, having obliterated the word *three* or *five*, and substituted the word *one*, in a will made in 1837, the alteration not being at-

tested as required by Stat. 7 Gul. 4 & 1 Vict. c. 26: probate was granted in blank. *In the Goods of Livock*, Ibid. 906.

An unattested codicil without date, the deceased dying in January, 1839, was pronounced for, the case being bare of facts, and there being nothing to shew, that the codicil was signed after the first of January, 1838, when Stat. 7 Gul. 4 & 1 Vict. c. 26, came into operation. *Pechell v. Jenkinson*, 2 Ibid. 273.

(2) *Republished*:—A will of lands, made before January 1st, 1838, and revoked, may, under Stat. 7 Gul. 4 & 1 Vict. c. 26, ss. 9 & 34, be republished after that day, by a codicil attested by only two witnesses. *Andrews v. Turner*, 3 Q. B. 177.

In *Brooke v. Kent*, (cit. Ibid. 178, in not.) Dr. Lushington is reported to have delivered the following judgment:

"The question is, whether all wills and codicils made before that date are altogether,

CLXI. STAT. 7 GULIELMI 4 & 1 VICTORIAE, cap. xli. A.D. 1837.

STAT. 7
4 & 1 V
cap. xli.

"An Act to alter and amend an Act passed in the second year of the Reign of His late Majesty King William the Fourth, intituled, An Act to enable the Governors of the Possessions, Revenues, and Goods of the Free Grammar School of King Edward the Sixth, in Birmingham, in the County of Warwick, to erect a School-house, Master's Houses, and other suitable Accommodations for the said School, and to extend the Objects of the Charity; and for other Purposes."

CLXII. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 44. A.D. 1837.

STAT. 7
4 & 1 V
c. 44.

"An Act to provide for the Costs of Prosecutions for concealing the Birth of Children by secret burying, or otherwise disposing of their Dead Bodies."

CLXIII. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 45. A.D. 1837.

STAT. 7
4 & 1 V
c. 45.

"An Act to alter the Mode of giving Notices for the holding of Vestries, and of making Proclamations in Cases of Outlawry, and of giving Notices on Sundays with respect to various Matters."

"Whereas by an act of parliament passed in the fifty-eighth year of the reign of his majesty King George the Third, intituled, 'An Act for the Regulation of Parish Vestries,' it is enacted, that no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some Sunday during or immediately after divine service, and by affixing the same, fairly-written or printed, on the principal door of such church or chapel; and whereas by an act passed in the thirty-first year of Queen Elizabeth it is enacted, that before any outlawry shall be had and pronounced proclamation shall be made at the door of the church or chapel of the town or parish where the defendant shall be dwelling immediately after divine service on a Sunday; and whereas by divers acts relative to the assessing and collecting of highway and poor rates and land tax, and other matters, it is directed or required that public notice shall be given with reference to certain proceedings relating thereto respectively in the parish churches or chapels during divine service; and whereas by ancient custom notice is usually given in churches during divine service of the times appointed for holding courts leet, courts baron, and customary courts; and whereas it is expedient that such mode of giving notices should be altered; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act so much of the said first-recited act as directs the publication of such notices to be made in the parish church or chapel on some Sunday during or immediately after divine service shall be and the same is hereby repealed; and that from and after the first day of January next no proclamation or other public notice for a vestry meeting or any other matter shall be made or given in any church or chapel during or after divine service, or at the door of any church or chapel at the conclusion of divine service.

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"II. And be it further enacted, that from and after the first day of January next all proclamations or notices which under or by virtue of any law or statute, or by custom or otherwise, have been heretofore made or given in churches or chapels during or after divine service, shall be reduced into writing, and copies thereof, either in writing or in print, or partly in writing and partly in print, shall previously to the commencement of divine service on the several days on which such proclamations or notices have heretofore been made or given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place;

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so affixed shall be in lieu of and as a substitution for the
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her enacted, that from and after the first day of January to a faculty, nor any other decree, citation, or proceed in a synodical court, shall be read or published in any church or lately after divine service.

ther enacted, that all the provisions of this act shall extend and to the town of Berwick-upon-Tweed, the Isle of Man, nsey, Jersey, Alderney, and Sark."

the Estate in Her Majesty, and to provide for the future
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GULIELMI 4 & 1 VICTORIÆ, c. 53. A.D. 1837.

passed in the last session of parliament, intituled, 'An Act
 secular Jurisdiction of the Archbishop of York and the

Bishop of Ely in certain Liberties in the Counties of York, Nottingham, and Cambridge,' it was amongst other things enacted, that all the secular authority of the Bishop of Ely in the isle of Ely in the county of Cambridge, and all authority of the chief justice of Ely, theretofore appointed by the Bishop of Ely, should, from and after the passing of the said act, cease and determine, and all the secular authority of the said bishop should become and be vested in his late majesty, his heirs and successors; provided always, that nothing therein contained should prevent any justice of the peace then acting for the said isle from continuing to act as such within the limits of the said jurisdiction as if the said act had not been passed; and it was further enacted, that the county rates for the said isle of Ely should remain, as theretofore, distinct from the rates for the rest of the county of Cambridge, and should be assessed and levied, and paid and applied, by and under the order and direction of the justices of the peace for the said isle, as if the same were a separate county, but in all other respects under the same regulations as were applicable to the rates of other counties in England; and it was further enacted, that no person should, from and after the passing of the said act, be committed to the gaol at Ely, but all persons who, if the said act had not passed, might have been committed to or confined in such gaol, might be committed to and confined in the gaol at Cambridge, and the justices of the said isle of Ely should have full power to commit to the said gaol at Cambridge, and all persons who at the time of the passing of the said act should be confined in the said gaol at Ely should, as soon as might be after the passing of the said act, be delivered up by the keeper of the said gaol at Ely to the keeper of the said gaol at Cambridge, together with the warrant or instrument under or by virtue whereof every such person should be then detained in custody, and the keeper of the said gaol at Cambridge should receive and detain such persons in custody in the same way as if such persons had originally been committed to his custody: and whereas the gaol for the county of Cambridge is not locally situate within the town or borough of Cambridge, but is situate near thereto, and within the parish of Chesterton in the same county, and there is a gaol for the said town or borough which is situate within the precincts of the same: and whereas it is desirable to prevent any doubt as to the meaning of the said recited act in regard to the gaol to which persons should be committed and removed from the said isle of Ely, and to declare that by the gaol at Cambridge mentioned in the said act, the gaol for the county of Cambridge for the time being was meant and intended: and whereas by the committal of prisoners from the said isle of Ely to the said county gaol, and the keeping and maintaining such prisoners there, considerable expense will be occasioned to the said county of Cambridge, and in consequence thereof it may be necessary to enlarge the said gaol for the county of Cambridge; and it is therefore expedient that all expenses already occasioned or which may hereafter be occasioned thereby, as well as from the prosecution, trial, punishment, conveyance, and transport of such prisoners, should be charged on the said rates for the said isle of Ely: be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that by the gaol at Cambridge mentioned in the herein before-recited act was meant and intended the gaol for the said county of Cambridge situate at Chesterton in the same county; and that all persons who if the said recited act had not passed might have been committed to or confined in the gaol at Ely may be committed to and confined in the gaol for the time being of the said county of Cambridge, and that all justices who if the said act had not been passed might have committed to the gaol of the said isle of Ely shall have full power to commit to the gaol for the time being of the said county of Cambridge.

"II. And be it enacted, that it shall be lawful for all judges, justices, and others acting under any commission of gaol delivery, to direct that any person who shall have been committed for any crime from the said isle of Ely, and who shall thereupon be convicted and sentenced to imprisonment, shall be imprisoned either in the gaol or house of correction of the said county of Cambridge, or in any other

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gaol or house of correction at Ely or Wisbeach, or elsewhere in the said isle of Ely.

"III. And be it enacted, that all expenses already incurred or which may hereafter be incurred under or by virtue of the said recited act by the committal of persons from the said isle of Ely to the gaol for the said county of Cambridge, and of the keeping and maintenance of such persons there, and also of the prosecution, trial, punishment, conveyance, and transport of such prisoners, and all other expenses occasioned by their being kept and detained in such gaol, or by the consequent and necessary increase of turnkeys and other attendants, or the alteration or enlargement of the said gaol, and also a due proportion of the expenses of the necessary repairs of the said gaol, and of the general expenses of the establishment thereof for the time being, shall be paid and satisfied out of the said rates for the said isle of Ely; and (notice in writing of the amount of such expenses being given or transmitted by post by the clerk of the peace for the said county to the clerk of the peace for the said isle half-yearly, specifying the time at which the same are required to be paid,) the justices of the peace for the said isle shall from time to time assess and levy the amount of such expenses, and use and exercise all powers, authorities, and methods in regard thereto, in the same manner as they are and shall be empowered by law to assess and levy county rates, or rates in the nature of a county rate, within the said isle for other purposes; and the amount of such expenses shall from time to time be paid by the treasurers for the said isle, or one of them, to the treasurer for the said county, to be applied to the satisfaction of all such expenses accordingly; and such last-mentioned treasurer shall be accountable for the same in the same manner as for other county rates received by him: provided always, that no enlargement of the said gaol shall be made until notice of such proposed enlargement shall be given by the clerk of the peace for the said county to the clerk of the peace for the said isle, nor until the expediency of such enlargement shall have been submitted to the consideration of and shall have been agreed to by a joint committee of six justices of the peace for the said county and isle, to be appointed at the general or quarter sessions of the peace to be holden for the said county and isle respectively next after such notice in the manner provided.

"IV. And be it enacted, that if at any time hereafter the justices of the peace for the said isle shall refuse to make, assess, and levy a rate for defraying any such expenses as aforesaid, (and the nonpayment thereof by the time to be specified in such notice shall be construed to be a refusal to make, assess, and levy such rate,) the justices of the peace for the said county and isle respectively shall, at the respective general or quarter sessions which shall be holden in and for the county and in and for the isle next after such refusal respectively, appoint six justices of the peace for the county and for the isle in manner hereinafter mentioned, that is to say, the justices of the peace for the said county shall at such sessions appoint three justices of the peace for the said county, and the justices of the peace for the said isle shall at such sessions appoint three justices of the peace for the said isle; which justices of the peace so to be respectively appointed as aforesaid are hereby required to meet, at such time as shall be fixed for the purpose by the chairman of such general or quarter sessions for the said county, at the gaol for the said county, and of which time of meeting notice in writing shall be given or transmitted by post by the clerk of the peace for the said county to the county justices so to be appointed, and by the same clerk of the peace to the clerk of the peace for the said isle, who shall give or transmit the same by post to the isle justices so to be appointed; and the justices of the peace so to be appointed as aforesaid, or the major part of them then and there assembled, (such major part not being less than five in number,) shall hold a special sessions at the said gaol for the purpose of ascertaining and settling whether any and what expenses are chargeable in respect of any of the matters aforesaid on the rates of the said isle, and the proportion of expenses in respect of any of the said matters which ought to be borne by the said county and isle respectively; and the clerk of the peace for the said county shall attend such special sessions, and keep a record of the proceedings there, which

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record shall be evidence thereof; and the sum or sums which at any such special sessions as aforesaid shall be declared to be chargeable on the said isle under this act, shall be levied and raised in manner aforesaid.

“V. And be it enacted, that all justices of the peace acting in and for the said isle of Ely shall from and after the passing of this act have and possess and may exercise all such and the same rights, privileges, powers, and authorities whatsoever within the said isle of Ely as any justice of the peace acting in and for any county, riding, or division now hath or possesses or may exercise in such county, riding, or division.

“VI. And be it enacted, that it shall and may be lawful from and after the passing of this act for any justice of the peace acting in and for the said county of Cambridge, and he is hereby authorized, to issue under his hand and seal any warrant or warrants for the apprehension of any person or persons residing or being within the said isle of Ely, charged on oath before him the said justice with any felony or misdemeanour committed in the said county of Cambridge, and in like manner for any justice of the peace acting in and for the said isle of Ely, and he is hereby authorized, to issue under his hand and seal any warrant or warrants for the apprehension of any person or persons residing or being within the said county of Cambridge, charged on oath before him the said last-mentioned justice with any felony or misdemeanor committed in the said isle of Ely; and the constables or constable or other person to whom any such warrant or warrants shall or may be addressed or directed are and is hereby authorized to apprehend and take any such person or persons so charged on oath as aforesaid (and whose name or names shall be inserted in such warrant or warrants) with any such felony or misdemeanor committed in the said county of Cambridge or in the said isle of Ely, without indorsement of such warrant or warrants by any justice of the peace of the said county of Cambridge or of the said isle of Ely.

“VII. And whereas doubts have arisen whether the isle of Ely is included in enactments made in several statutes respecting counties, ridings, or divisions; be it therefore enacted, that under such statutes heretofore passed or hereafter to be passed, the isle of Ely shall be deemed and taken to be a division of a county.

“VIII. And whereas the townships of Feliakirk and Sutton-under-Whitstonecliffe, in the parish of Feliakirk and townships of Kilburn and Marton Lordship, in the county of York, are locally situated within the north riding of the said county, and yet for certain purposes are esteemed to be within the liberty of Ripon in the said county, heretofore part of the secular jurisdiction of the Archbishop of York: and whereas by the said act of the last session of parliament it was amongst other things enacted, that all the secular jurisdiction of the said Archbishop of York in the said liberty of Ripon should from and after the passing of the said act cease and determine, and should become and be transferred to and vested in his said late majesty, his heirs and successors: and whereas the said townships are distant upwards of fourteen miles from Ripon aforesaid, and it is highly expedient that the said townships should be entirely separate and distinct from the said liberty of Ripon; be it therefore enacted, that from and after the passing of this act, the said townships of Feliakirk and Sutton-under-Whitstonecliffe, and the said townships of Kilburn and Marton Lordship, be absolutely removed and separated out of and from the said liberty of Ripon, and out of and from the jurisdiction thereof, and become parts of the said north riding, to all intents and purposes whatsoever, and be solely within the jurisdiction of the said north riding; any custom or usage to the contrary thereof in anywise notwithstanding.

“IX. And be it enacted, that this act may be repealed or altered by any other act in this present session of parliament.”

STAT.
4 & 1
c. 53.

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STATUTA GULIELMI IV. A.D. 1830—1837.

CLXVI. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 58(1). [IRELAND.] A.D. 1837.

An Act to revive and continue until the sixth day of April, One thousand eight hundred and thirty-eight, an Act of the last Session of Parliament, for suspending Proceedings for recovering Payment of the Money advanced under the Act for establishing Tithe Compositions in Ireland."

CLXVII. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 69(2). A.D. 1837.

An Act to amend an Act for the Commutation of Tithes in England and Wales."

"(3) Whereas an act was passed in the seventh year of the reign of his late majesty King William the Fourth, intituled, 'An Act for the Commutation of Tithes in England and Wales;' and it is expedient to amend the said act in certain respects; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the tithe commissioners for England and Wales shall have power, if they shall think fit, to confirm under their hands and seal any instrument of voluntary apportionment, and also any agreement for giving land instead of tithes, made according to the provisions of the said act, to which shall be annexed a map or plan agreed to be adopted by a parochial meeting, although they shall not be satisfied of the accuracy of such map or plan, or that the several quantities of land specified in such apportionment or agreement are therein truly stated; but no recital of quantity or admeasurement of land, nor any map or plan annexed to any such confirmed apportionment or agreement, nor any copy thereof, shall be deemed evidence of the quantity of land referred to therein or of the accuracy of such map or plan, unless the said map or plan, as well as the instrument of apportionment or agreement, shall be signed by the commissioners and sealed with their official seal; provided always, that the commissioners, in case they shall confirm such voluntary apportionment or agreement, but shall not think proper to seal such map or plan, shall certify under their hands upon some part of such map or plan that the same is the map or plan referred to in such voluntary apportionment or agreement, as the case may be, which certificate shall be received as evidence of that fact.

"II.(4) And be it enacted, that two thirds in value of the owners of the lands in any parish or district of which the tithes are to be commuted, and respecting the boundaries of which any dispute or doubt shall arise, may, by writing under their hands or the hands of their agents, signed at a parochial meeting called for that purpose according to the provisions of the said act, in the case of a parochial meeting for making a voluntary agreement for the commutation of the tithes of a parish, signify their request to the tithe commissioners that the said commissioners should inquire into and settle such boundaries; and thereupon the said commissioners, or any assistant commissioner specially appointed under their hands and seal for that purpose, shall, by examination of witnesses upon oath, (which oath the said commissioners or assistant commissioner are and is hereby empowered to administer) and also using any other powers contained in the said act, and by such other ways and means as they or he shall think proper, inquire into, ascertain, and set out the boundaries of that parish or district; provided always, that such commissioners or assistant commissioner (before they or he proceed to set out the boundaries of such parish or district) shall give public notice of their or his intention by writing under their or his hands or hand, to be affixed on the most public door of the church of that parish or district, and of every parish and district thereto adjoining, and also by advertisement to be inserted in some newspaper circulated in the county in which such parish or district is situated, and also by writing to be delivered to or left ten days at least before the time of setting out such boundaries at the last or usual place of abode of the respective landowners, or the respective

(1) *Vide* Stat. 1 & 2 Vict. c. 109.

(3) *Vide* Stat. 2 & 3 Vict. c. 62, s. 22.

(2) *Vide* Stat. 1 & 2 Vict. c. 64; Stat.

& 3 Vict. c. 62, s. 22; and Stat. 3 & 4

(4) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s.

55 & 64; Stat. 2 & 3 Vict. c. 62, s. 24

& 35, and Stat. 3 & 4 Vict. c. 15, s. 25

agents of such landowners, through or abutting upon whose lands the boundaries of such parish or district are supposed to pass; and such commissioners or assistant commissioner shall, within one month after ascertaining and setting out the boundaries, publish the same by causing a description thereof in writing to be delivered to or left at the place of abode of one of the churchwardens or overseers of the poor of the parish or district of which the boundary shall be so set out, and of every parish or district thereunto adjoining, and also of every landowner or his agent through or abutting upon whose lands the boundary so set out shall pass.

"III.(1) And be it enacted, that any person interested in the judgment or determination of the said commissioners or assistant commissioner respecting the said boundaries, who shall be dissatisfied with such determination, may within six calendar months next after the publication of the said boundaries, by delivering or leaving such description as aforesaid, move the court of Queen's Bench to remove the said judgment by *certiorari* into the said court, the party making such application giving eight days' notice of such application, and of the matter and ground thereof, in writing, to the said commissioners; and the decision of the said commissioners or assistant commissioner, or, in case of removal as aforesaid, the decision of the said court therein, shall be final and conclusive, as to the boundaries of such parish or district, for all purposes whatsoever; and after the expiration of the said term of six calendar months the judgment shall not be removed or removable by *certiorari* or any other writ or process whatsoever into any of her majesty's courts of record at Westminster or elsewhere; and no *certiorari* shall be allowed to remove any such judgment unless the party prosecuting the *certiorari* shall before allowance thereof enter into a recognizance before one of the justices of the said court in the sum of fifty pounds, with condition to prosecute the same without wilful delay, and to pay to the said commissioners their full costs and charges within one calendar month after the judgment shall be confirmed, to be taxed according to the custom of the court.

"IV. And be it enacted, that it shall not be necessary to state in any instrument of apportionment the several quantities of wheat, barley, and oats charged upon the estate of any landowner or upon any portion of such estate included in such apportionment; provided that the whole sum agreed or awarded to be paid by way of rent-charge instead of the tithes of the whole parish or district be therein stated, and the whole number of bushels of wheat, barley, and oats ascertained to be the fixed quantity of corn of which the variable value is to be paid in money by way of rent-charge, and also the several sums of money which were at the time of the confirmation of the apportionment of equal value with the quantities of wheat, barley, and oats apportioned on each estate or each separate portion thereof, according to the provisions of the said act, be also stated therein.

"V. And be it enacted, that it shall not be necessary to state in any instrument of voluntary apportionment made in consequence of a parochial agreement, whether the several lands are then cultivated as arable, meadow, or pasture land, or as wood land, common land, or howsoever otherwise, nor to state the amount charged on the several closes of every individual landowner, if three fourths of the landowners interested in the said apportionment shall by some writing under their hands request the commissioners to direct that such statements be omitted.

"VI. And be it enacted, that it shall not be necessary for the commissioners to send a copy of any draught or voluntary apportionment made in consequence of a parochial agreement for the inspection of any parties, nor to hold any meeting to hear any objection thereto, when one landowner shall be seised, either in fee-simple or fee-tail, of the whole of the lands that are not glebe lands in such parish.

"VII.(2) And be it enacted, that the prices at which the conversion from money into corn is to be made, at the time of the confirmation of each apportionment, according to the provisions of the said act, are seven shillings and one farthing for a bushel of wheat, three shillings and eleven pence halfpenny for a bushel of barley, and two shillings and nine pence for a bushel of oats.

STAT. 7 GUL.
4 & 1 VICT.
c. 69.

Judgment of
commissioners
respecting
boundaries
may be removed
by *certiorari*.

The apportion-
ment need not
contain the
several
amounts of
corn charged
on each estate.

Particulars of
land not ne-
cessary to be
stated in in-
struments of
voluntary ap-
portionments
if three fourths
of the land-
owners so
request.
When only one
landowner, no
draught of ap-
portionment
nor meeting
for objections
necessary.

Prices at which
conversion
from money
into corn is to
be made.

(1) *Vide* Stat. 2 & 3 Vict. c. 62, s. 35.

(2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 57.

STAT. 7 GUL.
4 & 1 VICT.
c. 69.

For the assess-
ment and reco-
very of rates.

"VIII.(1) And be it enacted, that all rates and charges to which any rent-charge payable in lieu of tithes shall be liable may be assessed upon the owner of the rent-charge, and the whole or any part thereof may be recovered from any one or more of the occupiers of the lands out of which such rent-charge shall issue, in case the same shall not be sooner paid by the owner of the rent-charge upon whom the same shall be assessed, in like manner as any poor rate assessed on such occupier or occupiers in respect of such lands may be recovered, upon giving to such occupier twenty-one days' notice in writing previous to any one of the half-yearly days of payment of the rent-charge, and the collector's receipt for the payment of such rates and charges, or of any part thereof, shall be received in satisfaction of so much of the rent-charge by the owner thereof; but no occupier shall be liable to pay at any one time, in respect of such rates and charges, any greater sum than the rent-charge payable in respect of the lands occupied by him in the same parish shall amount to for the current half year in which such notice shall have been given.

For deter-
mining the
lands charge-
able with rent-
charge.

"IX.(2) And be it enacted, that in all cases where the same person or body politic is not entitled to the perception of the whole of the tithes of any parish, and the liability of the lands to the payment of tithes is not in dispute, but the lands out of which each titheowner is entitled to the perception of his portion or parcel of tithes are not well defined, and also in all cases where such lands lie dispersedly throughout the parish, it shall be lawful, at any time before the confirmation of any apportionment under the provisions of the said act, for the landowners and titheowners having any interest in such lands or tithes, (with the consent of the diocesan and of the patron of the living whenever tithes payable to any spiritual person in right of his benefice are in question,) to agree, or for the tithe commissioners to determine, in case the commutation shall have been made by their award, that the several rent-charges which shall be made payable in lieu of tithes to each of the titheowners respectively shall be fixed and apportioned upon such particular lands as to them shall seem convenient, so that no lands are charged with more than their due proportion of rent-charge, when the determination shall be by the compulsory award of the commissioners; and every agreement or determination to that effect, when confirmed by the tithe commissioners, shall be binding upon and conclusive against all persons and bodies politic, notwithstanding any doubt as to the identity of the lands out of which the tithes originally issued in lieu whereof such distinct rent-charges are made payable.

Provision for
the period
intervening
between the
end of former
compositions
and the com-
mutation.

"X.(3) And be it enacted, that with the first payment of rent-charge under any agreement for the commutation of tithes shall also be paid any sum which shall be agreed to be paid in consideration of the time (if any) which may intervene between the termination of any previous agreement or composition for the payment of tithe and the time at which, by the said agreement for commutation, the lands shall be discharged from the payment of tithe, regard being had to the whole annual amount of rent-charge agreed to be paid, and to the other circumstances of each case.

Parties to a
parochial
agreement may
fix when it
shall begin to
operate.

"XI.(4) And be it enacted, that the parties to a parochial agreement may agree thereby, or by any supplemental agreement made and confirmed in like manner, that the lands included in the said agreement shall be discharged from the payment of tithes (except as excepted in the said act) from the first day of January next preceding, or from the first day of April, or first day of July, or first day of October preceding or following the confirmation of the apportionment instead of the first day of January next following the confirmation: provided always, that in every case the first payment of rent-charge shall be made and recoverable by the means provided in the said act, on the expiration of six calendar months from the time from which such lands are discharged from the payment of tithes.

(1) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 69 & 70.

(2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 58.

(3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 17.

(4) *Vide* Stat. 2 & 3 Vict. c. 62, s. 10; and

Stat. 3 & 4 Vict. c. 15, s. 13.

"XII. (1) And be it enacted, that no deed or declaration authorized by the said act for the commutation, release, or merger of tithes shall be chargeable with any stamp duty.

STAT. 7 GUL. 4 & 1 VICT. c. 69.

"XIII. And be it enacted, that any assistant commissioner appointed to assist in carrying the said act into execution may take the oath required of him by the said act before any two justices for the county, riding, division, liberty, or jurisdiction wherein such assistant commissioner shall be resident at the time of his appointment, or before a master extraordinary in her majesty's high court of Chancery; and every such oath so taken shall be as valid and effectual as if the same had been taken before one of the judges of her majesty's court of Queen's Bench or Common Pleas or one of the barons of the court of Exchequer.

Deeds not chargeable with stamp duty.

Assistant commissioner may be sworn before two justices or a master in Chancery.

This act to be taken as part of 6 & 7 Gul. 4, c. 71.

"XIV. And be it enacted, that this act shall be taken to be a part of the said act for the commutation of tithes in England and Wales."

CLXVIII. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 71 (2). A.D. 1837.

STAT. 7 GUL. 4 & 1 VICT. c. 71.

"An Act to continue until the first day of August, One thousand eight hundred and thirty-eight, and to the end of the then Session of Parliament, two Acts of the last Session of Parliament, for suspending Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories, and for preventing the immediate Effects on Ecclesiastical Jurisdictions of the Measures in progress for the Alteration of Dioceses."

"Whereas an act was passed in the last session of parliament, intituled, 'An Act for suspending for one year Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories:' and whereas another act was passed in the same session, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' in which latter act are contained certain provisions which were to continue in force only for one year after the passing thereof, or, if parliament should be then sitting, till the end of the session of parliament: and whereas it is expedient to continue for a further time the said first-recited act and the temporary provisions of the said secondly-recited act: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that the said firstly herein before-recited act and the said temporary provisions of the said secondly herein before-recited act shall continue and be in force until the first day of August, one thousand eight hundred and thirty-eight, and, if parliament shall be then sitting, until the end of the then session of parliament.

6 & 7 Gul. 4, c. 67.

6 & 7 Gul. 4, c. 77.

First recited act, and certain parts of last recited act, further continued.

"II. Provided always, and be it enacted, that nothing contained in this act shall be construed to prevent any bishop or archdeacon to whom ecclesiastical jurisdiction and authority over any parts of England or Wales shall have been given by any order in council under the provisions of the said last recited act passed in the session held in the sixth and seventh years of the reign of his late majesty, from holding visitations of the clergy, and at such visitations admitting churchwardens, receiving presentments, and doing all other acts, matters, and things, by custom appertaining to the visitation of bishops and archdeacons in the places assigned to his jurisdiction and authority under the enactments of the said recited act: provided also, that nothing contained in this act shall be construed to prevent any bishop from consecrating a new church or chapel, or a new burial ground within his diocese as assigned by the provisions of the said recited act."

Nothing in this act to prevent bishops, &c. holding visitations or consecrating new churches, &c.

(1) Vide Stat. 6 & 7 Gul. 4, c. 71, s. 91; 2 & 3 Vict. c. 9; and Stat. 2 & 3 Vict. c. 55. and Stat. 1 & 2 Vict. c. 64, s. 2.

(2) Vide Stat. 1 & 2 Vict. c. 108; Stat.

STAT. 7 GUL.
4 & 1 VICT.
c. 75.

CLXIX. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 75 (1). A.D. 1837.

"An Act to prolong for ten years Her Majesty's Commission for building New Churches."

58 Geo. 3, c. 45.

"Whereas an act was passed in the fifty-eighth year of the reign of his majesty King George the Third, intituled, 'An Act for building and promoting the building of additional Churches in populous Parishes,' whereby it was enacted, that it should be lawful for his majesty, by letters patent, to appoint such persons as his majesty should deem fit to be his commissioners for carrying into execution the purposes of the said act, and that the said commission should continue in force for the term of ten years from the date thereof, unless his majesty should think fit sooner to alter or revoke the same: and whereas another act was passed

59 Geo. 3,
c. 134.

3 Geo. 4, c. 72.

in the fifty-ninth year of the reign of his majesty King George the Third, for the purpose of amending and rendering more effectual the said act: and whereas another act was passed in the third year of the reign of his majesty King George the Fourth, for the purpose of amending and rendering more effectual the said two acts so passed as aforesaid: and whereas another act was passed in

5 Geo. 4, c. 103.

the fifth year of the reign of his majesty King George the Fourth, for amending and rendering more effectual the said three acts so passed as aforesaid: and

7 & 8 Geo. 4,
c. 72.

whereas another act was passed in the eighth year of the reign of his majesty King George the Fourth, intituled, 'An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes,' whereby it was enacted, that the persons then or thereafter to be appointed to be his majesty's commissioners for building new churches, and for the carrying into effect the aforesaid acts and the act now in recital, should continue to be such commissioners, and that the said commission should continue in force for the term of ten years from the twentieth day of July, one thousand eight hundred and twenty-eight, instead of the said term of ten years so fixed as aforesaid, unless his majesty, his heirs or successors, should think fit sooner to revoke the said commission: and whereas another act was passed in the second year of the reign of his late majesty King William the Fourth, to amend and render more effectual the last recited act: and whereas another act was passed in the third year of the reign of his late majesty, to render more effectual the aforesaid act passed in the fifty-ninth year of the reign of his majesty King George the Third: and whereas the commissioners appointed for the purpose of carrying into effect the aforesaid acts have proceeded in the execution of the powers so vested in them: and whereas it is expedient that the commission granted by his majesty King George the Fourth in pursuance of the said acts, and which by the aforesaid act passed in the eighth year of the reign of his majesty King George the Fourth is limited to the term of ten years from the twentieth day of July, one thousand eight hundred and twenty-eight, should continue in force for a further time; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that the persons now appointed to be his majesty's commissioners for building new churches, or hereafter to be appointed to be her majesty's commissioners for building new churches, and for the carrying into effect the aforesaid acts and this act, shall continue to be such commissioners.

1 & 2 Gul. 4,
c. 38.
2 & Gul. 4,
c. 61.

Commissioners
to continue;

and to be
styled Her
majesty's com-
missioners, &c.
Term of com-
mission further
continued.

"II. And be it enacted, that from and after the passing of this act the name and style of the said commissioners shall be Her majesty's commissioners for building new churches, in lieu of the name and style of His majesty's commissioners for building new churches; and the said commission shall continue in force for the term of ten years from the twentieth day of July, one thousand eight hundred and thirty-eight, and thence unto the end of the next session of parliament, instead of the term of ten years last fixed as aforesaid, unless her majesty shall think fit sooner to revoke the said commission."

(1) Amended by Stat. 1 & 2 Vict. c. 4 Vict. c. 20, s. 5; and Stat. 3 & 4 Vict. 107; Stat. 2 & 3 Vict. c. 49; Stat. 3 & c. 60.

CLXX. STAT. 7 GULIELMI 4 & 1 VICTORIAE, c. 78. A.D. 1837.

STAT. 7
4 & 1 V
c. 78.

"An Act to amend an Act for the Regulation of Municipal Corporations in England and Wales."

"XLV. And be it enacted, that any stocks, funds, or public securities which may be standing in the books of the governor and company of the bank of England, or of any other public company or society, in the name of the mayor, aldermen, and burgesses of any borough, either under their present or under any former style or title of incorporation, and the dividends and interest thereof, and all bonuses and accretions thereunto, which shall belong to the body corporate of such borough, without being subject to any trust for charitable purposes, may be transferred by, and paid to such person or persons as the council of the said body corporate shall appoint by an instrument in writing under the corporate seal of the borough; provided that such instrument of appointment shall be signed and sealed also by the clerk to the charitable trustees of the borough, who is hereby directed, upon request, to sign and seal the same.

Manner
transfer
corporat
property
standing
the bank
books, &

"XLVI. And be it enacted, that any stocks, funds, securities, and monies standing as aforesaid in the name of any such body corporate, which shall belong to the charitable trustees of the borough solely upon some charitable trust or trusts, may be transferred by and paid to such person or persons as shall be appointed under the hands and seals of the greater part of the trustees, which appointment shall be attested under the hand and seal of the said clerk, provided that such instrument as last aforesaid shall be also sealed with the corporate seal of the borough, and the mayor of the borough is hereby required, upon request, to cause the seal of the borough to be affixed to such instrument of nomination.

Manner
transfer
charitabl
property
standing
the bank
books, &

"XLVII. And be it enacted, that the dividends and interest of any stocks, funds, securities, and monies standing as aforesaid in the name of any such body corporate which shall belong partly to the said body corporate, but subject to some charitable trust or trusts, may be paid to such person or persons as shall be authorized to have the same paid to him or them, by an instrument in writing under the corporate seal of the borough, and appointed under the hands and seals of the greater part of the trustees, which appointment shall be attested under the hand and seal of the said clerk.

By what
authority a
whom di
divends of
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Receipts
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thereof.

"XLVIII. And be it enacted, that in every case the receipt of the person or persons authorized to give a receipt to the said company or society, by any instrument under the corporate seal of the said borough, and also signed and sealed by the clerk to the charitable trustees, shall be an effectual discharge to the said company or society; and all monies so paid shall be applied to the uses and in the manner provided by the said act; that is to say, so much of the said monies as may be held on charitable trusts shall be paid over to the charitable trustees of the said borough, and so much as the said body corporate shall be entitled to beneficially shall be paid over to the treasurer of the borough, and applied as directed by the said act as part of the borough fund; but no such public company or society as aforesaid shall be bound to see to the due application thereof, or to the validity of the appointment of the clerk to the charitable trustees, or to the execution of any such instrument by any of the said trustees, or to inquire whether or not the said stocks, funds, securities, or monies are charged with or held upon any charitable trust; and every person authorized to receive any monies under this act shall account to the council and to the charitable trustees respectively for all money, so received by him, and the council and trustees respectively shall have the same remedies against any such person refusing or wilfully neglecting so to account as are provided by the said act for regulating corporations, in the case of a treasurer or other officer appointed by the council refusing or wilfully neglecting to account as provided by the said act, during the continuance of his office, or within three months after the expiration of his office."

STAT. 7 GUL.
4 & 1 VICT.
C. 89.

CLXXI. STAT. 7 GULIELMI 4 & 1 VICTORIÆ, C. 89. A.D. 1837.

"An Act to amend the Laws relating to burning or destroying Buildings and Ships."

Setting fire to
a church or
chapel, house,
warehouse,
&c.

"III. And be it enacted, that whosoever shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland, or shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years."

STAT. 7 GUL.
4 & 1 VICT.
CAP. CXXX.

CLXXII. STAT. 7 GULIELMI 4 & 1 VICTORIÆ, CAP. CXXX. A.D. 1837.

"An Act for establishing a Cemetery for the Interment of the Dead westward of the Metropolis, by a Company to be called 'The West of London and Westminster Cemetery Company.'"

STAT. 7 GUL.
4 & 1 VICT.
CAP. CXXXI.

CLXXIII. STAT. 7 GULIELMI 4 & 1 VICTORIÆ, CAP. CXXXI. A.D. 1837.

"An Act for establishing a General Cemetery for the Interment of the Dead in or near the City of Bristol."

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VI. c. 20	1815	LXIX. c. 77	1979
VII. cap. xxii. [Sc.]	1824	LXX. c. 78	1985
VIII. c. 23	1825	LXXI. CAP. LXXXV.	1989
IX. cap. xxv.	1828	LXXII. c. 86	1989
X. c. 28 [Ir.]	1828	LXXIII. CAP. LXXXVIII.	2093
XI. c. 29	1829	LXXIV. CAP. XCI.	2094
XII. c. 30	1830	LXXV. c. 92	2094
XIII. c. 31	1832	LXXVI. c. 93	2098
XIV. CAP. XXXV.	1834	LXXVII. c. 101 [Ir.]	2100
XV. cap. xxxv.	1834	LXXVIII. c. 108 [Ir.]	2105
XVI. CAP. LIV.	1834	LXXIX. c. 113	2110
XVII. CAP. LV.	1834	LXXX. CAP. CXXIV.	2130
XVIII. c. 58 [Ir.]	1834	LXXXI. 4 & 5 Vict. c. 5 [Ir.]	2130
XIX. c. 64	1834	LXXXII. cap. ix.	2131
XX. CAP. LXXII.	1835	LXXXIII. c. 14	2131
XXI. c. 77	1836	LXXXIV. cap. xxiv.	2132
XXII. c. 78 [Ir.]	1836	LXXXV. cap. xxv.	2132
XXIII. c. 87 [Sc.]	1836	LXXXVI. cap. xxvi.	2132
XXIV. CAP. XCVIII.	1836	LXXXVII. c. 36	2132
XXV. c. 105	1836	LXXXVIII. c. 37 [Ir.]	2133
XXVI. c. 106	1836	LXXXIX. CAP. XXXVII.	2134
XXVII. c. 107	1885	XC. c. 38	2134
XXVIII. c. 108	1893	XCI. cap. xxxviii.	2140
XXIX. c. 109 [Ir.]	1894	XCH. c. 39	2140
XXX. c. 110	1915	XCHII. cap. xl.	2149
XXXI. 2 & 3 Vict. c. 3 [Ir.]	1916	XCIV. c. 42	2149
XXXII. CAP. V.	1919	XCV. cap. xliii.	2149
XXXIII. cap. vii.	1920	XCVI. cap. xlv.	2149
XXXIV. c. 9	1920	XCVII. cap. xlvii.	2150
XXXV. CAP. XI.	1920	XCVIII. CAP. LXIII.	2150
XXXVI. c. 4	1920	XCIX. 5 Vict. c. 6	2150
XXXVII. cap. xvii.	1921	C. 5 & 6 Vict. c. 4	2153
XXXVIII. c. 18	1921	CI. CAP. X.	2156
XXXIX. c. 19 [Ir.]	1921	CH. cap. xi.	2156
XL. cap. xx.	1921	CHII. cap. xii.	2156
XLI. cap. xxi.	1922	CIV. c. 18	2156
XLII. c. 23	1922	CV. cap. xviii.	2156
XLIII. c. 30	1925	CVI. cap. xix.	2156
XLIV. cap. xxxiii.	1926	CVII. c. 26	2156
XLV. c. 47	1926	CVIII. c. 27	2160
XLVI. c. 49	1927	CIX. cap. xxvii.	2167
XLVII. c. 53	1935	CX. c. 28 [Ir.]	2167
XLVIII. c. 55	1936	CXI. cap. xxxiv. [Ir.]	2168
XLIX. c. 56	1939	CXII. cap. xxxv.	2169
L. c. 62	1939	CXIII. cap. xxxix.	2169
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LII. 3 & 4 Vict. CAP. VII.	1950	CXV. c. 54	2169
LIII. CAP. VIII.	1950	CXVI. c. 58	2175
LIV. CAP. IX.	1951	CXVII. CAP. LXI. [Ir.]	2175
LV. cap. xii.	1951	CXVIII. c. 65	2175
LVI. c. 13 [Ir.]	1951	CXIX. c. 79	2179
LVII. c. 15	1952	CXX. c. 82	2182
LVIII. cap. xix.	1962	CXXI. CAP. CIII.	2187
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LXI. c. 26	1967	CXXIV. CAP. CIX.	2198
LXII. c. 33	1967	CXXV. c. 112	2198
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CXXIX. c. 10	2200	CLIII. cap. xxvii.	2259
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CXXXI. CAP. XXIV.	2201	CLV. c. 37	2259
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CXXXIII. CAP. XXXVI.	2201	CLVII. c. 44 [Sc.]	2259
CXXXIV. c. 37	2202	CLVIII. c. 45	2259
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CXXXVIII. c. 57 [Ir.]	2215	CLXII. c. 65	2259
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CXLIII. CAP. LXVII.	2222	CLXVII. c. 85	2259
CXLIV. c. 77 [Wa.]	2222	CLXVIII. CAP. LXXXII.	2259
CXLV. c. 38 [Ir.]	2224	CLXIX. c. 94	2259
CXLVI. c. 90	2224	CLXX. c. 97 [Ir.]	2259
CXLVII. CAP. XC.	2227	CLXXI. c. 101	2259
CXLVIII. c. 91 [Ir.]	2227	CLXXII. c. 102	2259
CXLIX. c. 94	2228	CLXXIII. CAP. CVIII.	2259
CL. 7 & 8 Vict. cap. iii.	2228		

STAT. 1 & 2
VICT. cap. iii.

I. STAT. 1 & 2 VICTORIÆ, cap. iii. (1). A.D. 1838.

"An Act for inclosing Lands in the Parish of Quedgley, in the County of Gloucester."

(1) The following is a list of Private Statutes, from the octavo edition of the Statutes, which have been passed in the reign of Queen Victoria, for inclosing lands, and in such statutes allotments have been made to the impropriators, in lieu of tithes, the rights of leasing reserved to the clerical incumbents, and other powers or advantages given, according to the circumstances of each case, so as to protect the rights of the church to its property, in the most ample manner.

Stat. 1 & 2 Vict. c. 6,
for inclosing lands in the parish of Swavesey,
in the county of Cambridge.

Stat. 1 & 2 Vict. c. 7,
for inclosing lands in the parish of Linton,
in the county of Cambridge.

Stat. 1 & 2 Vict. c. 10,
for inclosing lands in the parish of Chertonton,
in the county of Cambridge.

Stat. 1 & 2 Vict. c. 11,
for inclosing lands in the parish of Higham Ferrers,
in the county of Northampton.

Stat. 1 & 2 Vict. c. 13,
for inclosing lands in the manors of Bishop's Castle and Munslow, in the county of Salop.

Stat. 1 & 2 Vict. c. 17,
for inclosing lands in the township of Curbridge, in the parish of Witney, in the county of Oxford.

Stat. 1 & 2 Vict. c. 18,
for inclosing lands in the parish of Gazeley, in the county of Suffolk.

Stat. 1 & 2 Vict. c. 19,
for inclosing lands in the parishes of Pulham Saint Mary the Virgin, and Pulham Saint Mary Magdalen, in the county of Norfolk.

Stat. 2 & 3 Vict. c. 4,
for inclosing lands in the parish of Moulton, in the county of Suffolk.

Stat. 2 & 3 Vict. c. 6,
for inclosing lands in the parish of Melbourn, in the county of Cambridge.

Stat. 2 & 3 Vict. c. 10,
for inclosing lands in the manor of Unston, in the parish of Dronfield, in the county of Derby.

Stat. 2 & 3 Vict. c. 12,
for inclosing lands in the parish of Barton, in the county of Cambridge.

Stat. 2 & 3 Vict. c. 13,
for inclosing lands in the borough or township of Clun, in the parish of Clun, in the county of Salop.

Stat. 2 & 3 Vict. c. 14,
for inclosing lands in the parish of Comberton, in the county of Cambridge.

Stat. 2 & 3 Vict. c. 15,
for inclosing lands in the parish of Rampton, in the county of Cambridge.

Stat. 2 & 3 Vict. c. 28
for inclosing certain lands called the W. Croft and Burton Leys, in the parish of Saint Mary, in the town and county of the town of Nottingham.

Stat. 2 & 3 Vict. c. 29,
for inclosing lands in the parishes of W. Beckham and Alby, in the county of Norfolk.

Stat. 2 & 3 Vict. c. 32,
for inclosing, allotting, and improving certain open fields in the parish of Saint Mary, in the town and county of the town of Nottingham.

Stat. 3 & 4 Vict. c. 2,
for inclosing lands in the parishes of F. & C.

- thorpe, Limpenhoe, and Reedham, in the county of Norfolk.
- Stat. 3 & 4 Vict. c. 6,
for inclosing lands in the parishes of Whittlesea Saint Mary, and Whittlesea Saint Andrew, in the county of Cambridge.
- Stat. 3 & 4 Vict. c. 7,
for inclosing lands in the parish of Thriplow, in the county of Cambridge.
- Stat. 3 & 4 Vict. c. 10,
for inclosing lands in the manor of Dronfield, in the county of Derby.
- Stat. 3 & 4 Vict. c. 11,
for inclosing lands in the parish of Llangerniew, in the county of Denbigh.
- Stat. 3 & 4 Vict. c. 13,
for inclosing lands in the parish of Stoke Bruern and the hamlet of Shutlanger, otherwise Shuttlehanger, in the said parish of Stoke Bruern, in the county of Northampton.
- Stat. 3 & 4 Vict. c. 15,
for inclosing lands in the parish of Qumnton, in the county of Buckingham.
- Stat. 3 & 4 Vict. c. 28,
for inclosing Swingfield Minnis, otherwise Folkestone Common, within the manor, hundred, barony, and royalty of Folkestone, in the county of Kent.
- Stat. 4 & 5 Vict. c. 1,
for inclosing lands in the parish of Barnack with Pilgate and Southorpe, in the county of Northampton.
- Stat. 4 & 5 Vict. c. 2,
for inclosing lands in the parish of Collyweston, and within the precincts of West Hay, in the county of Northampton.
- Stat. 4 & 5 Vict. c. 6,
for inclosing lands in the parish of Gamlingay, in the county of Cambridge.
- Stat. 4 & 5 Vict. c. 10,
for inclosing lands in the parish of Bedingham, in the county of Norfolk.
- Stat. 4 & 5 Vict. c. 11,
for inclosing lands in the parish of Upper Heyford, in the county of Oxford.
- Stat. 4 & 5 Vict. c. 15,
for dividing, allotting, and inclosing lands in the parish of Elsing, in the county of Norfolk.
- Stat. 4 & 5 Vict. c. 16,
for inclosing the commons, droves, banks, and waste lands, in the parishes of Leverington, Tid Saint Giles, and Outwell, in the isle of Ely, in the county of Cambridge.
- Stat. 4 & 5 Vict. c. 20,
for inclosing lands in the parish of Whitmore, in the county of Stafford.
- Stat. 4 & 5 Vict. c. 22,
for inclosing lands in the parish of Great Horwood, in the county of Buckingham.
- Stat. 5 & 6 Vict. c. 1,
for inclosing lands in the parish of Clee, in the county of Lincoln.
- Stat. 5 & 6 Vict. c. 3,
for inclosing lands in the parish of Cottenham, in the county of Cambridge.
- Stat. 5 & 6 Vict. c. 5,
for inclosing lands in the parish of Kingsclere, in the county of Southampton.
- Stat. 5 & 6 Vict. c. 6,
for inclosing lands in the parish of Buckland, in the county of Buckingham.
- Stat. 5 & 6 Vict. c. 7,
for inclosing lands in the several parishes of Huish Champflower, Clatworthy, and Brompton Ralph, in the county of Somerset.
- Stat. 5 & 6 Vict. c. 8
for inclosing lands in the parish of Yate, in the county of Gloucester.
- Stat. 5 & 6 Vict. c. 9,
for dividing, allotting, and inclosing lands in the parishes of Ormesby Saint Margaret, Ormesby Saint Michael, Ormesby Saint Peter, and Ormesby Saint Andrew, and Scrathby, otherwise Scroteby, in the county of Norfolk.
- Stat. 5 & 6 Vict. c. 10,
for inclosing lands in the parish of Medbourn, in the county of Leicester.
- Stat. 5 & 6 Vict. c. 13,
for inclosing lands in the parishes of Britwell Salome and Britwell Prior, in the county of Oxford.
- Stat. 6 & 7 Vict. c. 1,
for inclosing lands in the parish of Littleton, in the county of Southampton.
- Stat. 6 & 7 Vict. c. 4,
for inclosing lands in the parish of Great Gransden, in the county of Huntingdon.
- Stat. 6 & 7 Vict. c. 7,
for inclosing lands in the parish of Chalgrove, in the county of Oxford.
- Stat. 6 & 7 Vict. c. 8,
for inclosing lands in the parish of Haddenham, in the isle of Ely, in the county of Cambridge.
- Stat. 6 & 7 Vict. c. 9,
for inclosing lands in the parish of Great Bromley, in the county of Essex.
- Stat. 6 & 7 Vict. c. 10,
for inclosing lands in Sowerby and Soyland, in the parish of Halifax, in the west riding of the county of York.
- Stat. 6 & 7 Vict. c. 13,
for inclosing lands in the parish of Leighton Bussard, in the county of Bedford.
- Stat. 6 & 7 Vict. c. 14,
for inclosing lands in the several parishes of Eglwys-rhos, Llandudno, and Llangwstenin, in the county of Carnarvon, and in the parish of Llandrillo, in the counties of Denbigh and Carnarvon, or either of them.
- Stat. 7 & 8 Vict. c. 4,
for inclosing lands in the parish of Brandes Burton, in the county of York.
- Stat. 7 & 8 Vict. c. 5,
for inclosing lands in the township of Haltwhistle, in the parish of Haltwhistle, in the county of Northumberland.
- Stat. 7 & 8 Vict. c. 8,
for inclosing lands in the parishes of Bledfa and Llangunllo, in the county of Radnor.

STAT. 1 & 2
VICT. csp. iii.

STAT. 1 & 2
VICT. C. 5.

II. STAT. 1 & 2 VICTIMS

**"An Act for the Relief of Quakers, M.
Municipal"**

STAT. 1 & 2
VICT. c. 10.

III. STAT. 1 & 2 VICTORIA

*"An Act to make good certain Contracts u
by certain Banking and c*

"Whereas divers associations and copartnerships or shareholders, have from time being engaged in and carrying on the business and dealings for gain and profit, and have as now are engaged in carrying on the same managers, committees or other officers, shareholdings or persons otherwise interested: and whereas divers spiritual persons canonries, benefices, stipendiary curacies, or bursarships or shareholders of or otherwise interested in copartnerships, and it has not been commoning of such shares or interests by such spiritual persons: whereas it is expedient to render legal and lawful such associations or copartnerships, or which for them, although the same may now be void being or having been such members or officers as aforesaid; be it therefore enacted by the Queen's Majesty with the advice and consent of the lords spiritual and temporal in this present parliament assembled, and by virtue of the association or copartnership already formed before the end of the next session of parliament that all such associations, partnerships, or shareholders contracted for the purposes thereof, or as between such persons, heretofore entered into, or which hereafter shall be entered into, by any such association or copartnership to be formed, shall be deemed to be valid and lawful to all intents and purposes to all occasions any forfeiture whatsoever, by reason of the same being or having been a member, director or otherwise interested in the same associations or copartnerships shall have the same validity, and be enforced in the same manner to all intents and purposes as if such person had been or was a member, partner, shareholder, or otherwise interested in such association or copartnership."

No association or copartnership, or contract entered into by any of them, to be illegal or void by reason only of spiritual persons being members of such association or copartnership.

In all actions and suits the defendant to be entitled to taxed costs, and the court may make order for further costs.

* II. And be it further enacted, that in been brought or instituted by or on behalf ship, in case any defendant therein shall thousand eight hundred and thirty-eight, by invalidity of any contract thereby sought spiritual person as aforesaid being or hav such association or copartnership, such d costs of such plea or other defence, to be as the court in which the said action or thereof, shall direct; and in order fully to lawful for such court or judge to order ther costs (if any.) of the said action or sui

"III. And be it further enacted, that any other act in this present session of parli-

**Act may be
repealed this
session.**

(1) *Vide* Stephens on Nisi Prius

IV. STAT. 1 & 2 VICTORIÆ, c. 15. A.D. 1838.

STAT. 1 & 2
VICT. c. 15.*"An Act for the further Relief of Quakers, Moravians, and Separatists."*

V. STAT. 1 & 2 VICTORIÆ, cap. xv. A.D. 1838.

STAT. 1 & 2
VICT. cap. xv.*"An Act for the Sale of the Advowson of the Vicarage of Painswick, in the County of Gloucester."*

VI. STAT. 1 & 2 VICTORIÆ, c. 20. A.D. 1838.

STAT. 1 & 2
VICT. c. 20.*"An Act for the Consolidation of the Offices of First-fruits, Tenths, and Queen Anne's Bounty."*

"Whereas her most gracious majesty Queen Anne, in her royal bounty to the poor clergy of the church of England, and pursuant to and by virtue of an act of parliament made in the second year of her said majesty's reign, intituled, 'An Act for making more effectual Her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling Her Majesty to grant in perpetuity the Revenues of the First-fruits and Tenths, and also for enabling other Persons to make Grants for the same Purpose,' did, in and by her letters patent under the great seal of England, bearing date the third day of November in the third year of her said majesty's reign, make, nominate, constitute, and appoint the persons therein named to be one body politic and corporate by the name of 'The Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy,' with such powers and authorities as are therein mentioned and expressed; and did in and by the said letters patent give and grant unto the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and their successors, all the revenues of the first-fruits and yearly perpetual tenths of all dignities, offices, benefices, and promotions spiritual whatsoever payable to her said majesty, her heirs and successors, by virtue of any act or acts of parliament whatsoever, and all arrears of the said first-fruits and tenths, (except as therein is excepted,) to be applied and disposed of by the said governors thereby constituted to and for such ends, intents, and purposes as in and by the said letters patent are contained and directed: and whereas by virtue of an act of parliament made and passed in the first year of the reign of Queen Elizabeth, intituled, 'An Act for the Restitution of First-fruits to the Crown,' the said revenues of first-fruits and yearly perpetual tenths are within the order, survey, rule, and governance of her majesty's court of Exchequer: and whereas his majesty King Charles the Second, by letters patent under the great seal of England, bearing date the twenty-fourth day of January, in the thirty-first year of his reign, did give and grant unto Marmaduke Gibbs, Esquire, his heirs and assigns, the office of remembrancer of first-fruits and tenths in his majesty's court of Exchequer, to hold the said office unto the said Marmaduke Gibbs, his heirs and assigns, by himself or by his or their sufficient deputy or deputies for ever, immediately and so soon after the date of the said letters patent as the said office should become vacant as therein mentioned, and which soon afterwards happened, upon trust that he the said Marmaduke Gibbs, his heirs and assigns, should stand seised of the said office, with the wages, fees, and emoluments thereof, (except as therein mentioned,) for Henry Duke of Grafton, his heirs and assigns, as in the said letters patent is mentioned: and whereas by an act passed in the third year of the reign of King George the First, intituled, 'An Act for the better collecting and levying the Revenue of the Tenths of the Clergy,' it was amongst other things enacted, that from and after the twenty-sixth day of December then last past there should be one collector or receiver of the said perpetual yearly tenths of all dignities, offices, benefices, and promotions spiritual whatsoever, granted to the said corporation of the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy by the said first-recited act and letters patent, (which had not been legally discharged by any act or acts since made, or otherwise,) from time to time to be appointed by his majesty, his heirs and successors, by his or their letters patent

2 Ann. c. 11.

1 Eliz. c. 4.

3 Geo. 1, c. 10.

STAT. 1 & 2
VICT. C. 20.

under the great seal of Great Britain, as in the said act now in recital is mentioned; which said collector or receiver should be and was thereby charged and chargeable to levy, collect, and receive all such sums of money wherewith all and every such dignities, offices, benefices, and promotions spiritual were charged and chargeable for and towards the payment of the said perpetual yearly tenths; and should pay and content the said sums of money yearly into the receipt of his majesty's exchequer at Westminster, in such manner and form as was thereinafter mentioned: and whereas under or by virtue of the several acts and letters patent hereinbefore mentioned or referred to, and other acts of parliament and letters patent of the crown, the said revenue of first-fruits is now collected and received in a certain office called the Office of First-fruits, which office is a branch of the said court of Exchequer, and consists of four officers; *videlicet*, a remembrancer of first-fruits and tenths, who holds his office in fee under or by virtue of the said letters patent of King Charles the Second, a collector or receiver, and two sworn clerks; and the revenue of yearly tenths is in the first instance collected and received by a collector or receiver, who holds his office under or by virtue of the said act of the third year of King George the First, or letters patent granted in pursuance thereof, and has two clerks for his assistance in the business of such collection and receipt; and the said revenues of first-fruits and yearly tenths are from time to time paid by the respective collectors or receivers thereof into the bank of England, to the account of her majesty's exchequer; and the same monies, or the amount thereof, are or is afterwards from time to time paid to the treasurer for the time being of the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy: and whereas the names of the present officers employed in the said offices of first-fruits and tenths for the collection, receipt, and payment, in manner aforesaid, of the said revenue of first-fruits and yearly perpetual tenths, and the average yearly amount of the emoluments of all such officers respectively, arising from salaries and fees, or otherwise, (as stated by such officers respectively,) and the annual expenses of the said offices for rent, salary to an office keeper, stationery, coals, candles, and other incidental matters, are set forth in the schedule to this act, and amount in the whole to the yearly sum of two thousand and twenty-two pounds eighteen shillings and eleven pence: and whereas the method at present in use for the collection and receipt of the said first-fruits and tenths by the said several officers respectively, and the payment of the same into the bank of England to the account of her majesty's exchequer, and the subsequent payment thereof to the treasurer of the governors of the bounty of Queen Anne as hereinbefore mentioned, is unnecessarily circuitous, complicated, and expensive; and it is therefore expedient that the said office of remembrancer of first-fruits and tenths, and the said several offices of collectors or receivers of first-fruits and tenths, and the clerkships attached to the same offices respectively, should be abolished, and that the collection and receipt as well as the expenditure and application of the whole revenue of first-fruits and tenths should be placed under the management of the said governors of the bounty of Queen Anne, and their treasurer for the time being under their immediate control, by which means the collection and receipt of the said first-fruits and tenths, and the proceedings to recover and enforce the payment thereof, may be rendered more simple and less oppressive to the clergy paying the same, and the expenses attending such collection and receipt may be greatly lessened, and the clear revenues of first-fruits and tenths be consequently increased for the augmentation of the maintenance of the poor clergy as directed by the said letters patent of her said majesty Queen Anne: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of December next after the passing of this act the said office of remembrancer of first-fruits and tenths, the said offices of collectors or receivers of first-fruits and tenths respectively, and the several clerkships and other offices attached or belonging thereto respectively, shall be and the same are hereby abolished.

Abolishing
offices of
first-fruits and
tenths.

Books, &c.
belonging to

"II. And be it enacted, that the several records, deeds, books, accounts, papers,

vouchers, and other documents whatsoever of or concerning the duties and business of the said several offices respectively so to be abolished as aforesaid, shall, on or before the said twenty-fourth day of December next after the passing of this act, be delivered by the several officers or persons now having the custody or possession of the same into the hands and possession of the treasurer for the time being of the said governors of the bounty of Queen Anne, at his office for the time being in the city of London or Westminster, to be by such treasurer for the time being duly kept and preserved in his said office, subject nevertheless to such rules, orders, and regulations as the said governors of the bounty of Queen Anne shall or may from time to time ordain or make touching the same; and that the barons of her majesty's court of Exchequer shall, if necessary, make such order or orders as to them may seem meet for the delivery of the said several records, deeds, books, accounts, papers, vouchers, and other documents to the said treasurer for the time being of the said governors of the bounty of Queen Anne as aforesaid.

"III. And be it enacted, that from and after the said twenty-fourth day of December next after the passing of this act, the treasurer for the time being of the said governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, shall be the one and only collector or receiver of all the said revenues of first-fruits and yearly perpetual tenths of all dignities, offices, benefices, and promotions spiritual whatsoever, which shall thereafter be or become payable under or by virtue of any act or acts of parliament, or otherwise howsoever, and of all past, present, and future arrears of the same revenues of first-fruits and tenths respectively; and that the monies to be received by such treasurer for the time being of the said governors of the bounty of Queen Anne shall be from time to time paid and disposed of and accounted for by such treasurer in the same manner as the monies which would have been received by him for or in respect of such revenues, in case this act had not been made, would have been paid and disposed of and accounted for.

"IV. Provided always, and be it enacted, that the enactments hereinbefore contained making the said revenues of first-fruits and tenths payable immediately to the said treasurer for the time being of the said governors of the bounty of Queen Anne, instead of being as heretofore first paid into her majesty's exchequer, shall not take away, lessen, defeat, prevent, or in any way affect or alter any writ, process, or remedy whatsoever heretofore in use in her majesty's name in her majesty's said court of Exchequer, or otherwise, for the recovery or compelling payment of the said revenues of first-fruits and tenths, or the arrears thereof, or the penalties for the nonpayment of the same; but that all such writs, process, and remedies shall and may be issued, sued, and prosecuted by or in the said court of Exchequer in the name of her said majesty, or otherwise, and in the same manner and form to all intents and purposes and as fully and effectually as if the said revenues of first-fruits and tenths were still payable in the same manner and to the same officers as before the passing of this act; and that from and after the said twenty-fourth day of December next after the passing of this act, the said treasurer for the time being of the governors of the bounty of Queen Anne shall and may have and exercise the same powers and authorities with regard to the issuing, suing forth, and prosecution of such writs, process, and proceedings for or relating to the recovery or compelling payment of the said revenues of first-fruits and tenths, and all penalties for nonpayment thereof, or otherwise relating thereto, as the said remembrancer of first-fruits, and the said collectors or receivers of first-fruits and tenths respectively, whose offices are hereby abolished, had or might have exercised immediately before the passing of this act.

"V. And be it enacted, that from and after the said twenty-fourth day of December next after the passing of this act, all returns by the bishops of the several dioceses and by other ordinaries of institutions to benefices, and all returns whatsoever heretofore made to, and all notices, process, and other proceedings, charges, discharges, bonds, recognizances, estreats, matters, and things usually issued, done, had, received, filed, recorded, or taken by or under the authority of the said remembrancer of first-fruits and tenths, or the said collectors and receivers

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abolished
offices to be
delivered up to
the treasurer of
Queen Anne's
bounty.

The treasurer of
Queen Anne's
bounty to be
the sole col-
lector of the
first-fruits and
tenths.

Alteration in
the mode of
collecting
first-fruits and
tenths not to
affect the
remedies for
compelling
payment.

Duties of
abolished
offices to be
performed by
treasurer of
Queen Anne's
bounty.

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of first-fruits and tenths, and other officers whose offices are hereby abolished, or any of them, for the recovery or enforcing the payment of the said revenues of first-fruits and tenths, or for any other purpose whatsoever, and which shall from henceforth be by law required or needful to be made and delivered, issued, done, had, received, filed, recorded, or taken, shall be respectively made and delivered to, and issued, done, had, received, filed, recorded, and taken by the treasurer for the time being of the said governors of the bounty of Queen Anne, or the clerk in the office of such treasurer by and under his direction, according to the course and practice of such office, as fully and effectually to all intents, constructions, and purposes as the same might or could have been made and delivered to, or issued, done, had, received, filed, recorded, or taken by the said remembrancer, collectors, and receivers, and other officers whose offices respectively are hereby abolished, or any of them, before the passing of this act.

Searches to be made and copies of documents to be obtained as heretofore.

“VI. And be it enacted, that from and after the said twenty-fourth day of December next after the passing of this act all such searches, copies, or extracts as may now be made, taken, or obtained by any person or persons whomsoever in and from the records, books, and other documents in or belonging to the said offices of first-fruits and tenths respectively, shall or may be made and taken from the same records, books, and other documents, and all other similar records, books, and other documents for the time being which by virtue of this act shall be in or belonging to the office of the treasurer for the time being of the said governors of the bounty of Queen Anne, at such time or times, and in such manner, and upon payment of such fees as the said governors shall, under their common seal, order and direct; and that all such copies or extracts, signed and authenticated by the said treasurer for the time being, or such other person or persons as shall be appointed by him for that purpose, shall be as available in evidence and as valid and effectual to all intents and purposes as the same would by law have been if the same had been signed, authenticated, and given before the passing of this act by the said remembrancer and other officers whose offices are hereby abolished, or any of them.

Fees for searches, &c. to be paid to the treasurer of Queen Anne's bounty.

“VII. And be it enacted, that in the meantime and until such order or orders shall be made in that respect, as are hereinafter provided, all fees for such searches and copies or extracts as aforesaid, and all such other fees, perquisites, and other payments whatsoever (except salaries) as are now paid to or received by and for the use and benefit of the said remembrancer and other officers whose offices are hereby abolished, shall be paid to and received by the said treasurer for the time being of the bounty of Queen Anne, and shall be by him from time to time accounted for and paid and disposed of in the same manner and for the same purposes as the said revenues of first-fruits and tenths hereby made payable to him as aforesaid.

Account of first-fruits and tenths payable to be sent to clerks on institution.

“VIII. And be it enacted, that the said treasurer for the time being of the bounty of Queen Anne shall upon or immediately after the receipt of every return of institutions made by the bishops of the respective dioceses in England or Wales, or other ordinaries, deliver or transmit by the post, or otherwise, to every clerk or other person instituted to any ecclesiastical benefice, an account or statement in writing of the payments (if any) which are to be made by him for or in respect of the first-fruits and yearly tenths of such benefice, and of the times and manner of making such payments.

Notice of arrears to be sent to the party omitting to pay.

“IX. And be it enacted, that when and as often as it shall appear to the treasurer for the time being of the governors of the bounty of Queen Anne that any person liable to the payment of first-fruits or tenths shall have omitted or neglected to pay the same respectively for one calendar month over or after the proper time for such payment, the said treasurer for the time being shall thereupon send to each such person a notice in writing, or transmit the same by the post addressed to him at the place of residence belonging to the benefice or other ecclesiastical preferment in respect of which such payment is required, or other his usual place of residence, if known to the said treasurer, stating the amount then appearing to be due from such person for or in respect of first-fruits and tenths respectively; and that such notice shall from time to time be repeated as often as the said treasurer

may deem expedient; and that in particular between the twenty-ninth day of September and the twenty-fifth day of December in every year such a notice shall be given, sent, or transmitted as aforesaid to every archbishop, bishop, or other dignitary, rector, vicar, or other person from whom any first-fruits or yearly tenths, or any sum or sums of money in respect thereof, may then appear to be due, to the end that the payment of such first-fruits and tenths may in no case be omitted or neglected through ignorance or inadvertence.

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“X. And be it enacted, that all the laws, statutes, and provisions touching or concerning the said revenues of first-fruits and tenths, and the imposing, charging, assessing, and levying, and the true answering and payment of the said first-fruits and tenths, or touching the charge or discharge or alteration of them or any of them, or any matter or thing relating thereto, which were in force immediately before the passing of this act, and which are not hereby or hereinbefore altered or repealed, shall be, remain, and continue in their full force and effect, and shall hereafter be observed and put in due execution according to the tenor or purport of the same and every of them in all things, excepting such as are in or by this act altered or repealed.

Provisions of
former acts
relating to
first-fruits and
tenths to con-
tinue in force,
except where
altered by this
act.

“XI. And whereas it is fit and reasonable that a fair and proper price or consideration in money should be paid out of the funds of the said governors of the bounty of Queen Anne to Henry Warre, esquire, the present remembrancer of first-fruits and tenths, or other the owner or owners of the freehold and inheritance of such office under the said letters patent of King Charles the Second, as and for the purchase of or a compensation for the loss of the same by virtue of this act: and that a fair and proper compensation in money should also be paid out of the funds of the said governors of the bounty of Queen Anne to George Arbuthnot, esquire, the present collector or receiver of first-fruits, and to Mr. George Gunthorpe, the present senior sworn clerk in the said office of first-fruits, and to Mr. Richard Griffiths, the present senior sworn clerk in the said office of tenths, for the loss which they will respectively sustain by the abolition of their said respective offices by virtue of this act; be it therefore enacted, that the governors of the bounty of Queen Anne shall, by and out of the funds of their said corporation, pay to the said Henry Warre, or other the owner or owners of the said office of remembrancer of first-fruits and tenths, and the freehold and inheritance thereof, as and for the purchase of or a compensation for the loss of the same by virtue of this act, such a sum of money as shall by the lord high treasurer or the commissioners of her majesty's Treasury for the time being, or any three or more of them, by warrant under their hands, be ascertained and declared to be the fair and reasonable value of the said office of remembrancer of first-fruits and tenths, and the freehold and inheritance thereof.

Compensation
to the remem-
brancer of
first-fruits and
tenths.

“XII. And be it enacted that the said governors of the bounty of Queen Anne shall, by and out of the funds of their said corporation, pay to each of them the said George Arbuthnot, George Gunthorpe, and Richard Griffiths, such sum or sums of money, either annually or in gross, as shall by the lord high treasurer or the commissioners of her majesty's treasury for the time being, or any three or more of them, by warrant under his or their hand or hands respectively, be ascertained and declared to be a fair and reasonable compensation for the loss which the said last-mentioned officers respectively will sustain by the abolition of their said respective offices by virtue of this act.

Compensation
to other
officers.

“XIII. And be it enacted, that the said Henry Warre, or other the person or persons claiming to be the owner or owners of or entitled to the said office of remembrancer of first-fruits and tenths, shall within one calendar month next after the passing of this act, at his or their own expense, prepare and deliver to the lord high treasurer or the commissioners of her majesty's Treasury for the time being, or any three or more of them, an abstract of the title to the said office of remembrancer, and the fee and inheritance thereof, under the said letters patent of King Charles the Second, and shall deduce and evidence a good title to the same to the reasonable satisfaction of the counsel of the said governors; and that on such good and marketable title being deduced and evidenced as aforesaid the said

Title to be
shown to the
office of re-
membrancer.

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VICT. c. 20.

governors, or their treasurer for the time being, shall, upon an order for that purpose made by the lord high treasurer or the commissioners of her majesty's Treasury, or any three or more of them, pay to the said Henry Warre, or other the owner or owners of the said office of remembrancer of first-fruits and tenths, and the fee-simple and inheritance thereof, the sum of money which shall in manner aforesaid have been ascertained and declared to be the fair and reasonable price or value of the same, and that the receipt of the person or persons to whom the same money shall be paid shall be a good and sufficient discharge to the said governors.

In case of not making out a good title, purchase money to be paid into court of Exchequer.

1 Geo. 4, c. 35.

"XIV. Provided always, and be it enacted, that in case a good title to the said office of remembrancer of first-fruits and tenths, and the fee-simple and inheritance thereof, shall not be deduced and evidenced, then and in that case it shall and may be lawful for the said governors, and they are hereby required, with all convenient speed, to pay the sum of money which shall have been in manner aforesaid ascertained and declared to be the reasonable price and value of the said office of remembrancer into the bank of England in the name and with the privy of the accountant-general of the court of Exchequer, to be placed to his account there *ex parte* the said governors of the bounty of Queen Anne, pursuant to the method prescribed by an act made in the first year of the reign of his majesty King George the Fourth, intituled, 'An Act for the better securing the Monies and Effects paid into the Court of Exchequer at Westminster, on account of the Suits of the said Court, and for other Purposes,' and the general orders of the said court, and without fee or reward; to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the said Henry Warre, or other the person or persons, body or bodies, who would have been entitled to the fees, emoluments, and profits of the said office of remembrancer of first-fruits and tenths in case the same had not been abolished, in or towards the discharge of any debt or debts, or such other incumbrances or part thereof, as the said court shall authorize to be paid, affecting the same office, or any part or parts, share or shares, estate or estates, interest or interests thereof or therein, or charges or charges thereon, or affecting any other hereditaments standing settled thereunto to the same or the like uses, trusts, intents, or purposes; or where such money shall not be so applied then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of messuages, lands, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the said office of remembrancer of first-fruits and tenths so hereby abolished as aforesaid stood settled or limited immediately before the passing of this act, or any of them as at the time of making such conveyance or settlement shall be existing undetermined and capable of taking effect; and that in the meantime and until such purchase shall be made the said money shall, by order of the said court, upon application thereto, be invested by the said accountant-general in his name in the purchase of three pounds per centum consolidated or three pounds per centum reduced bank annuities; and that in the meantime and until such bank annuities shall be ordered by the said court to be sold for the purposes aforesaid the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said court, to the said Henry Warre, or other the person or persons, body or bodies, who would for the time being have been entitled to the rents and profits of the lands, tenements, and hereditaments so hereby directed to be purchased, in case such purchase and settlement were actually made.

Persons in possession of office of remembrancer to be deemed rightfully entitled thereto

"XV. Provided always, and be it enacted, that if any question shall arise touching the title of the said Henry Warre, or of any other person or persons, body or bodies, to the monies to be paid into the bank of England in the name and with the privy of the accountant-general of the court of Exchequer, in pursuance of this act, for the purchase of or as a compensation for the said office of remembrancer of first-fruits and tenths, or to any bank annuities to be purchased with

any such money, or to the dividends or interest of any such bank annuities, the said Henry Warre, the present possessor of the said office of remembrancer, and all and every person or persons claiming under him, shall be deemed and taken to have been lawfully entitled to the said office, until the contrary shall be shown to the satisfaction of the said court of Exchequer; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of the said bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made to appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such office of remembrancer, or to some part or share thereof, or to some estate or interest therein or charge thereon.

“XVI. And be it enacted, that the Right Reverend Charles Thomas Lord Bishop of Ripon, and the Bishop of Ripon for the time being, shall be a governor of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy; and that in the event of the foundation of any new see or sees in England or Wales the bishop or bishops thereof for the time being shall be a governor or governors of the said bounty.

“XVII. And be it enacted, that between the first day of February and the first day of July in every year, on some convenient day and at some convenient place in the city of London or Westminster, to be respectively appointed for that purpose by the said governors of the bounty of Queen Anne, they the said governors shall hold an extraordinary general court or meeting for the despatch of the business of the said governors, and that at least fourteen days' previous notice of the time and place of such general court or meeting shall be yearly given in the London Gazette.

“XVIII. And be it enacted, that the said governors of the bounty of Queen Anne shall, in the month of November in every year, make out in writing a return of all their receipts and disbursements during the preceding year ending on the thirty-first day of December then last past, and of all sums of money which at the time of making such account or return shall appear to be due or in arrear from any person or persons whomsoever for or in respect of first-fruits and tenths respectively, and shall present such account or return to her majesty in council; and that the same or copies thereof shall, at the commencement of the ensuing session, be laid before both houses of parliament; and shall cause a duplicate of each such account or return to be deposited, on or before the first day of December in every year, at the office of the secretary of the said governors for the time being, who shall keep and preserve the same respectively at his said office; and all persons whatsoever may at all seasonable times have access thereto, and be furnished by the said secretary with copies or extracts thereof or of such part or parts thereof as they shall require, stamped with the common seal of the said governors, on giving reasonable notice to the said secretary, and on payment of two shillings and sixpence for such inspection, and after the rate of three-pence for every seventy-two words contained in such copy or extract; and all copies of or extracts from any of the said duplicates of the said accounts or returns, purporting to be stamped with the common seal of the said governors, shall be received in evidence in all courts and before all judges whatsoever without any further proof thereof.

“XIX. And be it enacted, that it shall be lawful for her majesty and her successors, under her or their royal sign manual, from time to time as there shall be occasion, and at the recommendation of the said governors of the bounty of Queen Anne, to make rules, orders, regulations, and arrangements for the better collecting, receiving, and enforcing the payment of the said first-fruits and tenths, and accounting for the same, and for prescribing or regulating the duties of the said treasurer for the time being with respect to the said first-fruits and tenths, and his receipt, disposition, and accounting for the same, and the number, duties, and employment of the clerks or other persons to be employed therein under the direction of such treasurer or otherwise, and for the remuneration of the said treasurer, clerks, and other persons respectively, for the duties performed by him and them respectively in the matters aforesaid, either by a fixed salary or salaries, or by the appropriation to him or them respectively, for his or their own benefit, of all or

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until contrary
is proved.

Bishop of
Ripon and
bishops of any
future new
sees, to be
governors.

General meet-
ing of go-
vernors to be
held yearly.

Account to be
annually laid
before her
majesty in
council and
both houses of
parliament.

Governors
empowered to
make rules and
orders.

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Deeds for
purchases, &c.
to be made in
the following
form.

any of the fees hereinbefore directed to be paid to such treasurer for the time being, and for enforcing and carrying into more complete operation the objects and purposes of this act.

"XX. And whereas it is expedient that the said governors of the bounty of Queen Anne should be empowered to adopt and use short forms of deeds in cases of purchases and grants by way of gift or benefaction of lands, tenements, and hereditaments, and annual stipends, rent-charges, or annuities, for the perpetual augmentation of small livings and cures; be it therefore enacted, that all conveyances and grants, either by way of purchase or by way of gift or of benefaction, of lands, tenements, and hereditaments hereafter to be made to or by the direction of the said governors and their successors, according to the rules and orders established for the regulation of the said bounty by letters patent under the great seal of Great Britain, and pursuant to the charter of incorporation of the said governors, and the several acts of parliament in that case made and provided for the perpetual augmentation of small livings and cures, may be made according to the following form, or as near thereto as the number of the parties and the circumstances of the case will admit; namely,

"I, _____ of _____ in consideration of [state the consideration], do hereby grant and convey to the said governors, their successors and assigns, [or to the rector, vicar, curate, or incumbent of the rectory, vicarage, curacy, or chapelry of _____ (as the case may be,) and his successors, by the direction of the said governors, (testified by their affixing their common seal to this deed,) all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all such estate, right, title, and interest in and to the same and every part thereof as I am or shall become seised or possessed of, to hold the said premises to the said governors, their successors and assigns, for ever, to be by them applied and disposed of [or to hold the said premises to the said rector, &c., as the case may be, and his successors, for ever,] for the augmentation of the maintenance of the said rector, vicar, curate, or incumbent (as the case may be) of the rectory, vicarage, curacy, or chapelry of _____ witness whereof, &c.'

"And all such conveyances and grants shall be valid and effectual in the law to convey all the right, title, and interest of the grantors or grantor in the premises thereby conveyed or granted.

Deed for
granting
stipends, &c.
to be in the
following
form.

"XXI. And be it enacted, that all deeds for the purpose of granting stipends, rent-charges, or annuities, to or by the direction of the said governors for the augmentation of small livings and cures, may be made according to the form following, or as near thereto as the number of the parties and the circumstances of the case will admit; viz.,

"I, _____ of _____ in consideration of [state the consideration], do hereby give and grant unto the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and their successors, [or to the rector, vicar, curate, or incumbent of the rectory, vicarage, curacy, &c., of _____, and his successors, by the direction of the said governors, testified by their affixing their common seal to this grant,] the clear rent-charge or annual sum of _____ to be issuing out of and charged upon all [describe the premises charged], to hold the said clear rent-charge or annual sum of _____ free from all charges and deductions now payable or hereafter to be made payable, unto the said governors, their successors and assigns, to be by them applied to the perpetual augmentation of the maintenance of the rector, vicar, curate, or incumbent (as the case may be) of, &c., [or unto the rector, vicar, curate, or incumbent of, &c., (as the case may be,) for the perpetual augmentation of the said rectory, vicarage, curacy, or benefice,] such clear rent-charge or annual sum to be paid yearly for ever, by four equal quarterly payments, on the days and times following, [specify the days and times and the place at which the payments are to be made,] the first payment to be made on such of the said days as shall first happen next after the date hereof. In witness whereof, &c.'

'And every such gift and grant shall be valid and effectual in the law for the

purpose of securing the payment of such clear rent-charge or annual sum as shall be therein expressed to be granted, as far as the estate or interest of the grantors or grantor in the tenements and hereditaments thereby charged shall extend, and shall be construed and adjudged in all courts of judicature to authorize and empower the grantees or grantee therein named, and their respective successors and assigns, if such clear rent-charge or annual sum, or any part thereof, shall be in arrear for the space of twenty-eight days, to levy the same by distraining any goods upon the premises charged, and selling the distress, as in the case of rent reserved on common leases for years, and to repeat such distress and sale from time to time, whenever necessary, until such clear rent-charge or annual sum, and all arrears thereof, and any costs attending the nonpayment thereof, shall be fully discharged.

"XXII. And be it enacted, that in all such conveyances and grants made for valuable consideration for the augmentation of any small living or cure, the word 'grant' shall, where the grantors or grantor at the time of such conveyances or grants had or claimed to have a beneficial interest in the premises conveyed, granted, or charged, operate as and be construed and adjudged in all courts of judicature to be an express covenant to or with the grantees or grantee, their, or his successors and assigns, by or from the grantors or grantor, their, his, or her successors, heirs, executors, and administrators, that, notwithstanding any act of the said grantors or grantor or their or any of their ancestors, to the contrary, the said grantors or grantor were or was at the time of the execution of such conveyances or grants seised or possessed of, and had full power and authority to grant and convey or to charge, the lands or premises thereby granted or charged, for an indefeasible estate of inheritance in fee-simple, or otherwise for such estate or interest as therein expressed, free from all incumbrances, and that, notwithstanding any such act as aforesaid, the grantees or grantee, their or his successors and assigns, shall quietly enjoy such lands and premises, or such rent-charge, as the case may be, against all persons whomsoever claiming or to claim by, from, under, or in trust for such grantors or grantor, or by, from, under, or in trust for their or any of their ancestors, and be indemnified and saved harmless by the said grantors or grantor, their, his, or her successors, heirs, executors, and administrators, from all incumbrances whatsoever made or created by such grantors or grantor, or any of them, or their or any of their ancestors, and also for further assurance, at the expense of the grantees or grantee, their or his successors or assigns, of such lands and premises, or of such rent-charge, by the said grantors or grantor, and all persons claiming under them, him, or her, unless and except and so far as the same shall be restrained or limited by express particular words contained in such conveyances and grants; but where the said grantors or grantor, at the time of such conveyances or grants were or was bare trustees or a bare trustee only of the premises thereby conveyed or granted, the word 'grant' shall operate as and be construed and adjudged to be an express covenant with the grantees or grantee, their or his successors and assigns, by or from the grantors or grantor, their, his, or her heirs, executors, and administrators, that such grantors or grantor had done no act to incumber the premises thereby conveyed or granted; and the grantees or grantee, their or his successors and assigns, shall and may in all actions to be brought assign breach or breaches of covenant as they might do in case such covenants were expressly inserted in such conveyances and grants.

"XXIII. And be it enacted, that it shall and may be lawful to and for the said governors of the bounty of Queen Anne to cause and procure to be enrolled in her majesty's high court of Chancery all or any of such deeds as may be hereafter made or executed for the purpose of conveying, giving, granting, or annexing any lands, tenements, or hereditaments, or any stipend, rent-charge, or annual sum to or by the direction of the said governors or their successors for the augmentation of livings or cures as aforesaid; and when any such deed or deeds shall have been so enrolled a copy of the enrolment thereof, certified by the proper officer having the custody of such enrolment to be a true copy of such enrolment, and examined with the said enrolment, shall be of the same force, effect, and validity to all intents and purposes as the original deed would be if the same were produced; and

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Definition of
the word
'grant' in
conveyances,
&c.

Governors of
Queen Anne's
bounty to
cause deeds to
be enrolled.

STAT. 1 & 2
VICT. c. 20.

Powers of acts
now in force
respecting
forms of deeds,
&c. not to be
affected.

Act may be
altered, &c.
this session.

that any rule or practice requiring deeds to be acknowledged before enrolment shall not apply to any deed by this act authorized to be enrolled in her majesty's high court of Chancery.

"XXIV. Provided always, and be it enacted, that before contained, empowering the said governors of adopt and use the forms of deeds hereinbefore met with any power or authority contained in any act of the use of any other forms or form of deeds and of deeds and conveyances by any such acts or act be adopted and used as if this act had not been passed.

"XXV. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

"THE SCHEDULE REFERRED TO BY THIS ACT.

FIRST-FRUIT OFFICE.			
Henry Warre, Esquire, Remembrancer.	Annual average amount of fees	£ s. d. 560 0 0	
	Payment from the court of Exchequer in lieu of cer- tain abolished fees	63 0 0	623 0 0
George Arbuthnot, Esquire, Receiver			250 0 0
Mr. George Gunthorpe, senior sworn clerk.	Annual average amount of fees	262 14 2	
	Under receiver's patent	20 0 0	282 14 2
Mr. John Geesin, junior sworn clerk.	Annual average amount of fees		118 4 9
			£1273 18 11
TENTHS OFFICE.			
The office of Receiver has lately become vacant by the death of Thomas Ve- nables, Esq., who had received	Salary	£ s. d. 300 0 0	
	Fees	125 0 0	425 0 0
Richard Griffiths, senior clerk	Salary		100 0 0
William Bridges, junior clerk	Salary		100 0 0
Besides the fees on notices, the amount of which is not stated.			
Office-keeper			25 0 0
Rent of office, stationery, coals, and sundries			99 0 0
			£749 0 0

STAT. 1 & 2
VICT. cap.
xxii. [Sc.]

VII. STAT. 1 & 2 VICTORIÆ, cap. xxii. [SCOTLAND.] A.D. 1838.

An Act to explain and extend the Powers of the Trustees of Lady Glenorchy's Chapel and School in Edinburgh."

VIII. STAT. 1 & 2 VICTORIÆ, c. 23 (1). A.D. 1838.

STAT. 1 & 2
VICT. c. 23.*"An Act to amend the Law for providing fit Houses for the Beneficed Clergy."*

"Whereas for further promoting the residence of the clergy it is expedient and desirable that the powers and provisions given and made by an act passed in the seventeenth year of the reign of King George the Third, intituled 'An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices,' as the same are explained and amended by an act passed in the twenty-first year of the same reign, intituled, 'An Act to explain and amend an Act made in the seventeenth year of the Reign of His present Majesty, intituled, An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses and other necessary Buildings and Tenements for the Use of their Benefices,' should be extended: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and immediately after the passing of this act it shall be lawful for the incumbent of any benefice to borrow and take up at interest for the purposes of the said acts, and also for the purpose of buying or procuring, if necessary, a proper site for a house and other necessary buildings, or for the purposes of the said acts only, any sum or sums of money not exceeding three years' net income of such benefice, and to take all such proceedings as are required in and by the said acts (so far as the same are applicable for that purpose), and, as a security for the money so to be borrowed, to mortgage the glebe, tithe, rent-charges, rents, and other profits and emoluments belonging to such benefice, to such person or persons, corporation or corporations aggregate or sole, as shall lend the same money, by one or more deed or deeds, for the term of thirty-five years, or until the money so to be borrowed, with interest for the same, and such costs and charges as may attend the recovery thereof, shall be fully paid and satisfied, according to the terms and conditions of the said acts (so far as the same are applicable, and not hereby repealed or altered): and that from and after the expiration of the first year of the said term (in which year no part of the principal sum borrowed shall be payable) the incumbent shall yearly and every year (such year to be computed from the day of the date of the mortgage) pay to the mortgagee one thirtieth part of the said principal sum, until the whole thereof shall be repaid, and shall at the end of the first and each succeeding year pay the yearly interest on the said principal sum, or on so much thereof as shall from time to time remain unpaid, in each case according to the terms and conditions of the said acts, except so far as the same are hereby repealed or altered; and such mortgage deed or deeds shall be made as nearly as may be in the form or to the effect of the form contained in the schedule to the said acts or one of them, and shall bind every succeeding incumbent of such benefice until the principal and interest, costs and charges, shall be paid off and discharged, as fully and effectually as if such successor had made and executed the same.

17 Geo. 3, c. 53.

21 Geo. 3, c. 66.

Extension of the provisions of recited acts relating to the repairing and building of houses of residence.

"II. And be it enacted, that so much of the said acts as requires the incumbent of a benefice mortgaged under the provisions thereof, if non-resident, to pay ten pounds per centum per annum of the money originally advanced, and obliges an incumbent paying five pounds per centum per annum to produce a certificate of residence, shall be and the same are hereby repealed as to all mortgages to be made after the passing of this act.

Repeal of so much as requires non-residents to pay 10l. per cent. per annum of sum borrowed, &c.

"III. And be it enacted, that for the future, as to every mortgage which has been made to the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, by any bishop, under the powers of an act of parliament specially enabling him, whereby a greater yearly instalment than one thirtieth part of the principal sum is stipulated to be paid, or by the incumbent of

The yearly instalments of principal sums secured by existing mortgages to the

(1) Amended by Stat. 1 & 2 Vict. c. 29; and Stat. 2 & 3 Vict. c. 49, ss. 14 & 17.

STAT. 1 & 2
VICT. C. 23.
governors of
Queen Anne's
bounty re-
duced.

a benefice, by virtue of the two beforementioned acts, the instalment of the principal sum to be paid in every year to the said governors or their assigns by such bishop or by the incumbent, (whether such incumbent shall have been resident for the space of twenty weeks in the year for which such instalment shall be payable, or not, and without the production of any certificate of such residence,) shall be one thirtieth part of the principal sum originally advanced on such mortgage, in lieu of the yearly instalment thereby stipulated to be paid, until the whole of the said principal sum shall be fully discharged and paid, such substituted yearly instalment to commence and be paid in each case on the day when the next yearly instalment by virtue of the said mortgage shall become due; and the mortgages made to the said governors of the estates of any bishopric, or of the glebe, tithes, rents, and other profits and emoluments of any benefice, shall in every case be and remain in force as a security for the yearly instalments of the principal by the said mortgages agreed to be paid, as well as for the payment of the interest arising on such mortgages, and with all the powers and remedies for enforcing the same given by the said respective acts, until the money borrowed and all interest for the same, and also all costs and charges which shall be occasioned by the nonpayment thereof, shall be fully paid and discharged, in like manner as if such substituted yearly instalments had been expressly mentioned in and secured by the said mortgages, the expiration of the term of years granted by the said mortgages, or any other cause or matter whatsoever, notwithstanding.

Governors of
Queen Anne's
bounty may
advance 100l.
for benefices
not exceeding
50l. a year
without
interest.

"IV. And be it further enacted, that it shall be lawful for the said governors to advance and lend any sum or sums of money not exceeding the sum of one hundred pounds in respect of each benefice, out of the money which has arisen or shall from time to time arise from the said bounty for promoting and assisting the several purposes of the said acts and of this act, with respect to any such benefice as shall not exceed the clear annual improved value of fifty pounds, and such mortgage and security shall be made for the repayment of the principal sums so to be advanced as are hereinbefore mentioned, but no interest shall be paid for the same; and in cases where the annual value of such benefice shall exceed the sum of fifty pounds, that it shall and may be lawful for the said governors to advance and lend for the same purposes any sum or sums of money to the extent authorized by this act to be borrowed, upon such mortgage and security as aforesaid, and subject to the several regulations of this act, and to receive interest for the same not exceeding four pounds for one hundred pounds by the year.

Colleges, &c.
may advance
money interest
free to benefices
in their
patronage for
houses.

"V. And be it enacted, that it shall be lawful for any college or hall within the universities of Oxford or Cambridge, or for any other corporate bodies possessed of the patronage of ecclesiastical benefices, to advance and lend any sum or sums of money of which they have the power of disposing, in order to aid and assist the several purposes of this act, for the building, rebuilding, repairing, or purchasing of any houses or buildings for the habitation or convenience of the clergy, or aim for such houses and buildings, upon benefices in the patronage of such colleges or halls respectively, upon the mortgage and security directed by this act for the repayment of the principal, without taking any interest for the same.

Old benefice
houses in cer-
tain cases may
be converted
into farming
buildings for
the tenants of
the glebe.

"VI. And be it enacted, that when it shall happen that any existing house and offices belonging to any benefice shall be unfit for the residence of the incumbent thereof, and shall be incapable of being enlarged or repaired so as to be rendered fit for his residence, and it shall be so certified to the bishop of the diocese wherein such benefice shall be situate by some competent surveyor or architect, and that it will be advantageous to the benefice that such house and offices should be suffered to remain, it shall be lawful for such incumbent, with the consent in writing of such bishop, (such consent to be registered in the registry of such bishop,) to allow such house and offices to remain standing as a dwelling house and offices, or to convert the same into farming buildings for the use and occupation of the occupier or occupiers of the glebe lands belonging to such benefice; and from and after the complete erection or the purchase of a new house and offices to the satisfaction of the bishop of the diocese, such old house and offices shall from thenceforth be used for and converted to the purposes aforesaid; and

the house and offices to be so erected or purchased shall from thenceforth to all intents and purposes be deemed and taken to be the residence house of and for such benefice, without the necessity of obtaining any licence or faculty for that purpose.

“VII. (1) And be it enacted, that where the residence house, gardens, orchard, and appurtenances belonging to any benefice shall be inconveniently situate, or for other good and sufficient reasons it shall be thought advisable to sell and dispose thereof, it shall and may be lawful for the incumbent of such benefice, and he is hereby authorized and empowered, with the consent and approbation of the ordinary and patron thereof, and of the archbishop of the province, to be signified by their executing the deed of conveyance hereby authorized to be made, absolutely to sell and dispose of such house, gardens, orchard, and appurtenances, any or either of them, with any land contiguous thereto not exceeding _____ acres, to any person or persons whomsoever, either altogether or in parcels, and for such sum or sums of money as to such ordinary and patron and archbishop shall appear fair and reasonable, and upon payment of the purchase money for the same as hereinafter mentioned by deed indented to convey and assure such house, gardens, orchard, land, and appurtenances unto and to the use of the purchaser or purchasers thereof, his or their heirs or assigns, or as he or they shall direct or appoint.

“VIII. And be it enacted, that the monies to arise from such sale or sales as aforesaid shall be paid to the said governors of the bounty of Queen Anne; and that the receipt or receipts of the treasurer for the time being of the said governors shall be and be deemed and taken to be an effectual discharge to the person or persons paying such monies, or for so much thereof as in such receipt or receipts shall be expressed; and after obtaining such receipt or receipts such purchaser or purchasers shall be absolutely discharged from the money for which such receipt or receipts shall be given, and shall not be answerable or accountable for the loss, misapplication, or nonapplication of such monies or any part thereof.

“IX. And be it enacted, that the monies to arise from such sale or sales as aforesaid shall, after payment of all costs, charges, and expenses of such sale or sales, be applied and disposed of by the said governors in or towards the erection or purchase of some other house and offices, or the purchase of an orchard, garden, and appurtenances, or land for the site of a house, any or either of them, together with land contiguous thereto, and not exceeding twelve acres, suitable for the residence and occupation of the incumbent of such benefice, and approved of by the said ordinary and patron, such approval to be signified under the respective hands of such ordinary and patron, and to be deposited in the registry of such ordinary; and such house shall from thenceforth be deemed and taken to be the house of residence of such benefice for all purposes whatsoever.

“X. And be it enacted, that in any case in which the consent of the patron of any benefice shall be required to the exercise of any power given by this act, and the patronage of such benefice shall be in the crown, the consent of the crown to the exercise of such power shall be testified in the manner hereinafter mentioned; (that is to say,) if such benefice shall be above the yearly value of twenty pounds in the Queen's Books, the instrument by which the power shall be exercised shall be executed by the lord high treasurer or first lord commissioner of the Treasury for the time being; and if such benefice shall not exceed the yearly value of twenty pounds in the Queen's Books, such instrument shall be executed by the lord high chancellor, lord keeper or lords commissioners of the great seal for the time being; and if such benefice shall be within the patronage of the crown in right of the duchy of Lancaster, such instrument shall be executed by the chancellor of the said duchy for the time being; and the execution of such instrument by such person or persons shall be deemed and taken for the purposes of this act to be an execution by the patron of the benefice.

“XI. And be it enacted, that in any case in which the consent of the patron of any benefice shall be required to the exercise of any power given by the said

STAT. 1 & 2
VICT. c. 23.

Power to incumbent (with consent of patron and ordinary and archbishop) to sell house of residence if inconveniently situated, or under special circumstances.

Purchase monies to be paid to the governors of Queen Anne's bounty;

to be applied to buy or build a house for incumbent's residence.

How consent of patron to be testified when patronage in the crown.

How consent to be given

(1) *Vide* Stat. 1 & 2 Vict. c. 29.

STAT. 1 & 2
VICT. c. 23.
when patron-
age is attached
to the duchy
of Cornwall.

acts or by this act, and the advowson and right of patronage of such benefice shall be part of the possessions of the duchy of Cornwall, the consent of the patron of such benefice to the exercise of such power shall be testified in the manner hereinafter mentioned, (that is to say,) the instrument by which the power shall be exercised shall be executed by the Duke of Cornwall for the time being, if of full age; but if such benefice shall be within the patronage of the crown in right of the duchy of Cornwall, such instrument shall be executed by the same person or persons who is or are by the said acts authorized to testify the consent of the crown to the exercise of any power given thereby in respect of any benefice in the patronage of the crown; and the execution of such instrument by such person or persons shall be deemed and taken for the purposes of the said acts and of this act, to be an execution by the patron of the benefice.

How consent
to be given
where patron
is an inca-
pacitated
person.

“XII. And be it enacted, that in any case in which the consent of the patron of any benefice shall be required to the exercise of any power given by this act, and the patron of such benefice shall be a minor, idiot, lunatic, or feme covert, it shall be lawful for the guardian or guardians, committee or committees, or husband of such patron, (but in case of a feme covert with her consent in writing,) to execute the instrument by which such power shall be exercised in testimony of the consent of such patron; and such execution shall for the purposes of this act be deemed and taken to be an execution by the patron of the benefice.

Remaining
powers of
recited acts
extended to
this act.

“XIII. And be it enacted, that all powers, authorities, provisions, forms, and matters, in the said acts contained, shall, except as is herein otherwise directed, extend and be applicable, *mutatis mutandis*, to all mortgages and other instruments made, as well under and for the purposes of this act, as of the before-mentioned acts, and as if the same had been respectively repeated and set forth herein.

In case of a
purchase, the
powers of act
7 Geo. 4, c. 66,
to apply.

“XIV. And be it enacted, that in the case of a purchase as aforesaid the several powers and provisions contained in an act made and passed in the seventh year of the reign of his majesty King George the Fourth, intituled, ‘An Act to render more effectual the several Acts now in force to promote the Residence of the Parochial Clergy, by making Provision for purchasing Houses and other necessary Buildings for the Use of their Benefices,’ shall be and the same are hereby extended to this act for the purposes aforesaid.

Sequestrations
under Act 17
Geo. 3, c. 53,
to have pri-
ority.

“XV. And be it enacted, that every sequestration to be issued under the provisions of the said act of the seventeenth year of the reign of King George the Third shall have priority, and the sums to be thereby recovered shall be paid and satisfied in preference to all other sequestrations and the sums to be thereby recovered, except such sequestrations as shall be founded on judgments duly served and docketed before the passing of this act.

Construction
of “benefice”
in this act.

“XVI. And be it further enacted, that in the construction of this act the word ‘benefice’ shall be deemed, construed, and taken, to extend to and comprise rectories with cure of souls, vicarages, perpetual curacies, and chapelries, the incumbents of which respectively in right thereof shall be corporations sole.”

STAT. 1 & 2
VICT. csp. xxv.

IX. STAT. 1 & 2 VICTORIÆ, cap. xxv. A.D. 1838.

“An Act to enable the Governors of the Possessions, Revenues, and Goods of the Free Grammar School of King Edward the Sixth in Macclesfield, in the County of Chester, to establish a second School, to be called ‘The Modern Free School’ in Macclesfield, in the County of Chester; and for other Purposes.”

STAT. 1 & 2
VICT. c. 28.
[Ire.]

X. STAT. 1 & 2 VICTORIÆ, c. 28. [IRELAND.] A.D. 1838.

“An Act to repeal the several Acts now in force relating to Bread to be sold in Ireland, and to provide other Regulations for the making and sale of Bread, and for preventing the Adulteration of Meal, Flour, and Bread, in that part of the United Kingdom called Ireland.”

Bakers not to
bake bread or

“XIII. Provided always, and be it enacted, that no master or mistress, journeyman or other person respectively exercising the trade or calling of a baker”

Ireland shall, on the Lord's day, or on any part thereof, make or bake any bread, rolls, or cake of any sort or kind, or shall on any other part of the said day than between the hours of nine of the clock in the forenoon and one of the clock in the afternoon, on any pretence whatsoever, sell or expose for sale, or permit or suffer to be sold, delivered, or exposed for sale, any bread, rolls, or cakes of any sort or kind, or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, except as hereinafter is excepted, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day; and every person offending against the last-mentioned regulations, or any one or more of them, and being thereof convicted before any justice of the peace of the city, county, or place where the offence shall be committed within ten days from the commission thereof, either upon the view of such justice or on confession by the party, or proof by one or more credible witness or witnesses upon oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say,) for the first offence the penalty of ten shillings, for the second offence the penalty of twenty shillings, and for the third and every subsequent offence respectively the penalty of forty shillings; and shall moreover upon every such conviction bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution at a rate not exceeding three shillings per diem, and to be paid to the prosecutor or prosecutors for his, her, or their own use and benefit, and the residue of such penalty to be paid to such justice, and within seven days after his receipt thereof to be transferred by him to the use of the poor of the parish where the offence shall be committed; and in case the whole amount of the penalty and of the costs and expenses aforesaid be not forthwith paid after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders, and in default or insufficiency of such distress commit the offender or offenders to the house of correction, with or without hard labour, on a first offence for the space of seven days, on a second offence for a space of fourteen days, and on a third or any subsequent offence for the space of one month, unless the whole of the penalty, costs, and expenses be sooner paid and discharged: provided nevertheless, that it shall be lawful for every baker in Ireland to deliver to his or her customer or customers on the Lord's day any bakings, (that is to say,) baked dishes, meat, or puddings, (but not bread,) until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained."

STAT. 1 & 2
VICT. c. 28.
[1a.]

rolls on the
Lord's day, or
sell bread or
bake pies, &c.
except between
certain hours.

Penalty.
First offence.
Second offence.
Third and sub-
sequent
offences.

Bakings may
be delivered
until half-past
one on Sun-
days.

XI. STAT. 1 & 2 VICTORIÆ, c. 29. A.D. 1838.

STAT. 1 & 2
VICT. c. 29.

"An Act to supply an Omission in an Act passed in the present Session of Parliament, intituled, An Act to amend the Law for providing fit Houses for the Beneficed Clergy."

"Whereas an act of parliament was passed in the present session of parliament, intituled, 'An Act to amend the Law for providing fit Houses for the beneficed Clergy:' and whereas the seventh section of the said act is in the words following; (that is to say,) 'And be it enacted, that where the residence house, gardens, orchard, and appurtenances belonging to any benefice shall be inconveniently situate, or for other good and sufficient reasons it shall be thought advisable to sell and dispose thereof, it shall and may be lawful for the incumbent of such benefice, and he is hereby authorized and empowered, with the consent and approbation of the ordinary and patron thereof and of the archbishop of the province, to be signified by their executing the deed of conveyance hereby authorized to be made, absolutely to sell and dispose of such house, gardens, orchard, and appurtenances,

1 Vict. c. 23.

STAT. 1 & 2
VICT. c. 29.

S. 7 in the
recited act to
have the intended
effect, notwithstanding
the omission.

any or either of them, with any land contiguous thereto, not exceeding acres, to any person or persons whomsoever, either altogether or in parcels, and for such sum or sums of money as to such ordinary and patron and archbishop shall appear fair and reasonable, and upon payment of the purchase money for the same as hereinafter mentioned by deed indented to convey and assure such house, gardens, orchard, land, and appurtenances unto and to the use of the purchaser or purchasers thereof, his or their heirs or assigns, or as he or they shall direct or appoint: and whereas the space in the said recited section of the said act between the words 'exceeding' and 'acres,' which was intended to be supplied with the word 'twelve,' was inadvertently left blank: be it declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said hereinbefore recited section of the said act of parliament shall be deemed, construed, and taken to have such and the same effect to all intents and purposes whatsoever as if the said word 'twelve' had been originally inserted therein between the words 'exceeding' and 'acres.'"

STAT. 1 & 2
VICT. c. 30.

XII. STAT. 1 & 2 VICTORIÆ, c. 30. A.D. 1838.

"An Act for continuing the Bishoprick of Sodor and Man(1)."

6 & 7 Gul. 4.
c. 77.

"Whereas an act of parliament was passed in the seventh year of the reign of his late majesty King William the Fourth, intituled, 'An Act for carrying into

(1) *Bishoprick of Sodor and Man*:—"The Isle of Man was converted to the Christian faith by St. Patrick, about the year 440, at which time the bishoprick of Man was erected; St. German, to whose name and memory the cathedral is dedicated, being the first Bishop of Man, who, with his successors, had this island only for their diocese, till the Norwegians had conquered the Western Isles, and soon after Man, which was about the beginning of the eleventh century.

"It was about this time that the Insule Sodorenses, being thirty-two, (so called from the bishoprick of Sodor erected in one of them, namely the Isle of Hy,) were united to Man, and from that time the bishops of the united sees were styled Sodor and Man, and sometimes Man and Insularum; and they had the Archbishop of Drontheim, (styled Nidorensis,) for their metropolitan. And this continued till the island was finally annexed to the crown of England, when Man had its own bishops again, who styled themselves variously, sometimes Bishop of Man only, sometimes Sodor and Man, and sometimes Sodor de Man; giving the name of Sodor to a little isle lying within a musket shot of the mainland, called by the Norwegians, Holm, and by the inhabitants, Peel, in which stands the cathedral. For in these express words, in an instrument yet extant, Thomas, Earl of Derby and Lord of Man, A.D. 1505, confirms to Huam Heskett, Bishop of Sodor, all the lands, &c., anciently belonging to the Bishops of Man; namely, 'Ecclesiam cathedralen Sancti Germani in Holm, Sodor vel Pele vocatum, ecclesiamque Sancti Patricii ibidem, et locum prefatum in quo prefatam ecclesiam, sita sunt.' This cathedral was built by Simon, Bishop of Sodor, who died A.D. 1245, and was there buried. Bishop Wilson's History of the Isle of Man.

"This bishoprick had for its diocese this isle and the Hebrides, or Western Islands of

Scotland; but which were called Sodoroc by the Danes, who went to them by the north from the Swediah, Sodor, sail, or oar, islands, from which the title of the Bishop of Sodor is supposed to have originated. The bishop's seat was at Rushen, or Castletown, in the Isle of Man, and in Latin is entitled Sodoranus: but when this island became dependent on the kingdom of England, the Western Islands withdrew themselves from the obedience of their bishop, and had a bishop of their own, whom they entitled also Sodoranus, but commonly, Bishop of the Isles. Beaton.

"The name of Sodor, whether derived from Sodoroc, or a corruption of the Saxon root of 'South,' evidently belongs to the Western Isles. There probably never was a place in the island of Hy, called Sodor, and certainly Peel is never so denominated. The mistake has probably arisen from those who not knowing the meaning of the term Sodor, attached it to the site of the cathedral. The present official name of the bishopric is, 'The Bishoprick and See of the Isle of Man and Sodor, and of Sodor of Man:' words which, without deciding any thing, comprehend both meanings. The expressions used in the deed of Thomas, Earl of Derby, in 1505, only prove that the question was, at that time, in the same state that it is at present.

"Information with regard to the present state of this see is valuable, not only on account of the interest which is generally attached to it, from the respect shown to the memory of Bishop Wilson, but because, in consequence of its seclusion, it remains at this moment in a condition much nearer that of the primitive church, than the rest of the Christian body with which it is ecclesiastically connected.

"It should be remembered that the Isle of Man is an independent kingdom under the same sovereign as England, but governed by

Effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties

STAT. 1 & 2
VICT. c. 30.

its own laws. This assertion may excite a smile in those who are unacquainted with the real state of the case; but it is strictly true, for an act of the British parliament is of no force in the island, unless it be specially extended to it, and even then it may be a question whether, if enforced against the wishes of the legislative body of the island, it would not rather be an invasion of rights, which the Manx have no power to resist. But this circumstance has placed the ecclesiastical affairs of the see in a very different state from what they are in England. Laws which have been there passed to increase the power of bishops, or to restrain the jurisdiction of their courts, are not here recognised. And the civil power has always given efficiency to the decisions of the ecclesiastical courts, by enforcing them by temporal authority. Add to which, that the circumstances of the island, which differ much from those of England, do, perhaps, create as great a practical difference as the actual state of the laws. The diocese is so small, that the bishop can really look after it; he has time for settling delinquencies of pariah clerks and village schoolmasters, and is often engaged in such matters; his position is such, as not only to give weight to his decisions, but to place him above the suspicion of those local prejudices, which render it so difficult to arrange disputed questions in such societies. His courts are very cheap, and may be very efficient, and if well managed, are a great blessing to a poor population, among whom small properties are still much divided. When or how could a better judgment be obtained, concerning a will under which the property contested amounted to twenty-five shillings? Again, the only provision made for the support of the pauper, is carried on through the ecclesiastical courts. The churchwarden collects the alms of the church for the maintenance of the necessitous, and if any parties possessing property, neglect to assist their poor relations, he presents them as creating a scandal, and the court forces them to provide what is fair. Upon the same principle, questions relating to the maintenance of illegitimate children, are brought before the same tribunal, and practically, the ecclesiastical courts decide not only such matters as belong to a bishop's court in England, as those pertaining to discipline, wills, and marriages, but embrace the maintenance of pauper relatives, the provision for illegitimate children, as well as the debts due to and from the estates of testators during the first year. For the purpose of carrying out the details of such a jurisdiction, three species of courts are held.

"Vicars-general's courts, which are held in two places in the island every fortnight, by a single vicar-general.

"Chapter courts, which are held in four places twice in the year, and in which the bishop, if present, presides with the two vicars-general.

"Consistory courts, which are held once a

month, before the bishop and two vicars-general.

"More important questions are removed from the former two courts to the latter, and an appeal lies from all, either to the staff of government in temporal matters, or the Archbishop of York in ecclesiastical.

"But all this is practically and constantly carried on, and a great deal of business is settled in these courts.

"The penal discipline exercised by Bishop Wilson was very great, and as the laws relating to such matters have not been altered, the change which has taken place, must have depended on the negligence or the prudential forbearance of his successors.

"The moral influence arising from such an ecclesiastical power, supported by the temporal authority, would be very considerable, if properly exercised; and the mere fact that the whole of its penal force depends on the temporal authority, will prevent a bishop from stretching its operations unduly. The state of property and of society is very different in the Isle of Man from what it is in England, and if the laws are not the same, it is more than probable that existing institutions are well suited to the condition of those who are living under them. It may be observed, that the bishop of this diocese still exercises the power of granting special licences, which formerly belonged to all bishops.

"The list of Bishops of Sodor and Man, as given in Weedon Butler's *Life of Bishop Hildesley*, p. 285, is as follows:

- 447. Germanus.
- Conindrius.
- Romulus.
- 498. Machutus. Machilla, or Manghold.
- 690. Conanus.
- Rantantus or Contentus.
- Bladus.
- Malchus.
- Torkirus.
- Roolwer.
- William.
- Brendinus
- 1114. Wymundus. Hamundus. Rey-mundus.
- 1151. John.
- 1154. Gamaliel.
- Reginald.
- Christian.
- Michael.
- 1203. Nicholas de Melsa, or de M'aux.
- 1217. Reginald.
- 1226. John.
- 1230. Simon, of Orkney.
- 1249. Laurence.
- 1252. Richard.
- 1275. Mark, of Galloway.
- 1305. Allen. Onanus, or Onachus.
- 1321. Gilbert.
- 1324. Bernard.
- 1334. Thomas.
- 1348. William Russel.
- 1374. John Duncan.
- 1391. Robert Welby.

STAT. 1 & 2
VICT. c. 30.

and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage: and whereas it is expedient that the said act, so far as it relates to or may affect the see of Sodor and Man, should be repealed; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act the said recited act shall be deemed and construed not to extend to the see of Sodor and Man, or any part thereof, but the said act, so far as it may relate to or affect the see of Sodor and Man, shall be and the same is hereby repealed.

Recited act not
to extend to
the see of So-
dor and Man.

No other part
of recited act
affected.

The bishop not
to hold any
dignity, &c. in
commendam.

"II. Provided always, and be it further enacted, that nothing herein contained shall be construed to affect any other part of the said act.

"III. Provided always, and be it further enacted, that no ecclesiastical dignity, office, or benefice shall be held in *commendam* by any Bishop of Sodor and Man, but that every such *commendam*, whether temporary or perpetual, shall be absolutely void to all intents and purposes."

STAT. 1 & 2
VICT. c. 31.

XIII. STAT. 1 & 2 VICTORIÆ, c. 31. A.D. 1838.

"An Act for facilitating the Sale of Church Patronage belonging to Municipal Corporations in certain Cases."

5 & 6 Gul. 4,
c. 76, s. 139.

6 & 7 Gul. 4,
c. 77, s. 26.

"Whereas by an act passed in the session of parliament holden in the fifth and sixth years of the reign of his late majesty King William the Fourth, intituled, 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' (as the same act is altered by another act passed in the then next session of parliament, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,') it is enacted, that in every case in which any municipal body corporate, or any particular class, number, or description of members, or the governing body of such body corporate, is or are, in their corporate capacity, and not as charitable trustees, seized or possessed of any manors, lands, tenements, or hereditaments whereunto any advowson or right of nomination or presentation to any benefice or ecclesiastical preferment is appendant or appurtenant, or of any advowson in gross, or hath or have any right or title to nominate or present to any benefice or ecclesiastical preferment, every such advowson, and every such right of nomination and presentation, shall be sold, at such time and in such manner as the ecclesiastical commissioners for England may direct, so that the best price may be obtained for the same; and the council of such body corporate is authorized and required, with the consent of the said

1429. Richard Pully.
1448. John Green (of Sprotton).
1452. Thomas Burton.
1481. Richard Oldham.
1487. Huan Hesketh.
1510. Thomas Stanley.
1545. Robert Ferrar, or Ferrer.
1546. Henry Mann.
1556. Thomas Stanley (restored).
571. John Salisbury.
576. John Meryk, or Merrick.
599. George Lloyd.
604. John Philips.
633. William Forst.
1635. Richard Parr.
1661. Samuel Rutter.
1663. Isaac Barrow.
1671. Henry Bridgman.
1682. John Lake.
1684. Baptist Levinz.
1696. Thomas Wilson.
1755. Mark Hildesley.
1773. Richard Richmond.

1780. George Mason.
1784. Claudius Crigan.
1813. George Murray.
1827. William Ward.
1838. James Bowstead.
1840. Henry Pepys.
1841. Thomas Vowler Short.

"The list of bishops here given, though it does not prove the uninterrupted succession of those who filled the office, can leave no doubt on the mind of any fair examiner, that the see was established at that early period, and that the Island Church has always been governed by bishops. The names of Patrick German, and Maughold, were in gratitude attached to three of the parishes, and are retained at the present day."

The author of the foregoing historical summary is the Bishop of Sodor and Man; and for its communication, the Editor respectfully tenders to His Lordship the warmest acknowledgments.

commissioners, to convey and assure, under the common seal of such body corporate, such advowson, or such right of nomination or presentation, to the purchaser or purchasers thereof: and whereas in some instances the manors, lands, tenements, or hereditaments whereof some municipal corporations are seised were granted to them with an obligation to nominate, provide, and sustain in certain churches or chapels able and fit priests, curates, preachers, or ministers, for the performance and administration of ecclesiastical duties and rites therein, and for the cure of the souls of the parishioners and inhabitants of the parishes or places thereunto belonging; and although such corporations have from time to time duly nominated and provided such priests, curates, preachers, or ministers, and paid stipends for their sustenance, and have either provided houses for their residence or made allowances in lieu thereof, yet such stipends and allowances have not been fixed or assured by any competent authority; and for want of any regular endowment or augmentation of such curacies they have not become perpetual cures, or benefices presentative, and the curates have not become bodies politic and corporate, within the meaning of an act passed in the first year of the reign of his majesty King George the First, intituled, 'An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of poor Clergy,' and of an act passed in the thirty-sixth year of the reign of his majesty King George the Third, intituled, 'An Act for the further Support and Maintenance of Curates within the Church of England, and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen Anne's Bounty, with respect to the Avoidance of other Benefices;' by reason whereof doubts have arisen whether the right of nominating ministers to such churches and chapels can be sold under the provisions of the said first hereinbefore recited act; and it is expedient that such doubts should be removed: be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every right of nomination of every such priest, curate, preacher, or minister, which at the time of the passing of the first hereinbefore recited act was vested in any municipal corporation, or in any member of such corporation in virtue of his office as such, shall and may be sold, at such time and in such manner as the said commissioners may direct, and shall by such conveyance or assurance as is in the said first-recited act mentioned become vested in the purchaser thereof, his heirs and assigns; and that from and after such sale and assurance every such curacy, preachship, or ministry shall become a benefice presentative within the meaning of the said recited act of the thirty-sixth year of the reign of King George the Third; and every such curate, preacher, or minister, and his successors for ever, shall become and be a body politic and corporate within the meaning of the said recited act of the first year of the reign of King George the First, and shall have perpetual succession, and shall be capable of taking and holding in perpetuity all such lands, tithes, tenements, hereditaments, monies, goods, and chattels as shall be granted unto or purchased for them respectively by the governors of the bounty of Queen Anne, or by other persons contributing with the said governors as benefactors; and every such purchaser, his heirs and assigns, may present to such benefice, from time to time when and as the same shall become vacant, in the same manner to all intents and purposes as patrons may now present to benefices presentative.

"II. And be it enacted, that notwithstanding any such sale and conveyance as aforesaid, every such corporation, and the property belonging thereto, shall continue liable to the same obligations (if any) of providing for and maintaining or contributing to the maintenance of any such priest, curate, preacher, or minister, to which such corporation and property would have been liable if no such sale and conveyance had taken place; and such liability (if any) may be enforced by the same means, at the instance of her majesty, her heirs or successors, or otherwise, as if the first hereinbefore recited act had not been passed, and the right of nominating such priest, curate, preacher, or minister had remained vested in such corporation.

STAT. 1 & 2
VICT. c. 31.

1 Geo. 1,
c. 10, s. 54.

36 Geo. 3,
c. 83, s. 3.

Right of nomination vested in municipal corporations may be sold.

Notwithstanding any sale, the property to be liable to same obligations as previous thereto.

STAT. 1 & 2
VICT. c. 31.

Municipal
corporations
may augment
and endow
priestships,
&c. as here-
tofore.

Act to apply
to previous,
present, and
future sales.
Act may be
amended this
session.

"III. Provided always, and be it hereby further enacted, that nothing in this act or in the said first-recited act contained shall preclude any municipal corporation seized of any manors, lands, tenements, or hereditaments, subject to an obligation to nominate and provide any such priest, curate, preacher, or minister, from augmenting and endowing such priestship, curacy, preacherhip, or ministry, either by the assigning of a competent portion of such manors, lands, tenements, or hereditaments to such priest, curate, preacher, or minister, and his successors, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, in as full and ample manner as such corporation might have done before the passing of the said first-recited act: provided always, that no such augmentation or endowment shall be valid without the consent of the lords commissioners of her majesty's Treasury or any three of them.

"IV. And be it enacted, that this act shall be deemed and taken to apply as well to sales already made, and to sales now in progress, as also to sales which shall hereafter be made.

"V. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

STAT. 1 & 2
VICT. CAP.
XXXV.

XIV. STAT. 1 & 2 VICTORIÆ, CAP. XXXV. A.D. 1838.

"An Act for establishing a general Cemetery in the Parish of Gravesend, in the County of Kent."

STAT. 1 & 2
VICT. cap.
XXIV.

XV. STAT. 1 & 2 VICTORIÆ, cap. XXIV. A.D. 1838.

"An Act for enabling the Governors of the Possessions, Revenues, and Goods of the Free Grammar School of the Parishioners of the Parish of Saint Saviour in Southwark, in the County of Surrey, to sell the Old School and Schoolhouse, and the Site thereof; and also for enabling the Right Reverend Charles Richard Lord Bishop of Winchester, and his Lessees, to grant to the said Governors another Site for the purpose of a more convenient School and Schoolhouse and proper Offices being erected thereon."

STAT. 1 & 2
VICT. CAP.
LIV.

XVI. STAT. 1 & 2 VICTORIÆ, CAP. LIV. A.D. 1838.

"An Act for the Erection of a new Church, in the Parish of Lee, in the County of Kent."

STAT. 1 & 2
VICT. CAP. LV.

XVII. STAT. 1 & 2 VICTORIÆ, CAP. LV. A.D. 1838.

"An Act for the Erection and Endowment of a Chapelry for the District of Lower Booding, in the County of Sussex, and for other Purposes."

STAT. 1 & 2
VICT. c. 58.
[Ir.]

XVIII. STAT. 1 & 2 VICTORIÆ, c. 58(1). [IRELAND.] A.D. 1838.

"An Act to vest in the Commissioners of the Treasury the Powers heretofore exercised by Commissioners appointed for certain Purposes relating to the Redemption of the Land Tax; and to authorize the Court of Eschequer to determine Disputes as to the Division in which Lands are liable to be rated to the Land Tax."

STAT. 1 & 2
VICT. c. 64.

XIX. STAT. 1 & 2 VICTORIÆ, c. 64(2). A.D. 1838.

"An Act to facilitate the Merger of Tithes in Land."

6 & 7 Gul. 4,
c. 71, s. 71.

"Whereas by an act passed in a session of parliament of the sixth and seventh years of the reign of his late majesty King William the Fourth, intituled, 'An Act for the Commutation of Tithes in England and Wales,' it was (amongst other things) provided that it should be lawful for any person seized in possession of an

(1) This statute does not affect ecclesiastical property. *Vide* ante 977.

(2) Amended by Stat. 2 & 3 Vict. c. 61. and Stat. 3 & 4 Vict. c. 15.

estate in fee-simple or fee-tail of any tithes, or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the tithe commissioners for England and Wales should approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of the same, so that the same might be absolutely merged and extinguished in the freehold and inheritance of the lands on which the same should have been charged; and whereas it is expedient that the aforesaid provision should be extended in manner hereinafter mentioned: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall be lawful for any person or persons who shall, either alone or together, be seised of or have the power of acquiring or disposing of the fee-simple in possession of any tithes, or rent-charge in lieu of tithes, by any deed or declaration under his or their hand and seal or hands and seals, to be made in such form as the tithe commissioners for England and Wales shall approve, and to be confirmed under their seal, to convey, appoint, or otherwise dispose of the same, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands out of or on which the same shall have been issuing or charged; and every such deed or declaration as aforesaid shall be valid and effectual for the purpose aforesaid, although the same may not be executed or made in the manner or with the formalities or requisites which if this act had not been passed would have been essential to the validity of any instrument by which such person or persons could have acquired or disposed of the fee-simple in possession of such tithes, or rent-charge in lieu of tithes.

"II. And be it enacted, that no deed or declaration authorized by this act for the merging of tithes shall be chargeable with any stamp duty.

"III. And be it enacted, that in all cases where tithes, or rent-charge in lieu of tithes, and the lands out of which the same are payable, are both settled to the same uses, it shall be lawful for any person in possession of an estate for life in both such lands and tithes, or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the said commissioners shall approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of such tithes or rent-charge, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands out of which such tithes shall have been issuing or on which such rent-charge shall have been charged.

"IV. (1) And whereas doubts have been entertained whether, according to the true construction of the said act, any tithes, or rent-charge in lieu of tithe, can be merged in lands of copyhold tenure, and it is expedient that such doubts should be removed; be it therefore declared and enacted, that the provisions in the said act and this act contained as to the merger of any tithe, or rent-charge in lieu of tithe, shall be deemed and taken to extend to all lands, being copyhold of inheritance or copyhold for lives, or of any other tenure whatsoever.

"V. And be it enacted, that in the construction and for the purposes of this act the several words 'person,' 'lands,' and 'tithes,' shall respectively mean and include whomsoever and whatsoever the same words would have meant and included if the enactment hereinbefore made had been contained in the said recited act instead of this act.

"VI. And be it enacted, that this act shall extend only to England and Wales.

"VII. And be it further enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament."

XX. STAT. 1 & 2 VICTORIÆ, CAP. LXXII. A.D. 1838.

"An Act to incorporate the Governors and Subscribers to Saint Luke's Hospital for Lunatics, and for better enabling them to carry on their Charitable Designs."

STAT. 1 & 2
VICT. c. 64.

Persons having
the power of
appointment
over tithes
may merge
them in the
land.

Deeds not
chargeable
with duty.

Where tithes
and the lands
charged there-
with are settled
to same uses,
the tenant for
life may cause
them to merge
in the land.

Tithes may be
merged in
copyhold lands.

Meaning of
words.

"Person."
"Lands."
"Tithes."

Limits of act.

Act may be
altered this
session.

STAT. 1 & 2
VICT. CAP.
LXXII.

(1) Vide Stat. 2 & 3 Vict. c. 62, s. 7.

STAT. 1 & 2
VICT. C. 77.

XXI. STAT. 1 & 2 VICTORIÆ, c. 77. A.D. 1838.

"An Act for permitting Affirmation to be made instead of an Oath in certain Cases."

STAT. 1 & 2
VICT. C. 78.
[IR.]

XXII. STAT. 1 & 2 VICTORIÆ, c. 78. [IRELAND.] A.D. 1838.

"An Act for the Amendment of the Laws relating to Loan Societies in Ireland."

Powers in
favour of
trustees by
s. 24 of 6 & 7
Gul. 4, c. 55,
vested in so-
ciety at large.

"XXIII. And whereas by the said act of the sixth and seventh years of the reign of his late majesty it is enacted, that the trustees of any such society as therein mentioned may from time to time appropriate such portion of the clear net profits, over and above all losses, as they shall think proper in support of the hospital or infirmary of the county for which or for a portion of which the society shall be established, or for such other local charitable purpose as they shall think fit, the residue or the whole of such net profits, if no part shall be so appropriated, being employed as part of the funds of the society until the trustees shall otherwise determine; and whereas it is just and reasonable that the powers vested by the said recited clause in the trustees of any such society as therein mentioned should be vested in the members at large of such society, or in such persons as may be authorized in that behalf by them; be it therefore enacted, that from and after the commencement of this act the said recited powers relating to the appropriation of the net profits of any charitable loan society established or to be established under the the provisions of the said recited act or of this act, shall vest in and shall and may be exercised by the members at large of such society, or by such committee, trustees, or other officer or officers of such society, or other person or persons as have been or shall be duly authorized in that behalf by the enrolled rules of such society, but not otherwise."

STAT. 1 & 2
VICT. C. 87.
[Sc.]

XXIII. STAT. 1 & 2 VICTORIÆ, c. 87(1). [SCOTLAND.] A.D. 1838.

"An Act to facilitate the Foundation and Endowment of additional Schools in Scotland."

STAT. 1 & 2
VICT. CAP.
xcviii.

XXIV. STAT. 1 & 2 VICTORIÆ, CAP. xcvi. A.D. 1838.

"An Act for uniting the Medieties of the Rectory of Liverpool, in the County Palatine of Lancaster, and for the better Endowment thereof, and of certain Churches in the said Town."

STAT. 1 & 2
VICT. C. 105.

XXV. STAT. 1 & 2 VICTORIÆ, c. 105. A.D. 1838.

"An Act to remove Doubts as to the Validity of certain Oaths."

STAT. 1 & 2
VICT. C. 106.

XXVI. STAT. 1 & 2 VICTORIÆ, c. 106(2). A.D. 1838.

"An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence (3) of the Clergy."

21 Hen. 8,
c. 13.

"Whereas an act was passed in the twenty-first year of the reign of King Henry the Eighth, intituled, 'An Act that no Spiritual Persons shall take to fern

(1) *Vide* Stat. 4 & 5 Vict. c. 38, s. 22.

(2) *Vide* Stat. 13 Eliz. c. 20 (*ante* 432); Stat. 2 & 3 Vict. c. 49; Stat. 4 & 5 Vict. c. 39, ss. 9, 10, 23, & 24; Stat. 3 & 4 Vict. c. 60, s. 21; Stat. 3 & 4 Vict. c. 86, s. 2; Stat. 3 & 4 Vict. c. 113, s. 34; and *Bluck v. Rackham*, *post.* 2092.

(3) *Residence*:—The ancient clerical law as to residence, and its restoration by the Council of Trent, have been described by Van Espen, (*Jus Canon.* pt. 1, t. 11; *De Personis*), in the following language: "Nihil adeo vocationi clericali oppositum, nihil ecclesie magis probrosum et laicis scandalosum esse quam otiosam ac inertem clericorum vitam ratione et experientia consperum est. Hinc jam pridem sollicita fuit ecclesia ne quis in clerum assumeretur nisi certe loco ascriberetur, ubi functionibus ordini convenientibus occuparetur et vitam clero dignam institueret. Disciplinam hanc canonico sexto concilii chalcedonensis probatam sed temporum injuriâ penitus collapsam, restauratam volens Synodus Tridentina murendo vestigiis dicti concilii statuit ut antea in posterum ordinatur qui illi ecclesie et pio loco pro cuius necessitate aut utilitate assumitur non adscribatur ubi eis sumptu muneribus nec incertis vagetur sedibus." Sess. 23, cap. 16, *De Resid.*

rum vitam ratione et experientia consperum est. Hinc jam pridem sollicita fuit ecclesia ne quis in clerum assumeretur nisi certe loco ascriberetur, ubi functionibus ordini convenientibus occuparetur et vitam clero dignam institueret. Disciplinam hanc canonico sexto concilii chalcedonensis probatam sed temporum injuriâ penitus collapsam, restauratam volens Synodus Tridentina murendo vestigiis dicti concilii statuit ut antea in posterum ordinatur qui illi ecclesie et pio loco pro cuius necessitate aut utilitate assumitur non adscribatur ubi eis sumptu muneribus nec incertis vagetur sedibus." Sess. 23, cap. 16, *De Resid.*

of the King, or any other Person, any Lands or Tenements for Term of Life, Lives, Years, or at Will, &c.; and for Pluralities of Benefices; and for Residence,' the whole of which recited act (excepting only such parts as relate to pluralities of benefices) has since been repealed by an act passed in the fifty-seventh year of the reign of King George the Third, intituled, 'An Act to consolidate and amend the Laws relating to Spiritual Persons holding of Farms; and for enforcing the Residence of Spiritual Persons on their Benefices; and for the Support and Maintenance of Stipendiary Curates in England;' and whereas it is expedient to consolidate and amend the said laws, and to restrain the holding of pluralities, and to make further provision for enforcing the residence of spiritual persons upon their benefices, and to limit the exemptions from such residence: and also to make further provision respecting the appointment and support of stipendiary curates in England; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said recited acts as is now in force shall be and the same is hereby repealed, save and except only such part of the said last-recited act as repeals certain acts and parts of acts therein particularly recited; provided always, that nothing herein contained shall exempt any person from any penalties incurred under the said last-recited act before the time of passing this act, to take away or affect any proceedings for recovery thereof, whether commenced or not before the passing of this act, or shall annul or abridge any licence granted under the provisions of the said last-recited act before the time of passing this act.

STAT. 1 & 2
VICT. c. 106.

57 Geo. 3, c. 99.

Both acts now wholly repealed; saving as to penalties already incurred, or licences already granted.

"II. And be it enacted, that from and after the passing of this act no spiritual person holding more benefices than one shall accept and take to hold therewith any cathedral preferment or any other benefice; and that no spiritual person holding any cathedral preferment and also holding any benefice shall accept and take to hold therewith any other cathedral preferment or any other benefice; and that no spiritual person holding any preferment in any cathedral or collegiate church shall accept and take to hold therewith any preferment in any other cathedral or collegiate church; any law, canon, custom, usage, or dispensation to the contrary notwithstanding; provided, that nothing hereinbefore contained shall be construed to prevent any archdeacon from holding, together with his archdeaconry, two benefices, under the limitations hereinafter mentioned with respect to distance, joint yearly value, and population, and one of which benefices shall be situate within the diocese of which his archdeaconry forms a part, or one cathedral preferment in any cathedral or collegiate church of the diocese of which his archdeaconry forms a part, and one benefice situate within such diocese, or to prevent any spiritual person holding any cathedral preferment, with or without a benefice, from holding therewith any office in the same cathedral or collegiate church the duties of which are statutely or accustomedly performed by the spiritual persons holding such preferment.

Not more than two preferments to be held together;

"III. And be it enacted, that, except as hereinafter provided, no spiritual person holding any benefice shall accept and take to hold therewith any other benefice, unless it shall be situate within the distance of ten statute miles from such first-mentioned benefice.

nor two benefices, unless within ten miles of each other; nor if population of one

"IV. And be it enacted, that, except as hereinafter provided, no spiritual person holding a benefice with a population of more than three thousand persons

Those who may be desirous of ascertaining some of the principal decisions in the common law courts, respecting residence previously to the enactment of Stat. 1 & 2 Vict. c. 106, are referred to *Still v. Coleridge*, Forrest, 117; *Vaus v. Vollans (Clerk)*, 4 B. & Ad. 525; *Balls q. t. v. Atwood (Clerk)*, 1 Hen. Black. 546; *Whitehead v. Wynn*, 5 M. & S. 427; 2 Chitt. 420; *Wynne v. Budd (Clerk)*, 5 Taunt. 629; *Wright q. t. v. Lloyd (Clerk)*, *Ibid.* 306; *Wright v. Legge (Clerk)*, 6 *Ibid.* 48; *Cathcart (Clerk) v. Hardy (in*

error), 2 M. & S. 534; *Leigh q. t. v. Kent (D. D.)*, 3 T. R. 362; *Bevan q. t. v. Williams*, *Ibid.* 635; *Wright v. Flammank (Clerk)*, 6 Taunt. 52; *Scammell q. t. v. Willett (Clerk)*, 3 Esp. N. P. C. 29; *Jenkinson v. Thomas*, 4 T. R. 665; *Fletcher v. Dickenson*, 2 Black. (Sir W.), 906; *Doe d. Crisp v. Barber*, 2 T. R. 749; *Wynn v. Smithies*, 6 Taunt. 198; *Wynn v. Kay*, 5 *Ibid.* 843; *Bagslaw v. Bosley*, 4 T. R. 78; and 432, n. (4). *Vide etiam Stephens on Clerical Law*, tit. Residence.

STAT. 1 & 2
VICT. c. 106.
such benefice
is more than
3000, or joint
yearly value
shall exceed
1000*l*.

If yearly value
of one of said
benefices be
less than 150*l*.
and the popula-
tion shall
exceed 2000
persons, the
two may be
held jointly,
after statement
of reasons by
the bishop.
Proviso as to
residence on
larger parish.

Licence or
dispensation to
hold together
any two bene-
fices must be
obtained from
the Archbishop
of Canterbury.

shall accept and take to hold therewith any other benefice having, at the time of his admission, institution, or being licensed thereto, a population of more than five hundred persons; nor shall any spiritual person holding a benefice with a population of more than five hundred persons accept and take to hold therewith any other benefice having, at the time of his admission, institution, or being licensed thereto, a population of more than three thousand persons; nor shall any spiritual person hold together any two benefices if, at the time of his admission, institution, or being licensed to the second benefice, the value of the two benefices jointly shall exceed the yearly value of one thousand pounds.

“V. And be it enacted, that in case the bishop or bishops, as the case may be, to whom any two benefices within the distance of ten miles from each other shall respectively be subject, which, under the provision hereinbefore contained, might not be holden together, but one of which benefices shall be below the yearly value of one hundred and fifty pounds, and the population of which shall exceed two thousand persons, shall think it expedient that the incumbent of one of such benefices should be permitted to hold the said two benefices together, the said bishop or bishops shall be at liberty, upon application made to him or them for that purpose by such incumbent, to state in writing under his or their hand or hands the reason why such benefices should be holden together, and in such case it shall be lawful for the said incumbent to hold the said two benefices together; provided always, that in the last-mentioned case the bishop of the diocese within which such benefice having a population exceeding two thousand persons is situate may from time to time, if he shall so think fit, by an order under his hand and revocable at any time, require that such incumbent should keep residence on and personally serve such benefice during the space of nine months in each year; and if such incumbent shall not, in obedience to the terms of such order and until the same be revoked, reside on and personally serve such benefice, he shall be liable to all the penalties for non-residence imposed by this act, notwithstanding he may have a legal exemption permanent or temporary from residence, or may be resident on some other benefice of which he may be possessed, or may be performing the duties of an office, and the performance of the duties of which might in such cases be accounted as residence on some benefice; provided always, that such spiritual person may, within one month after service upon him of any such order, appeal to the archbishop of the province, who shall confirm or rescind such order, as to him may seem just and proper.

“VI. Provided always, and be it enacted, that before any spiritual person shall be allowed to hold any two benefices together under any provision of this act it shall be necessary for such person to obtain from the Archbishop of Canterbury for the time being a licence or dispensation for the holding thereof, which licence or dispensation the said archbishop is hereby empowered to grant under the seal of his office of faculties, upon being satisfied as well of the fitness of the person as of the expediency of allowing such two benefices to be holden together, and that such licence or dispensation shall issue in such manner and form as the said archbishop shall think fit; and for such licence or dispensation there shall be paid to the registrar of the said office the sum of thirty shillings and no more, and to the seal keeper thereof the sum of two shillings and no more; and that no stamp duty, nor any other fee, save as hereinbefore mentioned, shall be payable on the licence or dispensation to be granted as aforesaid, nor shall any confirmation thereof be necessary; nor shall it be required of any spiritual person applying for any such licence or dispensation to give any caution or security by bond or otherwise before such licence or dispensation is granted; and if the said Archbishop of Canterbury shall refuse or deny to grant any such licence or dispensation as aforesaid, it shall be lawful for her majesty, if she, by the advice of her privy council, shall think fit, upon application by the person to whom such licence or dispensation shall have been refused or denied, to enjoin the said archbishop to grant such licence or dispensation, or to show to her majesty in council sufficient cause to the contrary, and thereupon to make such order touching the refusal or grant of such licence or dispensation as to her majesty in council shall seem fit; and such order shall be binding upon the archbishop.

"VII. And be it further enacted, that where any spiritual person shall be desirous of obtaining a licence or dispensation for holding together any two benefices such spiritual person shall, previously to applying for the grant of such licence or dispensation, deliver to the bishop of the diocese where both benefices are situate in the same diocese, or to the bishops of the two dioceses where such benefices are situate in different dioceses, a statement in writing under his hand, verified as such bishop or bishops respectively may require, according to the form or forms to be promulgated from time to time by the Archbishop of Canterbury and approved by the queen in council, in which statement such spiritual person shall set forth, according to the best of his belief, the yearly income arising from each of the said benefices, separately, on an average of the three years ending on the twenty-ninth day of September next before the date of such statement, and the sources from which such income is derived, and also the yearly amount, on an average of the same period of three years, of all taxes, rates, tenths, dues, and other permanent charges and outgoings to which the same benefices are respectively subject, and also the amount of the population of each of the said benefices, to be computed according to the last returns made under the authority of parliament, and also the distance between the two benefices, to be computed according to the directions of this act; and it shall be lawful for the bishop to whom such statement shall be delivered to make any inquiry which he may think right as to the correctness of the same in respect to the benefices or benefice within his diocese; and such bishop is hereby required, within the space of one month after he shall have received such statement as aforesaid, to transmit to the Archbishop of Canterbury a certificate under his hand, in which certificate such bishop shall set forth or shall annex thereto a copy of the statement delivered to him as aforesaid, and shall thereby certify the amount at which he considers that the annual value and the population of each of the two benefices (where both benefices are situate in the same diocese) and the distance of the said two benefices from each other, or the amount at which he considers the annual value and the population of the benefice within the diocese of such bishop (where the two benefices are situate in different dioceses) and the distance of such benefice from the other benefice, ought to be taken, with respect to the licence or dispensation in question; and whenever both or either of the benefices shall be in the diocese or jurisdiction of the Archbishop of Canterbury, a certificate shall be made out in manner aforesaid by the archbishop, and shall be retained by him.

"VIII. And be it further enacted, that in estimating the annual value of any benefice for the purpose of any such certificate as aforesaid it shall be lawful for the archbishop or bishop by whom such certificate shall be made, and every such archbishop and bishop is hereby directed, to deduct from the gross amount of the yearly income arising from such benefice all taxes, rates, tenths, dues, and other permanent charges and outgoings to which such benefice shall be subject, but not to deduct or allow for any stipend or stipends to any stipendiary curate or curates, nor for such taxes or rates in respect of the house of residence on any benefice or of the glebe land belonging thereto as are usually paid by tenants or occupiers, nor for monies expended in the repair or improvement of the house of residence and buildings and fences belonging thereto.

"IX. And be it further enacted, that the certificate or certificates to be transmitted to or retained by the Archbishop of Canterbury as aforesaid shall be deposited in the mid office of Faculties, and in the event of the required licence or dispensation being granted shall for the purposes of this act be conclusive evidence of the annual value and population of each of the benefices to which the same shall relate, and of their distance from each other: and the registrar of the faculties shall and he is hereby required to produce such certificate or certificates to any person who may require to inspect the same.

"X. And be it further enacted, that for all the other purposes of this act the annual value of all benefices shall be the net annual value thereof, to be estimated in the same manner as is hereinbefore directed for the purpose of any such certificate as aforesaid; and that it shall be lawful for the court before whom any

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A statement of certain particulars to be made by every spiritual person to the bishop of the diocese, previous to application for a licence or dispensation.

Bishop may make inquiry as to the accuracy of statement. Bishop to transmit a certificate to the Archbishop of Canterbury, setting forth copy of the statement made to the bishop, and other particulars.

How annual value of two benefices to be held together by dispensation to be estimated.

Certificate to be deposited in office of Faculties; and be conclusive evidence of value, population, and distance.

In other cases how annual value to be estimated.

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VICT. C. 106.

Acceptance of
preferment
contrary to
this act vacates
the former
preferment.

Present rights
of possession
saved.

Saving of other
rights.

suit shall be depending for the recovery of any penalty or forfeiture under this act, and for any bishop acting under any of the provisions of this act, to make or cause to be made such inquiries and call for such evidence as such court or bishop shall think fit, and otherwise to proceed upon the best information which such court or bishop may be able to procure for estimating in manner aforesaid the annual value of any benefice; and with respect to the same, the decision of such court or of such bishop, founded on such evidence or other information, shall be final and conclusive, save when appealed from in due course of law.

“XI. And be it enacted, that if any spiritual person, holding any cathedral preferment or benefice, shall accept any other cathedral preferment or benefice, and be admitted, instituted, or licensed to the same contrary to the provisions of this act, every cathedral preferment or benefice so previously held by him shall be and become *ipso facto* void, as if he had died or had resigned the same, any law, statute, canon, usage, custom, or dispensation to the contrary notwithstanding; and if any spiritual person holding any two or more benefices shall accept any cathedral preferment, or any other benefice, or if any spiritual person holding two or more cathedral preferments shall accept any benefice, or if any spiritual person holding any cathedral preferment or preferments, and benefice or benefices, shall accept another benefice, he shall, before he is instituted, licensed, or in any way admitted to the said cathedral preferment or benefice, in writing under his hand declare to the bishop or bishops within whose diocese or dioceses any of the cathedral preferments or benefices previously holden by him are situate, which cathedral preferment and benefice, or which two benefices, (such two benefices being tenable together under the provisions of this act,) he proposes to hold together, and a duplicate of such declaration shall by such spiritual person be transmitted to the registry of the diocese, and be there filed; and immediately upon any such spiritual person being instituted, licensed, or in any way admitted to the cathedral preferment or benefice which he shall have accepted as aforesaid, such cathedral preferment or preferments, benefice or benefices as he previously held, and as he shall not as aforesaid have declared his intention to hold, or such benefice as shall not be tenable under the provisions of this act with such newly-accepted benefice shall be and become *ipso facto* void, as if he had died or had resigned the same; and if such spiritual person shall in any such case refuse or wilfully omit to make such declaration as aforesaid, every cathedral preferment and benefice which he previously held shall be and become *ipso facto* void as aforesaid; provided always that nothing herein contained shall be construed to affect the provision heretofore made with respect to archdeacons, or with respect to spiritual persons holding, with any cathedral preferment, and with or without a benefice, offices in the same cathedral or collegiate church.

“XII. And be it enacted, that nothing hereinbefore contained shall be construed to prejudice or affect the right of possession in any cathedral preferment or benefice to which any spiritual person shall have been collated, admitted, instituted, or licensed, or which shall have been otherwise granted to any spiritual person before the passing of this act, unless he shall after the passing of this act accept or take some cathedral preferment or benefice contrary to the provisions of this act.

“XIII. And be it enacted, that nothing in this act contained shall be construed to prevent any spiritual person possessed of one or more than one benefice at the time of the passing of this act, and to whom or in trust for whom the advowson of or the next presentation or nomination to any other benefice has been conveyed, granted, or devised by any deed or will made before the twenty-third day of December one thousand eight hundred and thirty-seven, from taking the said last-mentioned benefice, and holding together such benefice and any one such first-mentioned benefice, (although the benefices to be held together be not within the limits nor under the joint yearly value, nor the population thereof under the amount, prescribed by this act,) but so nevertheless that the said two benefices be such as might have been held together before the passing of this act by dispensation duly granted and confirmed; and the bishop of the diocese in which

such second or other benefice is situate shall and may, after a licence or dispensation shall have been obtained by such spiritual person as is by this act required for holding two benefices together, admit, institute, or license such spiritual person thereto, anything herein contained to the contrary notwithstanding; unless such spiritual person, after the passing of this act, and before he shall be so admitted, instituted, or licensed to such second or other benefice as aforesaid, shall have accepted and taken any cathedral preferment or any other benefice, the holding of which with such second or other benefice would be contrary to the provisions of this act.

“XIV. Provided also, and be it enacted, that nothing hereinbefore contained shall be construed to prevent the Reverend Frederick Vernon Lockwood, the Reverend Edward Repton, or the Reverend Temple Fane, formerly chaplains to the house of commons, from taking and holding with any benefice of which any of them was in possession at the time of the passing of this act any cathedral preferment, or any benefice which may be conferred on them or either of them by her majesty in consideration of their respective services as such chaplains, although any such benefices be not within the limits nor under the joint yearly value, nor the population thereof under the amount, prescribed by this act.

“XV. And whereas it is expedient to alter and amend the provisions made by an act passed in the thirty-seventh year of the reign of King Henry the Eighth, intituled, ‘An Act for the Union of Churches not exceeding the Value of Six Pounds;’ and by another act passed in the seventeenth year of the reign of King Charles the Second, intituled, ‘An Act for uniting Churches in Cities and Towns Corporate;’ be it enacted, that the said last-recited acts shall be and the same are hereby repealed.

“XVI. And be it enacted, that whenever it shall appear to the archbishop of the province, with respect to his own diocese, and whenever it shall be represented to him by the bishop of any diocese, or by the bishops of any two dioceses, that two or more benefices, or that one or more benefice or benefices, and one or more spiritual sinecure rectory or rectories, vicarage or vicarages, in his or their diocese or dioceses, being either in the same parish or contiguous to each other, and of which the aggregate population shall not exceed one thousand five hundred persons, and the aggregate yearly value shall not exceed five hundred pounds, may with advantage to the interests of religion be united into one benefice, the said archbishop of the province shall inquire into the circumstances of the case; and if on such inquiry it shall appear to him that such union may be usefully made, and it will not be of inconvenient extent, and that the patron or patrons of the said benefices, sinecure rectory or rectories, vicarage or vicarages respectively is or are consenting thereto, such consent being signified in writing under the hands of such patron or patrons, the said archbishop shall, six weeks before certifying such inquiry and consent to her majesty as hereinafter directed, cause, with respect to his own diocese, a statement in writing of the facts, and in other cases a copy in writing of the aforesaid representation, to be affixed on or near the principal outer door of the church, or in some public and conspicuous place in each of such benefices, sinecure rectories, or vicarages, with notice to any person or persons interested that he, she, or they may, within such six weeks, show cause in writing under his, her, or their hand or hands to the said archbishop against such union, and if no sufficient cause be shown within such time, the said archbishop shall certify the inquiry and consent aforesaid to her majesty in council, and thereupon it shall be lawful for her majesty in council to make and issue an order or orders for uniting such benefices, sinecure rectory or rectories, vicarage or vicarages, into one benefice, with cure of souls, for ecclesiastical purposes only; and it shall be lawful for her majesty in council to give directions for regulating the course and succession in which the patrons, if there be more than one patron, shall present or nominate to such united benefice from time to time as the same shall become vacant, and for determining, if such united benefice shall be in two dioceses, to which of such dioceses such benefice shall belong; and such order or orders shall be registered in the registry or registries of the diocese or respective dioceses to

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Saving as to
former chap-
lains to the
house of
commons.

Acts 37 Hen.
8, c. 21, and
17 Car. 2, c. 3,
for uniting
churches,
repealed;

and their pro-
visions re-
enacted and
extended.

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which such united benefice shall be determined to belong, and to which either or any of the united benefices, sinecure rectories, or vicarages shall have belonged when separate, which order or orders the registrar or registrars of such diocese or respective dioceses, immediately on the receipt thereof, are hereby required to register accordingly; and such order or orders shall thenceforth be binding on all parties whatsoever; and if at the time of the registration of such order or orders all the benefices, sinecure rectories, or vicarages ordered to be united shall not be holden by the same incumbent, then if any of such benefices, sinecure rectories, or vicarages shall at such time be vacant, and if not, then upon every avoidance, until all the said benefices, sinecure rectories, or vicarages but one shall come to be holden by the same incumbent, the patron of the vacant benefice or benefices, sinecure rectory or rectories, vicarage or vicarages, shall be bound to present or nominate, and the bishop shall be bound to admit and institute or license, to the vacant benefice or benefices, sinecure rectory or rectories, vicarage or vicarages, the incumbent of the other or one of the other benefices, sinecure rectory or rectories, vicarage or vicarages so ordered to be united; and if both or all, as the case may be, shall be holden by the same incumbent at the time of the registration of such order or orders, or all but one of the said benefices, sinecure rectories, or vicarages shall at such time be vacant, then immediately, or otherwise on the first avoidance of either or any of such benefices, sinecure rectories, or vicarages, after all but one shall have come to be holden by the same incumbent, the said benefices, sinecure rectory or rectories, vicarage or vicarages shall become permanently united together, and shall be and be deemed and taken to be one benefice, with cure of souls, to all intents and purposes, unless and until the same shall be afterwards disunited in the manner hereinafter enacted: provided always, that notwithstanding any such union the parishes or places of which such united benefice shall consist shall continue distinct as to all secular rates, taxes, charges, duties, and privileges, and in all other respects except as hereinbefore specified.

Glebe lands, &c. may in certain cases be excepted out of any united benefice to augment the provision for any other adjoining poor benefice by an exchange in such manner that the augmentation shall be situate within the limits of such other benefice.

“XVII. And be it enacted, that when it shall further appear to the archbishop of the province, with respect to his own diocese, or it shall be further represented to him by the bishop of any other diocese, that the total income of any benefice or benefices, sinecure rectory or rectories, vicarage or vicarages, proposed to be united as aforesaid, would be larger than sufficient for the due maintenance and support of the incumbent of the benefice when united, and that the whole or some specified part or parts of the glebe lands, tithes, rent-charges, tenements, and hereditaments, belonging to the benefice or benefices, sinecure rectory or rectories, vicarage or vicarages proposed to be united, or any of them, might and could, with advantage to the interests of religion, be excepted out of such union, and be exchanged for certain other lands, tithes, tenements, and hereditaments, or any of them, in some other specified benefice situate in the same diocese, and having no competent provision belonging thereto, and that the lands, tithes, tenements, or hereditaments proposed to be given in exchange for such excepted lands, tithes, rent-charges, tenements, or hereditaments, might with like advantage be granted, conveyed, and assured as a further perpetual endowment for the incumbent of such last-mentioned benefice, and that the patron or patrons of the said benefice or benefices, sinecure rectory or rectories, vicarage or vicarages respectively, and the incumbent or incumbents for the time being thereof respectively, or of such thereof as shall not be then vacant, and the owner or owners, impropricator or impropricators of such lands, tithes, tenements, or hereditaments respectively so proposed to be given in exchange, is or are consenting thereto, such consent to be signified in writing under their respective hands, it shall be lawful for the said archbishop, after inquiring into such further matter, to certify in like manner as aforesaid such further circumstances to her majesty in council, and thereupon it shall be lawful for her majesty, in and by such order as aforesaid, or any other order or orders, to direct that such first-mentioned lands, tithes, rent-charges, tenements, and hereditaments shall be excepted out of such united benefice, and be granted, conveyed, and assured unto such owner or owners, impropricator or impropricators as

aforesaid, in exchange for an equal value of lands, tithes, tenements, or other hereditaments situate or arising within the limits of such benefice, to be by such owner or owners, impropriator or impropriators, granted, conveyed, and assured for the further endowment of such other benefice; and such order or orders shall be registered in the register of the diocese to which such united benefice and other benefice shall belong, and which order or orders the register of such diocese, immediately on the receipt thereof, is hereby required to register accordingly, and such order or orders shall thenceforth be binding on all parties whatsoever; and such lands, tithes, tenements, and hereditaments, so directed to be granted, conveyed, and assured to such owner or owners, impropriator or impropriators as aforesaid, shall, immediately upon and after the execution and enrolment in manner hereinafter directed of the deed or deeds, instrument or instruments hereinafter mentioned, be for ever freed and discharged of and from all estate, right, title, and interest whatsoever of all and every the incumbent or incumbents for the time being of the said benefices, sinecure rectory or rectories, vicarage or vicarages so to be united, and become and be subject and liable in every respect to all and singular the uses, trusts, estates, and charges of or to which the lands, tithes, rent-charges, tenements, or other hereditaments so granted, conveyed, or assured by such owner or owners, impropriator or impropriators, for such further endowment as aforesaid, may at the time of such execution have been subject or liable; and that such last-mentioned lands, tithes, rent-charges, tenements, or other hereditaments, so granted, conveyed, and assured by such owner or owners, impropriator or impropriators, for such further endowment as aforesaid, shall in like manner become and be for ever annexed to such other benefice for the further endowment of which the same shall be so granted, conveyed, and assured, and be held and enjoyed for ever by the incumbent for the time being thereof, as part of the endowment thereof, freed and discharged of and from all uses, trusts, estates, and charges whatsoever to which the same respectively or any part thereof were or was before subject or liable.

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“XVIII. Provided always, and be it further enacted, that all such grants, conveyances, and assurances as aforesaid shall be made by a deed or deeds, instrument or instruments in writing, under the hand and seal or hands and seals of the patron or patrons of the benefice or benefices, sinecure rectory or rectories, vicarage or vicarages, affected thereby, and of the owner or owners, impropriator or impropriators of the lands, tithes, tenements, and hereditaments so to be given in exchange as aforesaid; and the bishop of the diocese for the time being shall testify his approval thereof by being a party and affixing his episcopal seal thereto; and the incumbent or incumbents for the time being of such of the said benefice or benefices, sinecure rectory or rectories, vicarage or vicarages, as shall not be then vacant, shall testify his or their approval by being a party or parties to and signing the same respectively, and shall be the party or parties by whom the grant, conveyance, and assurance to be made or executed to such owner or owners, impropriator or impropriators as aforesaid shall be made and executed; and such deed or deeds, instrument or instruments in writing, shall be enrolled in her majesty's high court of Chancery within six calendar months after the execution thereof respectively, or else have no operation under this act.

Such conveyances in exchange to be by deed in writing, under the hands and seals of all parties interested, to be enrolled in Chancery.

“XIX. Provided always, and be it enacted, that the approval of the said bishop, testified as aforesaid, shall be conclusive that the lands, tithes, rent-charges, tenements, and hereditaments so to be granted, conveyed, and assured under or by virtue of the provisions aforesaid were respectively of the proper value required by this act, and were respectively granted, conveyed, and assured in due accordance with the provisions aforesaid.

Approval of bishop of the diocese.

“XX. Provided also, and be it enacted, that from and after the passing of this act it shall not be lawful to unite two or more benefices into one benefice in any other form or manner or under any other circumstances than is hereinbefore provided; and that if any such union shall be made in any other form or manner or under any other circumstances than as it is hereinbefore provided, the same shall be void to all intents and purposes whatsoever; any statute, law, canon, custom, or usage to the contrary notwithstanding.

No union except under this act.

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VICT. C. 106.

Provisions for
partly dis-
uniting united
benefices.

“XXI. And whereas from the increase of population, or from other circumstances, it may be expedient that two or more benefices which have been heretofore united or which may be hereafter united under the provisions of this act should be disunited; be it enacted, that when two or more benefices shall have been united or may be hereafter united into one benefice, and, with respect to his own diocese, it shall appear to the archbishop of the province, or the bishop of any diocese shall represent to the said archbishop of the province, that one or more of the benefices within his diocese of which such united benefice shall consist may be separated therefrom with advantage to the interests of religion, the said archbishop shall inquire into the circumstances of the case, and if on such inquiry it shall appear to him that such union may be usefully dissolved, so far as respects such benefice or benefices, he shall, six weeks at least before certifying such inquiry to her majesty, as hereinafter directed, cause with respect to his own diocese a statement in writing of the facts and in all other cases a copy in writing of the aforesaid representation to be affixed on or near the principal outer door of the church or in some public and conspicuous place in each of the benefices forming part of the united benefice, with notice to any person or persons interested that he, she, or they may within such six weeks show cause in writing under his, her, or their hands to the said archbishop against any such disunion; and if no sufficient cause be shown within such time the archbishop shall certify the inquiry and consent, when the patron's consent is necessary, to her majesty in council, and thereupon it shall be lawful for her majesty to issue an order for separating such last-mentioned benefice or benefices from such united benefice, and for declaring the rights of patronage of the several patrons if there be more than one patron, and such order shall be registered in the registry of the diocese to which such united benefice shall belong, which order the registrar of such diocese, immediately on the receipt thereof, is hereby required to register accordingly; and thereupon immediately, if such united benefice shall be then vacant, otherwise on the first avoidance thereof, such union shall be *ipso facto* dissolved so far only as regards such benefice or benefices so proposed to be separated from such united benefice, but in all other respects shall remain in full force and effect, and thenceforward such last-mentioned benefice or benefices shall be and be deemed and taken to be a separate and distinct benefice or benefices to all intents and purposes whatever as if no such union had taken place, and the patron or patron thereof shall and may according to the terms of such order present or nominate thereto respectively, and so from time to time upon each and every avoidance of the same; provided always, that no benefices which have been united for more than sixty years before the passing of this act shall be disunited without the consent in writing of the patron or patrons thereof.

Incumbent
may resign
one or more
of disunited
benefices, and
patron may
present.

“XXII. And be it enacted, that in any case in which her majesty in council shall have issued any such order as aforesaid for separating one or more benefices from such united benefice, it shall be lawful for the incumbent thereof, if such united benefice shall be full at the time of issuing such order, to resign the benefice or benefices so proposed to be separated as aforesaid from such united benefice; and thereupon it shall be lawful for the respective patron or patrons of such last-mentioned benefice or benefices to present or nominate thereto, in the same manner as if such united benefice had been vacant at the time of issuing such order.

Portion of
glebe, &c. may
be assigned to
each of the
disunited
benefices;

“XXIII. And be it enacted, that whenever two or more benefices which have at any time been united into one benefice shall be disunited and become separate benefices under the provisions of this act, whether the order for disunion shall extend to the whole number of benefices of which such united benefice consisted, or to one or more of such benefices only, it shall be lawful for her majesty in council, on the recommendation of the archbishop of the province, with the consent of the patron or patrons of such benefices respectively, (such consent to be signified in writing under the hands of such patron or patrons,) to assign and attach such portion of the glebe lands, tithes, moduses, rent-charges, or other endowments or emoluments belonging to or arising or accruing within the limits of such united benefice to each of such benefices respectively, as to her majesty in council shall seem fit, notwithstanding such proportion of glebe land, tithes, rent-charges,

estate in fee-simple or fee-tail of any tithes, or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the tithe commissioners for England and Wales should approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of the same, so that the same might be absolutely merged and extinguished in the freehold and inheritance of the lands on which the same should have been charged; and whereas it is expedient that the aforesaid provision should be extended in manner hereinafter mentioned: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall be lawful for any person or persons who shall, either alone or together, be seised of or have the power of acquiring or disposing of the fee-simple in possession of any tithes, or rent-charge in lieu of tithes, by any deed or declaration under his or their hand and seal or hands and seals, to be made in such form as the tithe commissioners for England and Wales shall approve, and to be confirmed under their seal, to convey, appoint, or otherwise dispose of the same, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands out of or on which the same shall have been issuing or charged; and every such deed or declaration as aforesaid shall be valid and effectual for the purpose aforesaid, although the same may not be executed or made in the manner or with the formalities or requisites which if this act had not been passed would have been essential to the validity of any instrument by which such person or persons could have acquired or disposed of the fee-simple in possession of such tithes, or rent-charge in lieu of tithes.

"II. And be it enacted, that no deed or declaration authorized by this act for the merging of tithes shall be chargeable with any stamp duty.

"III. And be it enacted, that in all cases where tithes, or rent-charge in lieu of tithes, and the lands out of which the same are payable, are both settled to the same uses, it shall be lawful for any person in possession of an estate for life in both such lands and tithes, or rent-charge in lieu of tithes, by any deed or declaration under his hand and seal, to be made in such form as the said commissioners shall approve, and to be confirmed under their seal, to release, assign, or otherwise dispose of such tithes or rent-charge, so that the same may be absolutely merged and extinguished in the freehold and inheritance of the lands out of which such tithes shall have been issuing or on which such rent-charge shall have been charged.

"IV. (1) And whereas doubts have been entertained whether, according to the true construction of the said act, any tithes, or rent-charge in lieu of tithe, can be merged in lands of copyhold tenure, and it is expedient that such doubts should be removed; be it therefore declared and enacted, that the provisions in the said act and this act contained as to the merger of any tithe, or rent-charge in lieu of tithe, shall be deemed and taken to extend to all lands, being copyhold of inheritance or copyhold for lives, or of any other tenure whatsoever.

"V. And be it enacted, that in the construction and for the purposes of this act the several words 'person,' 'lands,' and 'tithes,' shall respectively mean and include whomsoever and whatsoever the same words would have meant and included if the enactment hereinbefore made had been contained in the said recited act instead of this act.

"VI. And be it enacted, that this act shall extend only to England and Wales.

"VII. And be it further enacted, that this act may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament."

XX. STAT. 1 & 2 VICTORIÆ, CAP. LXXII. A.D. 1838.

"An Act to incorporate the Governors and Subscribers to Saint Luke's Hospital for Lunatics, and for better enabling them to carry on their Charitable Designs."

STAT. 1 & 2
VICT. c. 64.

Persons having
the power of
appointment
over tithes
may merge
them in the
land.

Deeds not
chargeable
with duty.

Where tithes
and the lands
charged there-
with are settled
to same uses,
the tenant for
life may cause
them to merge
in the land.

Tithes may be
merged in
copyhold lands.

Meaning of
words.

"Person."
"Lands."
"Tithes."

Limits of act.

Act may be
altered this
session.

STAT. 1 & 2
VICT. CAP.
LXXII.

STAT. 1 & 2
VICR. C. 106.

parish for ecclesiastical purposes; and the said archbishop or bishop shall draw up a scheme in writing, (the scheme of such bishop to be transmitted to the said archbishop for his consideration,) describing the mode in which it appears to him that the alteration may best be effected, and how the changes consequent on such alteration in respect to ecclesiastical jurisdiction, glebe lands, tithes, rent-charges, and other ecclesiastical dues, rates, and payments, and in respect to patronage and rights to pews, may be made with justice to all parties interested; and if the patron or patrons of the benefice or benefices to be affected by such alteration shall consent in writing under his or their hands to such scheme, or to such modification thereof as the said archbishop may approve, and the said archbishop shall, on full consideration and inquiry, be satisfied with any such scheme or modification thereof, and shall certify the same and such consent as aforesaid, by his report to her majesty in council, it shall be lawful for her majesty in council to make an order for carrying such scheme, or modification thereof, as the case may be, into effect; and such order, being registered in the registry of the diocese, which the registrar is hereby required to do, shall be forthwith binding on all persons whatsoever, including the incumbent or incumbents of the benefice or benefices to be affected thereby, if he or they shall have consented thereto in writing under his or their hands; but if such incumbent or incumbents shall not have so consented thereto the order shall not come into operation until the next avoidance of the benefice by the incumbent objecting to the alteration, or by the surviving incumbent objecting, if more than one shall object thereto; and in such case the order shall forthwith, after such avoidance, become binding on all persons whatsoever.

Power of adjusting disputes arising out of the foregoing alterations.

"XXVII. And whereas the changes effected by virtue of the provisions aforesaid for uniting or disuniting benefices, and for altering the contents of parishes, may, when the orders for those purposes respectively come into operation, raise doubts and create disputes not foreseen at the time when such orders may have been made respecting ecclesiastical jurisdiction, glebe lands, tithes, rent-charges, and other ecclesiastical dues, rates, and payments, patronage, right to pews, and the definition of local boundaries; be it enacted, that it shall be lawful for her majesty in council, at any time within five years after such orders respectively shall come into full operation, if occasion shall arise, to make a supplemental order for removing such doubts and settling such disputes; and every such supplemental order shall have the same force and effect as if it had formed part of the original order made under the provisions of this act: provided always, that in every case in which the contents of parishes shall be so altered, such alteration shall not in any way affect the secular rates, taxes, charges, duties, or privileges, of such parishes, or of any part of them.

Spiritual persons not to take to farm for occupation above eighty acres, without consent of the bishop, and then not beyond seven years, under penalty of 40s. per acre.

"XXVIII. And be it enacted, that it shall not be lawful for any spiritual person holding any cathedral preferment or benefice, or any curacy or lectureship, or who shall be licensed or otherwise allowed to perform the duties of any ecclesiastical office whatever, to take to farm for occupation by himself, by lease, grant, words, or otherwise, for term of life or of years, or at will, any lands exceeding eighty acres in the whole, for the purpose of occupying or using or cultivating the same, without the permission in writing of the bishop of the diocese specially given for that purpose under his hand; and every such permission to any spiritual person to take to farm for the purpose aforesaid any greater quantity of land than eighty acres, shall specify the number of years, not exceeding seven, for which such permission is given; and every such spiritual person who shall without such permission so take to farm any greater quantity of land than eighty acres, shall forfeit for every acre of land above eighty acres so taken to farm the sum of forty shillings for each year during or in which he shall so occupy, use, or cultivate such land contrary to the provision aforesaid.

No spiritual person, beneficed or performing eccle-

"XXIX. And be it enacted, that it shall not be lawful for any spiritual person holding any such cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform such duties as aforesaid, by himself or by any other for him or to his use, to engage in or carry on *any trade or dealing for*

gain or profit (1), or to deal in any goods, wares, or merchandize, unless in any case in which such trading or dealing shall have been or shall be carried on by or on behalf of any number of partners exceeding the number of six, or in any case in which any trade or dealing, or any share in any trade or dealing, shall have devolved or shall devolve upon any spiritual person, or upon any other person for him or to his use, under or by virtue of any devise, bequest, inheritance, intestacy, settlement, marriage, bankruptcy, or insolvency; but in none of the foregoing excepted cases shall it be lawful for such spiritual person to act as a director or managing partner, or to carry on such trade or dealing as aforesaid, in person.

“XXX. Provided always, and be it enacted, that nothing hereinbefore contained shall subject to any penalty or forfeiture any spiritual person for keeping a school or seminary, or acting as a schoolmaster or tutor or instructor, or being in any manner concerned or engaged in giving instruction or education for profit or reward, or for buying or selling or doing any other thing in relation to the management of any such school, seminary, or employment, or to any spiritual person whatever for the buying of any goods, wares, or merchandizes, or articles of any description, which shall without fraud be bought with intent at the buying thereof to be used by the spiritual person buying the same for his family or in his household, and after the buying of any such goods, wares, or merchandizes, or articles, selling the same again or any parts thereof which such person may not want or choose to keep, although the same shall be sold at an advanced price beyond that which may have been given for the same; or for disposing of any books or other works to or by means of any bookseller or publisher; or for being a manager, director, partner, or shareholder, in any benefit society, or fire or life assurance society, by whatever name or designation such society may have been constituted; or for any buying, or selling again for gain or profit, of any cattle or corn or other articles necessary or convenient to be bought, sold, kept, or maintained by any spiritual person, or any other person for him or to his use, for the occupation, manuring, improving, pasturage, or profit of any glebe, demesne lands, or other lands or hereditaments which may be lawfully held and occupied, possessed, or enjoyed, by such spiritual person, or any other for him or to his use; or for selling any minerals the produce of mines situated on his own lands; so nevertheless that no such spiritual person shall buy or sell any cattle or corn or other articles as aforesaid in person in any market, fair, or place of public sale.

“XXXI. And be it enacted, that if any spiritual person shall trade or deal in any manner contrary to the provisions of this act, it shall be lawful for the bishop of the diocese where such person shall hold any cathedral preferment, benefice, curacy, or lectureship, or shall be licensed or otherwise allowed to perform the duties of any ecclesiastical office whatever, to cause such person to be cited before his chancellor or other competent judge, and it shall be lawful for such chancellor or other judge, on proof in due course of law of such trading, to suspend such spiritual person for his first offence for such time not exceeding one year as to such judge shall seem fit; and on proof in like manner before such or any other competent ecclesiastical judge of a second offence committed by such spiritual person

STAT. 1 & 2
VICT. c. 106.
statistical duty,
shall engage in
trade or buy
to sell again
for profit or
gain.

Not to extend
to spiritual
persons en-
gaged in keep-
ing schools, or
as tutors, &c.
in respect of
anything done,
or any buying
or selling in
such employ-
ment; or to
selling any-
thing *bond*
fide bought for
the use of the
family, or to
being a
manager, &c.
in any benefit
or life or fire
assurance so-
ciety; or buy-
ing and selling
cattle, &c. for
the use of his
own lands, &c

Spiritual per-
sons illegally
trading may
be suspended,
and for the
third offence
deprived.

(1) *Any trade or dealing for gain or profit*.—To an action of *assumpsit* by the indorsees against the indorser of a bill of exchange, the defendant pleaded that the bill was made and indorsed after the passing of Stat. 57 Geo. 3, c. 99, which restrained spiritual persons from being occupied in any trade or dealing; that the plaintiffs were a banking company, of which certain spiritual persons holding benefices, were partners and members; that the trade or business of a banker was carried on by the said copartnership for gains and profits, as well of such spiritual persons as others, contrary to the form of the statute, whereby the indorsement and the promise in the declaration men-

tioned, were void in law: it was held on demurrer, that the plea was good, and that the trade of a banker was within the meaning of the statute. *Hall v. Franklin*, 3 M. & W. 259. *Vide* Stephens on Nisi Prius, tit. PARTNERS, 2378.

It may be here observed, that the decision in this case occasioned the enactment of Stat. 1 & 2 Vict. c. 10.

Where a clergyman has been a sleeping partner in a concern left to him in common with others by his father's will, he has, notwithstanding these provisions, a right of calling for an account of the partnership concerns. *Hale v. Hale*, Rolls, 21 July, 1841.

STAT. 1 & 2
VICT. c. 106.

subsequent to such sentence or suspension, such spiritual person shall for such second offence be suspended for such time as to the judge shall seem fit; and for his third offence be deprived *ab officio et beneficio*, and thereupon it shall be lawful for the patron or patrons of any such cathedral preferment, benefice, lectureship, or office, to make donation or to present or nominate to the same as if the person so deprived were actually dead; and in all such cases of suspension the bishop during such suspension shall sequester the profits of any cathedral preferment, benefice, lectureship, or office of which such spiritual person may be in possession, and by an order under his hand direct the application of the profits of the same respectively, after deducting the necessary expenses of providing for the due performance of the duties of the same respectively, towards the same purposes and in the same order, as near as the difference of circumstances will admit, as are hereinafter directed with respect to the profits of a benefice sequestered in case of non-compliance after monition with an order requiring a spiritual person to proceed and reside on his benefice, save that no part of such profits shall be paid to the spiritual person so suspended, nor applied in satisfaction of a sequestration at the suit of a creditor; and in case of deprivation the bishop shall forthwith give notice thereof in writing under his hand to the patron or patrons of any cathedral preferment, benefice, lectureship, or office, which the said spiritual person may have held in the manner hereinafter required with respect to notice to the patron of a benefice continuing under sequestration for one whole year, and thereby becoming void, and any such cathedral preferment or benefice shall lapse at such period after the said notice as any such last-mentioned benefice would under the provisions of this act lapse: provided always, that no contract shall be deemed to be void by reason only of the same having been entered into by a spiritual person trading or dealing, either solely or jointly with any other person or persons, contrary to the provisions of this act, but every such contract may be enforced by or against such spiritual person, either solely or jointly with any other person or persons, as the case may be, in the same way as if no spiritual person had been party to such contract.

Penalties for non-residence, on incumbent not having a licence or exemption, unless he be resident on another benefice.

"XXXII. And be it enacted, that every spiritual person holding any benefice shall keep residence on his benefice, and in the house of residence (if any) belonging thereto; and if any such person shall, without any such licence or exemption, as is in this act allowed for that purpose, or unless he shall be resident at some other benefice of which he may be possessed, absent himself from such benefice, or from such house of residence, if any, for any period exceeding the space of three months together, or to be accounted at several times in any one year, he shall, when such absence shall exceed three months and not exceed six months, forfeit one-third part of the annual value of the benefice from which he shall so absent himself; and when such absence shall exceed six months and not exceed eight months, one half part of such annual value; and when such absence shall exceed eight months, two third parts of such annual value; and when such absence shall have been for the whole of the year, three fourth parts of such annual value.

Licence to reside out of the usual house, if unfit.

"XXXIII. And be it enacted, that it shall be lawful for any bishop, upon application in writing by any spiritual person holding any benefice within his diocese whereon there shall be no house or no fit house of residence, by licence under his hand and seal, to be registered in the registry of the diocese, which the registrar is hereby required to do, to permit such person to reside in some fit and convenient house, although not belonging to such benefice, such house to be particularly described and specified in such licence, and for a certain time to be therein also specified, not exceeding the period by this act limited, and from time to time as such bishop may think fit, to renew such licence; and every such house shall be a legal house of residence for such specified time to all intents and purposes: provided always, that no such licence shall be granted to such spiritual person to reside in any house unless it be within three miles of the church or chapel of such benefice, nor in case such church or chapel be in any city, or market or borough town, unless such house be within two miles of such church or chapel.

"XXXIV. And whereas the governors of the bounty of Queen Anne have purchased, built, or procured, and may hereafter purchase, build, or procure, by way of benefaction or donation to poor benefices, houses not situate within the parishes or places wherein such benefices lie, but so near thereto as to be sufficiently convenient and suitable for the residence of the officiating ministers thereof; be it therefore enacted, that such houses, having been previously approved by the bishop of the diocese, by writing under his hand and seal duly registered in the registry of the diocese, shall be deemed the houses of residence belonging to such benefices to all intents and purposes whatsoever.

"XXXV. And be it enacted, that in all cases of rectories having vicarages endowed or perpetual curacies, the residence of the vicar or perpetual curate in the rectory house of such benefice shall be deemed a legal residence to all intents and purposes whatever; provided that the house belonging to the vicarage or perpetual curacy be kept in proper repair to the satisfaction of the bishop of the diocese.

"XXXVI. And be it enacted, that from and after the decease of any spiritual person holding any benefice to which a house of residence is annexed, and in which he shall have been residing at the time of his decease, it shall be lawful for the widow of such spiritual person to occupy such house for any period not exceeding two calendar months after the decease of such spiritual person, holding and enjoying therewith the curtilage and garden belonging to such house.

"XXXVII. And be it enacted, that no spiritual person, being head ruler of any college or hall within either of the universities of Oxford or Cambridge, or being warden of the university of Durham, or being head master of Eton, Winchester, or Westminster School, or principal or any professor of the East India College, having been appointed such principal or professor before the time of the passing of this act, and not having respectively more than one benefice with cure of souls, shall be liable to any of the penalties or forfeitures in this act contained for or on account of non-residence on any benefice.

"XXXVIII. And be it enacted, that no spiritual person being dean of any cathedral or collegiate church, during such time as he shall reside upon his deanery, and no spiritual person having or holding any professorship or any public readership in either of the said universities, while actually resident within the precincts of the university, and reading lectures therein, (provided always, that a certificate under the hand of the vice-chancellor or warden of the university, stating the fact of such residence, and of the due performance of such duties, shall in every such case be transmitted to the bishop of the diocese wherein the benefice held by such spiritual person is situate within six weeks after the thirty-first day of December in each year;) and no spiritual person serving as chaplain of the queen's or king's most excellent majesty, or of the queen dowager, or of any of the queen's or king's children, brethren, or sisters, during so long as he shall actually attend in the discharge of his duty as such chaplain in the household to which he shall belong: and no chaplain of any archbishop or bishop, whilst actually attending in the discharge of his duty as such chaplain; and no spiritual person actually serving as chaplain of the house of commons, or as clerk of the queen's or king's closet, or as a deputy clerk thereof, while any such person shall be actually attending and performing the functions of his office; and no spiritual person serving as chancellor or vicar general or commissary of any diocese, whilst exercising the duties of his office; or as archdeacon, while upon his visitation, or otherwise engaged in the exercise of his archidiaconal functions; or as dean or subdean, or priest or reader, in any of the queen's or king's royal chapels at Saint James's or Whitehall, or as reader in the queen's or king's private chapels at Windsor or elsewhere, or as preacher in any of the inns of court, or at the Rolls, whilst actually performing the duty of any such office respectively; and no spiritual person, being provost of Eton College, or warden of Winchester College, or master of the Charter House, or principal of Saint David's College, or principal of King's College, London, during the time for which he may be required to reside and shall actually reside therein respectively, shall be liable to any of the penalties or forfeitures in this act contained for or on account of non-residence on

STAT. 1 & 2
VICT. c. 106.

Houses purchased by governors of Queen Anne's bounty to be deemed residences.

Vicar or perpetual curate may reside in rectory house.

Widow of any spiritual person may continue in the house of residence for two months after his decease.

Certain persons exempt from penalties for non-residence.

Privileges for temporary non-residence.

STAT. 1 & 2
VICT. c. 106.

Performance
of cathedral
duties, &c.
may be ac-
counted as re-
sidence under
certain restric-
tions.

Existing rights
as to exemp-
tions and li-
cences pre-
served.

If house of
residence not
kept in repair,
the incumbent
to be liable to
the penalties
for non-resi-
dence.

Every petition
for licence for

any benefice for the time in any year during which he shall be so as aforesaid resident, engaged, or performing duties, as the case may be, but every such spiritual person shall, with respect to residence on a benefice under this act, be entitled to account the time in any year during which he shall be so as aforesaid resident, engaged, or performing duties, as the case may be, as if he had legally resided during the same time on some other benefice; anything in this act contained to the contrary notwithstanding.

“XXXIX. And be it enacted, that it shall be lawful for any spiritual person being prebendary, canon, priest, vicar, vicar choral, or minor canon in any cathedral or collegiate church, or being a fellow of one of the said colleges of Eton or Winchester, who shall reside and perform the duties of such office during the period for which he shall be required to reside and perform such duties by the charter or statutes of such cathedral or collegiate church or college, as the case may be, to account such residence as if he had resided on some benefice; provided always, that nothing herein contained shall be construed to permit or allow any such prebendary, canon, priest, vicar, vicar choral, minor canon, or fellow, to be absent from any benefice on account of such residence and performance of duty for more than five months altogether in any one year, including the time of such residence on his prebend, canonry, vicarage, or fellowship; provided also, that it shall be lawful for any spiritual person having or holding any such office in any cathedral or collegiate church or college in which the year for the purposes of residence is accounted to commence at any other period than the first of January, and who may keep the periods of residence required for two successive years at such cathedral or collegiate church or college, in whole or in part, between the first of January and the thirty-first of December in any one year, to account such residence, although exceeding five months in the year, as reckoned from the first of January to the thirty-first of December, as if he had resided on some benefice, anything in this act contained to the contrary notwithstanding.

“XL. Provided always, that every spiritual person being in possession of any benefice at the time of the passing of this act, and entitled by the law previously in force to exemption from residence, or to apply for a licence for non-residence, shall, as to every such benefice, but not as to any after-taken benefice, be entitled to the same exemption from residence, and to the same capacity of applying for and obtaining a licence for non-residence, and to the same right of appeal, in case of refusal or revocation of a licence, to which he was entitled before the time of the passing of this act; and every bishop and other person empowered before the passing of this act to grant such licence to such spiritual person shall have the like power after the passing thereof, anything hereinbefore contained to the contrary notwithstanding.

“XLI. Provided also, and be it enacted, that every spiritual person having any house of residence upon his benefice, who shall not reside therein, shall, during such period or periods of non-residence, whether the same shall be for the whole or part of any year, keep such house of residence in good and sufficient repair; and in every such case it shall be lawful for the bishop to cause a survey of such house of residence to be made by some competent person, the costs of which, in case the house shall be found to be out of repair, shall be borne by such spiritual person; and if the surveyor shall report that such house of residence is out of repair, it shall be lawful for the bishop to issue his monition to the incumbent to put the same in repair, according to such survey and report, a copy of which shall be annexed to the monition; and every such non-resident spiritual person who shall not keep such house of residence in repair, and who shall not, upon such monition, and within one month after service of such monition, show cause to the contrary to the satisfaction of the bishop, or put such house in repair within the space of ten months, to the satisfaction of such bishop, shall be liable to all the penalties for non-residence imposed by this act during the period of such house of residence remaining out of repair, and until the same shall have been put in repair.

“XLII. And be it enacted, that every spiritual person applying for a licence for non-residence shall present to the bishop a petition signed by himself or by some

person approved by the bishop in that behalf, and shall state therein whether such spiritual person intends to perform the duty of his benefice in person, and in that case where and at what distance from the church or chapel of such benefice he intends to reside; and if he intends to employ a curate such petition shall state what salary he proposes to give to such curate, and whether the curate proposes to reside or not to reside in the parish in which such benefice is situate; and if the curate intends to reside therein, then whether in the house of residence belonging to such benefice, or in some and what other house, and if he does not intend to reside in the parish, then such petition shall state at what distance therefrom, and at what place, such curate intends to reside, and whether such curate serves any other and what parish as incumbent or curate, or has any and what cathedral preferment, and any and what benefice, or officiates in any other and what church or chapel; and such petition shall also state the annual value and the population of the benefice in respect of which any licence for non-residence shall be applied for, and the number of churches or chapels, if more than one, upon such benefice, and the date of the admission of such spiritual person to the said benefice; and it shall not be lawful for the bishop to grant any such licence unless such petition shall contain a statement of the several particulars aforesaid; and every such petition shall be filed in the registry of the diocese by the registrar thereof, and shall be open to inspection, and copies thereof made, with the leave in writing of the bishop.

"XLIII. And be it enacted, that it shall be lawful for the bishop, upon such petition being presented to him, and upon such proofs being adduced as to any facts stated in any such petition as he may think necessary and shall require, to grant, in such cases as are hereinafter enumerated, in which he shall think fit to grant the same, a licence in writing under his hand for such spiritual person to reside out of the proper house of residence of his benefice, or out of the limits of his benefice, or out of the limits prescribed by this act, for the purpose of exempting such person from any pecuniary penalty in respect of any non-residence thereon; which licence shall express the cause of granting the same licence; (that is to say,) to any spiritual person who shall be prevented from residing in the proper house of residence or within the limits of such benefice, or within the limits prescribed by this act, by any incapacity of mind or body; and also for a period not exceeding six months to any spiritual person on account of the dangerous illness of his wife or child making part of his family, and residing with him as such; but that no such licence on account of the illness of a wife or child shall be renewed save with the allowance of the archbishop of the province previously signified under his hand in pursuance of a recommendation in writing from the bishop, setting forth the circumstances, proofs, and reasons which induce him to make such recommendation; and also to any spiritual person having or *holding any benefice wherein there shall be no house of residence* (1), or where the house of residence shall be unfit for the

STAT. 1 & 2
VICT. c. 106.

non-residence to be in writing, and to state certain particulars.

Bishop may grant licences for non-residence in certain enumerated cases.

(1) *Holding any benefice wherein there shall be no house of residence*:—The following case of the Rev. James Hartley Dunsford, decided under the repealed Stat. 57 Geo. 3, c. 99, will illustrate the authority which the episcopal bench possess to enforce the erection of glebe houses, under Stat. 1 & 2 Vict. c. 106.

"To the Most Reverend Father in God, William, by Divine Permission Lord Archbishop of Canterbury, Primate of all England, &c. &c. &c.

"The humble Petition and Appeal of the Rev. James Hartley Dunsford, M.A., sheweth,
"That your appellant is stipendiary curate of the parish of Slimbridge, in the county and diocese of Gloucester, on which curacy he has resided for twenty years last past.

"That he is also vicar of Frampton upon

Severn, and rector of Fretherne, in the same county and diocese; to the first of which benefices he was inducted in the year 1813, to the last in the year 1824.

"That on neither of the said benefices is there a house of residence for the incumbent; and

"That there is no house in either of the said parishes at all suitable to the circumstances of his family, which he could rent or purchase.

"Your appellant further states, as follows:

"On the 6th of February last he petitioned the Bishop of Gloucester for licences of non-residence, inclosing his petitions in a letter, of which the following is a copy.

"*'Slimbridge Rectory, near Dursley, February 6th, 1833.*

"My Lord,—Inclosed are two petitions for non-residence on my two benefices of

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residence of such spiritual person, such unfitness not being occasioned by any negligence, default, or other misconduct of such spiritual person, and such spiritual

Fretherne and Frampton upon Severn. The ground of each petition is the same, viz., the want of a glebe house; but I am anxious also to inform your lordship that there is no house in either of the parishes, to be rented or purchased, which would be a suitable residence for my family. I therefore respectfully solicit from your lordship a renewal of my licences, both of which expired on the 31st of December last.

"I am, my lord,

"Your lordship's very obedient servant,

"J. H. DUNSFORD.

"To the Lord Bishop of Gloucester."

"On the 22nd of February your appellant received from the Bishop of Gloucester a letter, of which the following is a copy.

"Palace, Gloucester, Feb. 20th, 1833.

"Reverend Sir,—In reply to your application for fresh licences of non-residence on your two livings of Frampton and Fretherne, I beg you to understand that I do not consider it as compatible with the proper discharge of my duty to permit both these parishes to continue longer without a residence for their incumbent; and that the ground upon which you rest your application, the want of a glebe-house in either, must be removed without any further delay by your building one.

"As I explained to you last year, in the course of a long conversation, the reasons which made me judge it indispensably requisite that this step should be taken, there is no occasion now to repeat them. At that time you urged circumstances of private convenience, which made you desire the postponement; and from my anxious wish to consult the interests of my clergy, I then consented to give you licences of non-residence for one year, in order to enable you to make arrangements for the purpose of building. This term having now elapsed, I do not feel justified in acquiescing in further delay. Since our last conversation on the subject of your residence, I have understood more fully the circumstances of the exchange of property which took place at Fretherne four or five years ago. You were then suffered to alienate the glebe-house from the benefice; but it was with the understanding that you were about to build another upon the land which the living received in exchange.

"As I should be very sorry that you should incur any unnecessary inconvenience, I think it right to let you know that my mind is entirely made up to enforce your residence, should any attempt be made, which I trust will not be the case, to resist this injunction.

"When you have commenced the building a house, I will give you licences of non-residence for the time which is required for its completion.

"I have the honour to be, reverend sir, your very faithful and humble servant,

"J. H. GLOUCESTER.

"Rev. J. H. Dunsford."

[The appellant then proceeds to detail his case at great length, but it has not been deemed expedient to print it, because all the facts have been commented upon in the reply of the Bishop of Gloucester.]

"My lord archbishop, your appellant is most anxious to bring this appeal to an end. He laments that he has been in a manner compelled to make this long reply to the Bishop of Gloucester's letter. His case is itself sufficiently simple: he petitions for licences of non-residence on his benefice, because his residence on either of them is impossible. Residence has always been impossible to appellant; residence is still impossible; residence would be impossible, even if appellant were to build under the powers of the Gilbert Act. Neither is this impossibility of residence occasioned by my negligence, default, or misconduct of appellant. He therefore humbly, yet confidently, solicits from your grace those licences of non-residence which the Bishop of Gloucester, not exercising a sound discretion, refuses to grant.

"And your petitioner will ever pray, &c. &c."

"To the Most Reverend William, by Divine Providence, Lord Archbishop of Canterbury, &c. &c."

"My Lord,—I have the honour of addressing you, in reply to an appeal which has been presented to your grace, by the Reverend James Hartley Dunsford, in consequence of my refusal to grant him fresh licences of non-residence on his two livings of Frampton, and Fretherne, in my diocese.

"My feelings upon this occasion are certainly painful; not on account of the subject of the appeal, which I am sincerely happy has been brought before your grace; not on account of the part which I have taken in the matter, since I wish it to be fully understood, and understood, being confident that my motives will, in spite of all misrepresentation, be properly appreciated; but because the complaint is couched in language and in a spirit inconsistent with the clerical character, and tending to bring scandal upon our church.

"The appeal of Mr. Dunsford consists almost entirely of a personal attack upon his diocesan; whom he is not satisfied with accusing of conduct that is illegal and irregular, (although that is all which his case could require,) but he attributes that conduct to 'hostility' against himself, and reiterates the charges of 'abusing his power,' of 'perverting the laws,' of 'episcopal tyranny,' and 'oppression;' as if he thought the perpetual repetition of such intemperate expressions, likely to give them greater weight with your grace; and, in order to make the violation of decency more flagrant, he mixes his reproachful charges with assertions and insults; forgetting that the individual on whom he throws all this contumely, is an

person keeping such house of residence, if any, and the buildings belonging thereto, in good and sufficient repair and condition to the satisfaction of the bishop, and a

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whose station gives him a peculiar claim upon his respect: and that the personage to whom he addresses his jeers and banter, is no other than the spiritual head of our church establishment. I certainly never before heard or read of such an open contempt for the rules of decency and propriety, as the adoption of language of this description in a solemn document, addressed by a clergyman to the primate. What may have been the motives of the appellant, in filling his case with all these personalities, I am at a loss to conjecture. Undoubtedly, they do not tend to strengthen or recommend his own positions; and he could hardly expect that they would prejudice your grace in favour of his manners or principles.

"As far as I am myself concerned, the violence with which I am assailed, will prove perfectly harmless. My character is sufficient to shield me against the invectives of Mr. Dunsford: and his charges of unfair and hostile intentions, while they prove the spirit in which the appeal is made, are refuted by the facts of the case, even as they may be elicited from the statement of my accuser.

"The complaint against me must resolve itself into this:—I have refused to exert in the case of the incumbent of Frampton and Fretherne, the power entrusted to me by the act of parliament, 57 Geo. 3, c. 99, s. 15, to exempt him from the penalties imposed by the law, for absence from both those livings. The power there given to the bishop is permissive; and is to be exercised or not, as he may judge, in his discretion, to be most conducive to the interests of the church, of which he is the guardian. If, therefore, I have done wrong in my refusal, I presume that my error is only an error in judgment; and it is one from which no injury can result to the complainant, since the merits of the case are now subjected to the revision of your grace. From my confidence in your experience and judgment, I am convinced, that if I have either taken a wrong view of the powers entrusted to me, or have made a wrong application of them in this instance, your grace will give him immediate relief, by granting the licences for which he prays.

"The case itself lies in a very small compass. I will, as briefly as I can, explain the reasons which induced me, after full and mature consideration of the subject, in all its bearings, to determine upon the course which I have adopted. Frampton is a benefice of 300*l.* a year, and contains a population of above one thousand inhabitants: it is, therefore, entitled to a house of residence for its minister; and a small annual reserve from the proceeds during the twenty years that Mr. Dunsford has received the emoluments of this living, would have enabled him to build or to purchase a competent one. At Fretherne there was, until lately, a parsonage house, which would, at all events, have been an adequate residence for a curate:

that house Mr. Dunsford has himself alienated from the living. Under these circumstances, I am of opinion that, in strictness and propriety, a house for the minister ought to be built or procured in each pariah, at the expense of the person who has derived the profits, without performing the duties of the benefices. And when I consider the circumstances attending Mr. Dunsford's incumbency, they seem rather to strengthen and add to the reasons which should induce him to perform what is so plainly required by the parishes. The salary of the curate of Frampton would, according to the Curate's Act, be 150*l.* a year; but Mr. Dunsford, having been instituted in 1813, a few months before that act was passed, is exempt from its operations; and he has, accordingly, got the curacy served for little more than a third of that sum. The consideration which sometimes deters clergymen from expending money out of their private resources upon glebe-houses, cannot have any weight in his case; since he himself possesses the advowsons of both benefices; [This appears to be a misapprehension. Mr. Dunsford possessed the advowson only of one of the livings, Fretherne, to which he was instituted on his own petition. He was presented to the other, Frampton upon Severn, by his father, James Dunsford: to that circumstance must the mistake be attributed.] consequently, whatever sum the building might cost him, would be expended, not upon a life estate of precarious tenure, but in improving his own family property.

"Your grace will have observed that the appellant seems to consider that there are but two parties concerned in this question—the bishop and himself: and as the former is exerting his power to compel him to do that which 'he does not think fit to do,' he declares that he 'resists him upon principle.' He argues, throughout his appeal, as if he were not sensible that there is a third party whose interests are involved—I mean the parishioners—the persons whose souls have been solemnly entrusted to his care, and to whose spiritual welfare he is bound by the most sacred obligations to attend. It is for the benefit of the flock, and not of the incumbent, that his churches were endowed; and upon no other principle does he enjoy the fruits of the benefices. It is for the sake of the people, and of them only, that I felt it to be my duty to interfere, and endeavour to procure them a resident minister, who might be enabled to pay them the attention to which they are entitled. But for this consideration, Mr. Dunsford would never have had to complain of my urging him to steps which 'he does not think fit to take of himself.' In this point of view, the question now before your grace is of much importance. I have complaints brought to me from both the appellant's parishes, of the manner in which the services of the churches are performed. At Fretherne, which is deprived of all residence for a minister, it is

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certificate under the hand of two neighbouring incumbents, countersigned by the rural dean, if any, that no house convenient for the residence of such spiritual

stated that for several weeks together, the single service of the church has been performed at half-past one o'clock on Sunday afternoon, an hour so obviously inconvenient to the parishioners, that no result can be looked for, except that they will be alienated altogether from their parish church. Having judged it my duty to call upon Mr. Dunsford to build at least one residence house on his preferment, I considered that a person who refused compliance with a reasonable and moderate requisition, could not expect from the bishop the favour of a continued exemption from the operation of the law, as it affects non-resident incumbents.

"The appellant urges two topics of a totally distinct nature: first, that it rests with the bishop, and not with himself, to build parsonage houses upon those livings, under the provisions of the Gilbert Act: secondly, that the magnitude of his family precludes his residence upon either living. The reply to both these positions is very short and simple.

"The first topic is that on which Mr. Dunsford dwells at great length, and with extraordinary vehemence of language. But I submit to your grace that it is not possible for him to have been serious in bringing this matter before you, as a charge against his diocesan. The power given to the bishops, of raising the money and directing the building, in case of the incumbent's refusal or neglect, can only be put in execution *'with the consent of the patron'*: such are the provisions of the act, as quoted by the complainant. And who is the patron in this instance? Why, Mr. Dunsford himself: and it was hardly to be expected that, after refusing to build himself, he would consent to the same thing being done by another, at the charge of his preferment, in a manner far less favourable to his property. But even supposing there were no such obstacle, that there were other and consenting patrons, yet the power possessed by the diocesan under sect. 8, of this act, is, like the power of granting licences of non-residence, not imperative, but permissive; to be exercised or not at his discretion: and from the circumstances of those two livings, as stated by the appellant himself, the exercise of such a power would plainly have been inexpedient; since in that mode of proceeding, the sum expended in each place could not have exceeded 600*l.*; an amount not sufficient to erect a house suitable to the living. But I shall detain your grace no longer in discussing a point, which never could have been seriously contemplated.

"The appellant lays great stress upon the extent of his family, as preventing his residence in any house which could be built or procured in either of his parishes. Upon this I have to remark, that if a clergyman, from any unavoidable cause, is precluded from paying that full and personal attention to his parish which the ministerial duty prescribes, it is peculiarly obligatory on him to

effect all that does lie in his power for the benefit of that parish, in order that it may suffer as little as possible by his default. Thus, in the present instance, if he is prevented from residing himself, it is morally incumbent on him to take care that his curate has a house which may enable him to live among the parishioners. The appellant frequently recurs to this topic; and in more than one place, says, that 'the Bishop of Gloucester is fully aware of the impossibility of his residence on either of his livings:' and that 'the position of his affairs is well known to him.' I beg leave to assure your grace, that I have no knowledge whatever about Mr. Dunsford's family or his affairs, except what I obtain from his own account of them, which he has given in minute detail in the appeal before you. But I am by no means convinced of 'the impossibility of his residence;' I admit that it may be attended with inconvenience, and occasion some change in the habits of life to which he alludes. But I know of no situation in any profession, where a person has not inconveniences, more or less important, to which he must submit. In our profession it very seldom happens that any individual, be his situation what it may can choose his place of residence. Mr. Dunsford is quite mistaken in thinking, that 'the final cost of building a house is seldom less than double the first calculation:' such a result may happen from negligence or ignorance; but that it is neither necessary nor frequent, I know from my own experience, as well as from my observation among the incumbents of my diocese. I cannot admit that some of the apartments mentioned by the appellant, for instance, two school-rooms, a justice-room, and spare bed-rooms for visitors, however convenient they may be, are required in the residence of a parochial clergyman. And where there is a large family of children it is rarely found that they are all at home at the same time. A clergyman may have to make some sacrifices, in order to discharge his duty by living among his flock: but they are such as he ought not to regard for a moment, in competition with the higher questions which are involved.

"In relation to this subject, it is necessary to notice a misapprehension on the part of Mr. Dunsford, as to what passed in conversation between us early in the year 1837; he says, *'His lordship at that time acknowledged the impracticability of appellant's residence, and was graciously pleased to promise him that he should not be called to reside, if he would consent to build. In fact, that he might purchase continued licences of non-residence, during his own incumbency, at the price of building for the curate or future incumbents.'* I can assure your grace, that I never promised this, or any thing to this effect: nor did I make any promise at all, except to grant licences for the time of building. I never acknowledged the impracticability of Mr. Dunsford's residence; (that being a matter which would

person can be obtained within the parish, or within the limits prescribed by this Stat. 1 & 2 act, being first produced to the bishop; and also to grant to any spiritual person Vict. c. 106.

depend upon the capacity of the house, in reference to the amount of his family;) but I was desirous in this, as well as in every other case, of doing the utmost that was consistent with a proper discharge of my duty, to prevent a clergyman being subjected to distress or inconvenience: and I probably intimidated, (what I certainly designed,) that in case of his doing that which I thought was incumbent upon him to execute, without delay, I should be disposed to extend the licences, while the circumstances of his family continued to require such an indulgence.

"The appellant has not thought it irreverent or unbecoming to furnish your grace with a burlesque account, in the shape of a pretended dialogue, of what passed at this interview. Upon this conduct of his I shall offer no comment. As it regards myself, I am well satisfied that neither your grace, nor any person who knows me, will believe that I used the expressions put into my mouth in that fictitious colloquy, or any expressions which in language or meaning were equivalent to them. The arguments which I did urge, were addressed to the sense that I presumed a clergyman to entertain of the solemn responsibility which he had voluntarily incurred when he undertook the care of parishes, and of the duty which he owed to his parishioners and to the church. I was sorry to observe at the time that they made no impression, and he appears now to have forgotten them; or perhaps the mention of such topics only gave him that contemptible opinion which he tells your grace that 'he formed of his diocesan's reasoning powers and talents for business.' The interview was as unsatisfactory to me as it could possibly be to the appellant.

"Mr. Dunsford chooses to dispute the ground upon which at that time I granted him licences for one year: but of the views which guided my own conduct he must surely allow me to be the best judge. I gave the licences upon his representation that the delay of a year might, from private circumstances, (into the nature of which I forebore to inquire,) enable him to build a house without any inconvenience. That act was intended by me as an accommodation and kindness to him, and as nothing else. He says, 'In fact, the transaction was in the nature of a truce for a year.' This term is totally inapplicable, and is not very decorous, as implying the existence of a state of warfare. I felt no hostility to him, and I was not aware that he entertained any towards myself. Had it been intimated that my right to withhold licences in this case was likely to be disputed, it is not conceivable that I should have chosen to interpose the delay of a year, or even of a day, before such a question was brought to an issue.

"The appellant, however, sought another interview on the 23rd of last February, and informs your grace, that '*this interview his lordship, with singular discourtesy, refused to grant.*' When he made this accusation,

he must have forgotten that he had himself, in the preceding page of his appeal, supplied its refutation, by copying for your grace's perusal the very letter which I wrote in reply to his request. In this you will see that I did not refuse the interview, but only suggested my opinion of its inutility, and intimated my preference of a written communication upon any new topics which he might wish to bring before me. Had I, indeed, believed him capable of inventing speeches and quotations to be put into the mouth of his diocesan, I should have declined any conversation with him, except in the presence of witnesses, who might take minutes of what passed. As it was, I designed only to save him the needless trouble of a journey to Gloucester, and to obtain that mode of communication which would enable me to give to the topics urged, due weight and consideration. But had he chosen to call upon me, I should have seen him, as I do all clergymen who call every day in the week, within certain hours; and your grace would, in that case, probably have received from the appellant another travesty of a dialogue supposed to have taken place between us. While the appellant is making against me this most unfounded charge of 'discourtesy,' he seems to forget a fact which his own narrative reveals. It was on February 23rd that he wrote to your grace to announce his intention of appealing; and on the same day he wrote to me to desire an interview for the purpose of 'inducing me,' he says, 'to abandon my illegal line of conduct.' Surely, not only courtesy, but common fairness and candour, required that he should have informed me of his having taken that step. With what propriety could I have opened with him a new discussion upon a subject which was already brought under the jurisdiction of your grace?

"Mr. Dunsford talks about a letter written by me to the rector of Slimbridge, (the parish where he is curate,) in a paragraph which contains some of the most intemperate expressions to be found in the whole appeal. He first gives as a quotation, a sentence not to be found in that letter; and, after declaiming against me for what I had not written, he demands, in an imperious tone, an explanation of my meaning. Not being disposed to attend to requisitions of such a nature, I should not have noticed this paragraph at all, were it not so expressed that it might seem as if I had ventured to anticipate the result of the present appeal to your grace. The fact is, that as I happened to be writing to the rector of Slimbridge, on the 15th of last January, upon another occasion, I thought it right to apprise him of the state of affairs, as far as it concerned him to know them. At that time Mr. Dunsford's licences of non-residence had actually expired: I had not received any application for new ones, or any intimation that such an application was intended; still less did I apprehend that an appeal would

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holding any benefice, and occupying in the same parish any mansion or messuage whereof he shall be the owner, a licence to reside in such mansion or messuage,

be the consequence of their being refused; and the usual time of applying for renewal of expiring licences had passed. Knowing that he must either reside on one of his benefices, or be subject to the penalties of non-residence, I concluded he would adopt the former alternative. The mention of Lady-day was only a suggestion of my own; I merely said, that it might probably be the most convenient for all parties that the change should take place at that period. This was far from being a mysterious communication; I naturally concluded that the person to whom it was addressed, would communicate with his curate on the subject.

"The alienation of the glebe-house at Fretherne is a matter into which I trust your grace will pardon my declining to enter. The transaction took place before my time, and my knowledge of it must of course be derived from others. I can only say, that the effect of the appellant's statement upon my mind, is to convince me that the account which I had received, and which I mentioned to himself in my letter, is the true one. To his criticism on my words '*suffered*,' and '*understanding*,' I can only reply that I used those terms in their common acceptation, and that, instead of any '*mystification*' or '*ingenious obscurity*,' I described the circumstance (as I had learned it) in the plainest and simplest way that I could. But on this subject I have humbly to beg that your grace will be pleased to ask the testimony of the then diocesan, the present Bishop of Bangor; and that, should his lordship not have a perfect recollection of the nature of the transaction, and the views with which he gave his consent, your grace will direct such questions to be put to the rural dean, and the commissioners engaged in the exchange, as may enable you to judge with precision on the matter.

"I have now noticed every part of Mr. Dunsford's appeal which has any bearing upon the real question in dispute. Your grace will have observed, in the perusal of that document, that the object of the appellant is not so much to establish any point in his own favour, as to indulge in a railing accusation against his bishop. He sets out by assuming that my conduct is illegal, and having so done, he proceeds to denounce it as being also '*base*,' '*tyrannical*,' and '*oppressive*;' his declamation becoming more violent and exaggerated as he proceeds, but containing not one atom of evidence to substantiate so heinous a charge. . . .

"Before I leave this subject, I humbly request your grace to take such cognizance as you shall judge right of the outrageous language of the appellant. Although his design may be nothing more than to cast affront and contumely upon myself, yet it is certain that the adoption of such a style, upon a solemn occasion, constitutes a contempt of the judge to whose jurisdiction he has appealed. I submit also, that this demeanour towards superiors is inconsistent

with the clerical character, is incompatible with all notion of church government, and is in direct opposition to the very elements of Christian discipline. Whatever be the result of the present appeal, the relation which subsists between the appellant and myself will continue; and I do not see how even the ordinary intercourse between a bishop and a clergyman can take place, where the latter feels himself at liberty to express the most contumelious and contemptuous sentiments in regard to his superior—a licence which is even the solemnity of the present occasion, nor the dignity of the highest character in the church, has been able to restrain.

"In conclusion, I beg leave to declare that there is in my mind no hostility to Mr. Dunsford. I feel obliged to him for having been the means of bringing this question before your grace. I sincerely wish him a better and more Christian spirit than that with which he appears at present to be actuated; and I hope, for his own sake, that he will some time or other feel compassion and remorse for the bitter and unprovoked personalities of which his present appeal has been made the vehicle.

"I have the honour to be, with all respect, my lord archbishop, your grace's dutiful and humble servant,

"J. H. Gloucester.
"*Cloisters, Westminster, May 7, 1833.*"

"*To the Most Reverend Father in God, William, by Divine Providence, Lord Archbishop of Canterbury, Primate of all England, Metropolitan, &c. &c. &c.*"

"The Petition and Appeal of the Rev. James Hartley Dunsford, M.A., humbly sheweth,

"That your appellant is vicar of the parson of Frampton upon Severn, in the county and diocese of Gloucester.

"That on his said benefice there is not, nor to his knowledge ever hath been, a house of residence for the incumbent.

"That there is no house within the limits of his said benefice, which he could rent or purchase, which would be a suitable residence for himself and family.

"That he hath petitioned the Bishop of Gloucester for licence of non-residence on his said benefice, on the ground of there being no house of residence, which ground is recognised by the 15th section of 57 Geo. 3, c. 99, as a legitimate ground of non-residence.

"That the Bishop of Gloucester hath refused to grant the prayer of appellant's petition, alleging, as a reason, that appellant must remove the ground of his petition by building a house of residence.

"That your appellant hath no funds wherewith to build; and

"That his residence on his said benefice is impossible.

"Your appellant therefore humbly petitions your grace to grant him a licence of

such spiritual person keeping the house of residence and other buildings belonging thereto in good and sufficient repair and condition, and producing to the bishop

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non-residence on his said benefice of Frampton upon Severn.

"And your petitioner will ever pray, &c. &c."

"To the Most Reverend the Lord Archbishop of Canterbury, &c. &c."

"My Lord,—I have the honour to acknowledge the receipt of a second appeal made to your grace by the Rev. James Hartley Dunsford, complaining of my having refused him a licence of non-residence on his vicarage of Frampton upon Severn, in the diocese of Gloucester.

"This appeal differs essentially from the former, inasmuch as it omits all mention of the appellant's other living of Fretherne. What the object of this alteration is, I cannot comprehend, unless it is intended that your grace should receive distinct applications, from the vicar of Frampton and the rector of Fretherne as from different personages. At all events, it places Mr. Dunsford in a position different from his actual one; and at the same time removes the principal ground upon which I refused the licence.

"Having, in my reply to the first appeal, explained the reasons which actuated me in the refusal of the application to grant Mr. Dunsford renewed licences of absence from both his livings, it is unnecessary to trouble your grace with a repetition of them. It was my duty to look at the case as it actually stood. I found the appellant a pluralist, who did not reside in, or do the duty of, either of his parishes, and who had alienated the glebe-house which belonged to one of them. It was impossible to detach these considerations from the question upon which I had to exercise the discretion vested in me by the law. I could not regard it as if the vicar of Frampton and the rector of Fretherne were two distinct personages. Nor is it possible for your grace to form a judgment on the propriety with which I came to my decision, without taking into consideration the position of the appellant as a pluralist, in relation to both his benefices. In regard, therefore, to the merits of the question, I beg leave respectfully to refer your grace to my former reply.

"The appellant says, that I have called upon him to build a house of residence, implying of course at Frampton, for no allusion is made to any other place. That this statement is inaccurate, your grace is aware from the documents laid before you by the appellant in his first appeal.

"In the new appeal there is only one sentence which requires any notice from me. The appellant says, 'that he hath petitioned the Bishop of Gloucester for licence of non-residence on his said benefice, on the ground of there being no house of residence, which ground is recognised by the 15th sect. of 1 Geo. 3, c. 99, as a legitimate ground of non-residence.'

"To this statement of the law comprised in the section referred to, I must pointedly object. A *legitimate ground of non-residence* implies, in common language, 'a legal exemption from residence.' But the purport of the law is very different. It recognises the want of a house of residence merely as a ground on which the bishop is empowered to grant a licence, exempting the incumbent from the penalties of non-residence, in such cases only, '*in which, upon due consideration of all the circumstances,*' he '*shall in his discretion think it fit to grant the same.*' It is hardly possible for words to be devised which should more clearly express the intention of the law, or be less open to cavil or misapprehension. The want of a house is not recognised as a *legitimate ground of non-residence*, it is only a ground on which the bishop has a discretionary power of granting a licence, if, after considering all the circumstances stated in the application, and verified to his satisfaction, he shall in his discretion think it a fitting case for such a favour and indulgence. As the giving or withholding this favour is thus left to the discretion of the bishop, the law has properly given a power of appeal to the primate, by whom the bishop's exercise of his discretion may be confirmed or reversed, after an inquiry into the circumstances of the case. Whatever may be your grace's judgment upon the manner in which this discretion has been exercised by myself, I must humbly contend, that in considering the whole case, and deciding in such a mode as my own judgment told me was best for the interests of the church, I have only discharged my bounden duty.

"I apprehend, that I should have complied neither with the spirit nor the letter of the law, had I not duly considered *all the circumstances* of the case, and among the rest, the appellant's other living of Fretherne, which the present appeal puts aside.

"I presume, that I am not expected to declare what I would have done in a supposed case. Had the appellant held no other preferment than his vicarage of Frampton, and had I been satisfied that he had used his best endeavours to obtain a residence in that parish, agreeably to the oath which he took at his institution, then the case would have been so widely different from that which actually came before me, that all discussion of it is superfluous. I shall, therefore, only remark, that even in that case, I could not have granted the licence of non-residence, upon the petition presented to me by Mr. Dunsford; the original of which I inclose to your grace: you will observe, that it is not a legal one, as it contained no mention of the place where the curate was to reside. Had no such objection been in the way, I should have felt it right to require that the asserted impossibility of his residing in his parish, should be proved to my satisfaction, in the manner which the act has prescribed. Mr. Duns-

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Appeal to
archbishop in
case of refusal.

In cases not
enumerated
bishops may
grant licences
to reside out
of limits of
benefice, sub-
ject to allow-
ance by the
archbishop.

By whom
licences may
be granted
while a see is
vacant, &c.

proof to his satisfaction at the time of granting every such licence of such good and sufficient repair and condition; provided always, that any such spiritual person, within one month after refusal of any such licence, may appeal to the archbishop of the province, who shall confirm such refusal, or direct the bishop to grant a licence under this act, as shall seem to the said archbishop just and proper.

“XLIV. And be it enacted, that it shall be lawful for any bishop, in any case not hereinbefore enumerated, in which such bishop shall think it expedient, to grant to any spiritual person holding any benefice within his diocese a licence to reside out of the limits of such benefice; provided always, that in every such case the nature and special circumstances thereof, and the reasons that have induced such bishop to grant such licence, shall be forthwith transmitted to the archbishop of the province, who shall forthwith proceed therein as hereinafter provided in cases of appeal, and shall allow or disallow such licence in the whole or in part, or make any alteration therein, as to the period for which the same may have been granted or otherwise; and no such licence shall be valid unless it shall have been so allowed by such archbishop, such allowance thereof being signified by the signing thereof by such archbishop; provided also, that it shall not be necessary in such licence to specify the cause of granting the same.

“XLV. And be it enacted, that during the vacancy of any see the power of granting licences of non-residence under this act, subject to the regulations herein contained, shall be exercised by the guardian of the spiritualities of the diocese; or in case the bishop of any diocese shall be disabled from exercising in person the functions of his office, such power shall be exercised by the person or persons lawfully empowered to exercise his general jurisdiction in the diocese; provided always, that no licence granted by any other than the bishop shall be valid until

ford relies upon the excuse of his being unable to procure a house *suitable to his family*. It appears, however, from his own statement, that he has been non-resident more than twenty years, during the early part of which period, his family was very small, and he probably could have procured a suitable house, had it been his wish to attend to his parish.

“As Mr. Dunsford’s case has been so long before your grace, I should be sorry to interpose any difficulty which might prevent or delay its adjudication. But it will be proper here to mention, that should he prefer any more appeals, I shall not reply to or notice them, any further than to protest against their legality, unless he complies with the positive provisions of the law, in giving security for the payment of reasonable expenses. I have no personal interest in the matter of these appeals: and the act of parliament, being designed to be impartial, extends a protection to the bishop, as well as to the incumbent, which I shall not feel myself justified in foregoing.

“I have the honour to remain,

“With all respect and duty, my Lord,

“Your Grace’s most humble servant,

“J. H. GLOUCESTER.

“To His Grace the Lord Archbishop of Canterbury.”

“WE, WILLIAM, by Divine Providence, Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, having carefully read *two several petitions* and appeals, lately made to us, by the Reverend JAMES HARTLEY DUNSFORD, Clerk, THE ONE in consequence of the refusal by the Right

Reverend JAMES HENRY Lord Bishop of Gloucester, to grant to him licences for his non-residence on his Vicarage of Frampton-upon-Severn, in the county and diocese of Gloucester, and on his Rectory of Fretherne in the same county and diocese, and praying us to grant him licences for his non-residence on the said rectory and vicarage; AND THE OTHER of the said petitions and appeals being in consequence of such refusal by the said lord bishop, to grant to the said *James Hartley Dunsford, a licence for his non-residence on his said Vicarage of Frampton-upon-Severn only, and praying us to grant to him a licence for his non-residence on the said vicarage*. And we, the said archbishop, having well weighed and considered the merits and circumstances of the said several petitions and appeals, and made inquiry into the same, and being of opinion, that the said Lord Bishop of Gloucester hath exercised a due discretion, in refusing to grant licences for the non-residence of the said James Hartley Dunsford on the said Vicarage of Frampton-upon-Severn, and the Rectory of Fretherne, or either of them, have thought it proper to confirm such refusal; and, accordingly, we do by virtue of the power and authority vested in us as archbishop, as aforesaid, by the act of parliament in that case made and provided, accordingly confirm the refusal by the said Lord Bishop of Gloucester to grant such licences for the non-residence of the said James Hartley Dunsford on his said vicarage and rectory respectively.

“Witness our hand this 16th day of July in the year of our Lord 1833.

“(Signed) W. CANTUAR.”

the archbishop of the province shall have signified his approbation of the grant of such licence by signing the same.

“XLVI. And be it enacted, that no licence for non-residence granted under this act or under the said hereinbefore second recited act shall continue in force after the thirty-first day of December in the year next after the year in which such licence shall have been or shall be granted.

“XLVII. And be it enacted, that every person obtaining any licence of non-residence shall pay for the same to the secretary or officer of the bishop, or other person granting the same, the sum of ten shillings, over and above the stamp duty chargeable thereon, and no more, and also the sum of three shillings, and no more, to the registrar of the diocese, and shall also pay the sum of five shillings to the secretary of the archbishop when any such licence shall have been signed by such archbishop.

“XLVIII. And be it enacted, that no licence of non-residence shall become void by the death or removal of the bishop granting the same, but the same shall be and remain valid, notwithstanding any such death or removal, unless the same shall be revoked as hereinafter mentioned.

“XLIX. And be it enacted, that it shall be lawful for any archbishop or bishop who shall have granted any licence of non-residence as aforesaid, or for any successor of any such archbishop or bishop, after having given such incumbent sufficient opportunity of showing reason to the contrary, in any case in which there may appear to such archbishop or bishop good cause for revoking the same, by an instrument in writing under his hand to revoke any such licence; provided always, that any such incumbent may, within one month after service upon him of such revocation, if by a bishop, appeal to the archbishop of the province, who shall confirm or annul such revocation as to him shall appear just and proper.

“L. And be it enacted, that every bishop who shall grant or revoke any licence of non-residence under this act shall and he is hereby required, within one month after the grant or revocation of such licence, to cause a copy of every such licence or revocation to be filed in the registry of his diocese; and an alphabetical list of such licences and revocations shall be made out by the registrar of such diocese, and entered in a book, and kept for the inspection of all persons, upon payment of three shillings, and no more; and a copy of every such licence, and a statement in writing of the grounds of exemption, shall be transmitted by the spiritual person to whom such licence shall have been granted, or who may be exempted from residence, to the churchwardens or chapelwardens of the parish or place to which the same relates, within one month after the grant of such licence, or of his taking advantage of such exemption, as the case may be; and every bishop revoking any such licence shall cause a copy of such revocation to be transmitted, within one month after the revocation thereof, to the churchwardens or chapelwardens of the parish or place to which it relates; which copies of licences and revocation, and statements of exemption, shall be by such churchwardens or chapelwardens deposited in the parish chest, and shall likewise be produced by them, and publicly read by the registrar or other officer, at the visitation of the ecclesiastical district within which such benefice shall be locally situate next succeeding the receipt thereof; and every spiritual person who shall neglect so to transmit a copy of such licence or statement of exemption, as hereby required, shall lose all benefit of such licence, and until he shall have transmitted such statement, shall not be entitled to the benefit of such exemption; provided always, that in case the archbishop of the province shall on appeal to him annul the revocation of any such licence, the bishop by whom such revocation shall have been made shall, immediately on receiving notice from the archbishop that he has annulled the same, order, by writing under his hand, that the copies of such revocation shall be forthwith withdrawn from the said registry and parish chest, and that the same shall not be produced and read at the visitation, and that such revocation shall be erased from the list of revocations in the said registry; which order shall be binding on the registrar and churchwardens respectively to whom the same shall be addressed.

“LI. And be it enacted, that every archbishop who shall in his own diocese

STAT. 1 & 2
VICT. c. 106.

Duration of
licences.

Fee for licence.

Licences not
to be void by
the death or
removal of the
grantor.

Licences may
be revoked.

Copies of
licences or
revocations to
be filed in the
registry of the
diocese, and a
list kept for
inspection;
and copies
transmitted
to churchwar-
dens, and pub-
licly read at
the first visita-
tion.

List of licences

STAT. 1 & 2
VICT. c. 106.
Appeal to
archbishop in
case of refusal.

In cases not
enumerated
bishops may
grant licences
to reside out
of limits of
benefice, sub-
ject to allow-
ance by the
archbishop.

by whom
licences may
be granted
while a see is
vacant, &c.

proof to his satisfaction at the time of granting every such sufficient repair and condition; provided always, that within one month after refusal of any such licence of the province, who shall confirm such refusal, licence under this act, as shall seem to the said

"XLIV. And be it enacted, that it shall not hereinbefore enumerated, in which such grant to any spiritual person holding any reside out of the limits of such benefice, the nature and special circumstances, such bishop to grant such licence, shall of the province, who shall forthwith cases of appeal, and shall allow or make any alteration therein, as granted or otherwise; and it has been so allowed by such archbishop signing thereof by such archbishop such licence to specify the

"XLV. And be it enacted, that in granting licences of non-residence contained, shall be in or in case the bishop functions of his office fully empowered always, that it

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And be it enacted, that it shall be lawful for each bishop and he is required to transmit, some time in the month of January in each year, to the spiritual person holding any benefice within his diocese or jurisdiction, the questions contained in the first schedule to this act, for the purpose of better enabling the several bishops to make the returns hereinafter mentioned; and every spiritual person to whom such questions shall be so transmitted shall, within three weeks from the day on which the same shall be delivered to him, or to the officiating minister of the benefice for the time being, make and transmit to the bishop full and specific answers thereto, such answers being signed by such spiritual person.

"LIII. And be it enacted, that on or before the twenty-fifth day of March in every year a return shall be made to her majesty in council by every bishop of the name of every benefice within his diocese or jurisdiction, and the names of the several spiritual persons holding the same respectively who shall have resided thereon; and also the names of the several spiritual persons who, by reason of any exemption under or by virtue of this act, or by reason of any licence granted by such bishop, shall not have resided on their respective benefices; and also the names of all spiritual persons, not having any such exemption or licence, who shall not have resided on their respective benefices, so far as the bishop is informed thereof; and also the substance of the answers received in all cases to the questions so transmitted as aforesaid.

"LIV. And be it enacted, that in every case in which it shall appear to the bishop that any spiritual person holding any benefice within his diocese, and not having a licence to reside elsewhere than in the house of residence belonging thereto, nor having any legal cause of exemption from residence, does not sufficiently, according to the true meaning and intent of this act, reside on such benefice, it shall be lawful for such bishop, instead of proceeding for penalties under this act, or for penalties incurred before the passing of this act under the act of the 5th

Residence may
be enforced by
monition, or
the living
sequestered.

Annual return
to be made to
her majesty in
council of
residents and
non-residents,
&c.

STATUTE BOOK
1857-1858

King George the Third, or after proceeding for the
 a monition to such spiritual person, requiring
 reside on such benefice, and perform the duties
 h monition within a certain number of days
 in every such case there shall be thirty
 ition on such spiritual person, in the
 fied in such monition for the return
 such monition shall be served
 ke a return thereto into the
 be lawful for the bishop to
 rn or any fact contained
 no such return shall
 the non-residence
 shop, or where
 o verified as afore-
 shall be lawful for the
 seal, requiring such spiri-
 n thirty days after such order
 er as is hereinafter directed with
 ase of non-compliance with such order
 easter the profits of such benefice until such
 n sufficient reasons for non-compliance there-
 as aforesaid, and to direct, by any order to be made
 and, and filed as aforesaid, the application of such
 ne *necessary expenses of serving the cure* (1), either in the
 portions as he shall think fit, in the first place to the payment
 proceeded for, if any, and of such reasonable expenses as shall have
 d in relation to such monition and sequestration, and in the next
 wards the repair or sustentation of the chancel, house of residence of such
 ace, or of any of the buildings and appurtenances thereof, and of the glebe and
 mesne lands, and in the next place, where such benefice shall be likewise under
 sequestration at the suit of any creditor, then towards the satisfaction of such last-
 mentioned sequestration; and after the satisfaction thereof, then and in the next
 place towards the augmentation or improvement of any such benefice, or the house
 of residence thereof, or any of the buildings and appurtenances thereof, or towards
 the improvement of any of the glebe or demesne lands thereof, or to order and

(1) *Necessary expenses of serving the cure*.—In *Dakins (Clerk) v. Seaman (Clerk)*, (9 M. & W. 777,) it was held, that where a curate is appointed by the special sequestrators of the bishop of the diocese, to serve the cure of a benefice during the vacation between the death of the last and the appointment of the next incumbent, he may, although not licensed by the bishop, and notwithstanding Stat. 1 & 2 Vict. c. 106, recover his reasonable stipend in an action of debt under Stat. 28 Hen. 8, c. 11, from the next incumbent, the tithes which accrued during the interval not being sufficient to pay him a reasonable stipend:—Mr. Baron Parke stating, “I am of opinion, that the plaintiff may maintain an action for his stipend. The main question is, whether the statute of Henry the Eighth is repealed by the statute of Victoria, and whether the curate can recover in a court of common law. It is to be observed, that as the words of the latter act are affirmative, both statutes are compatible, and may well stand together. The language of the statute of Victoria affords strong ground for the argument, that as the courts of common law cannot determine what sa-

lary the curate is to receive, so neither can they assist him in recovering it; and undoubtedly that argument applies, where the curate is appointed under that act; but if the curate is not appointed by the bishop, the statute of Henry the Eighth remains in full force and effect. It is said, that the canon law requires the curate to be licensed, but I should have great difficulty in determining, that the effect of the statute of Henry the Eighth is taken away by the canons of 1603; that question, however, need not be considered here; for I am not satisfied that the plaintiff need be licensed under the 48th canon. A licence applies to the case, where the appointment is permanent, but here the plaintiff is employed by the sequestrators, and is not appointed for any specified time. The sequestrators are to see, that the duties of the parish are performed by somebody, and accordingly they appoint the plaintiff for a short period; it may not, perhaps, be necessary for them to provide for more than two Sundays. Under the circumstances of the present case, I think the plaintiff is entitled to our judgment.”

STAT. 1 & 2
VICT. c. 106.

allowed by the archbishop, or granted in his own diocese, to be annually transmitted to her majesty in council, who may revoke licences, &c.

Licence, although revoked, to be deemed valid between the grant and revocation.

Incumbents to answer questions transmitted to them by bishop.

Annual return to be made to her majesty in council of residents and non-residents, &c.

Residence may be enforced by monition, or the living sequestered.

grant any licence of non-residence, or who shall approve and allow, in manner directed by this act, any such licence in any case not enumerated in this act, or any renewal of a licence in the case of the dangerous illness of the wife or child of any spiritual person, shall annually in the month of January in each year transmit to her majesty in council a list of all licences or renewals so granted or allowed by such archbishop respectively in the year ending on the last day of December preceding such month of January, and shall in every such list specify the reasons which have induced him to grant or allow each such licence or renewal, together with the reasons transmitted to him by the bishops for granting or recommending each such licence in their respective dioceses; and it shall be lawful for her majesty in council, by an order made for that purpose, to revoke and annul any such licence; and if her majesty in council shall think fit so to do, such order shall be transmitted to the archbishop who shall have granted or approved and allowed such licence or renewal, who shall thereupon cause a copy of every such order to be transmitted to the bishop of the diocese in which such licence shall have been granted; and such bishop shall cause a copy of the mandatory part of the order to be filed in the registry of such diocese, and a like copy to be delivered to the churchwardens or chapelwardens of the parish or place to which the same relate, in manner hereinbefore directed as to revocation of licences; and every such archbishop shall cause a copy of the mandatory part of every such order made in relation to any such licence granted by him in his own diocese to be in like manner filed in the registry of his diocese, and a like copy also to be delivered to the churchwardens or chapelwardens of the parish or place to which such licence shall relate in manner before mentioned; provided always, that after such licence shall have been so revoked by her majesty in council the same shall nevertheless, in all questions that shall have arisen or may thereafter arise touching the non-residence of the spiritual person to whom the same shall have been granted, between the time at which the same was granted or approved and allowed and the time of the revocation thereof being so filed in the registry, be deemed and taken to have been valid.

“LII. And be it enacted, that it shall be lawful for each bishop and he is hereby required to transmit, some time in the month of January in each year, to every spiritual person holding any benefice within his diocese or jurisdiction, the questions contained in the first schedule to this act, for the purpose of better enabling the several bishops to make the returns hereinafter mentioned; and every spiritual person to whom such questions shall be so transmitted shall, within three weeks from the day on which the same shall be delivered to him, or to the officiating minister of the benefice for the time being, make and transmit to the bishop full and specific answers thereto, such answers being signed by such spiritual person.

“LIII. And be it enacted, that on or before the twenty-fifth day of March in every year a return shall be made to her majesty in council by every bishop of the name of every benefice within his diocese or jurisdiction, and the names of the several spiritual persons holding the same respectively who shall have resided thereon; and also the names of the several spiritual persons who, by reason of any exemption under or by virtue of this act, or by reason of any licence granted by such bishop, shall not have resided on their respective benefices; and also the names of all spiritual persons, not having any such exemption or licence, who shall not have resided on their respective benefices, so far as the bishop is informed thereof; and also the substance of the answers received in all cases to the questions so transmitted as aforesaid.

“LIV. And be it enacted, that in every case in which it shall appear to the bishop that any spiritual person holding any benefice within his diocese, and not having a licence to reside elsewhere than in the house of residence belonging thereto, nor having any legal cause of exemption from residence, does not sufficiently, according to the true meaning and intent of this act, reside on such benefice, it shall be lawful for such bishop, instead of proceeding for penalties under this act, or for penalties incurred before the passing of this act under the act of the fifty-

seventh year of his majesty King George the Third, or after proceeding for the same, to issue or cause to be issued a monition to such spiritual person, requiring him forthwith to proceed to and to reside on such benefice, and perform the duties thereof, and to make a return to such monition within a certain number of days after the issuing thereof; provided that in every such case there shall be thirty days between the time of serving such monition on such spiritual person, in the manner hereinafter directed, and the time specified in such monition for the return thereto; and the spiritual person on whom any such monition shall be served shall, within the time specified for that purpose, make a return thereto into the registry of the diocese, to be there filed; and it shall be lawful for the bishop to whom any such return shall be made to require such return or any fact contained therein to be verified by evidence; and in every case where no such return shall be made, or where such return shall not state such reasons for the non-residence of such spiritual person as shall be deemed satisfactory by the bishop, or where such return, or any of the facts contained therein, shall not be so verified as aforesaid, when such verification shall have been required, it shall be lawful for the bishop to issue an order in writing under his hand and seal, requiring such spiritual person to proceed and reside as aforesaid within thirty days after such order shall have been served upon him in like manner as is hereinafter directed with respect to the service of monitions; and in case of non-compliance with such order it shall be lawful for the bishop to sequester the profits of such benefice until such order shall be complied with, or such sufficient reasons for non-compliance therewith shall be stated and proved as aforesaid, and to direct, by any order to be made for that purpose under his hand, and filed as aforesaid, the application of such profits, after deducting the *necessary expenses of serving the cure* (1), either in the whole or in such proportions as he shall think fit, in the first place to the payment of the penalties proceeded for, if any, and of such reasonable expenses as shall have been incurred in relation to such monition and sequestration, and in the next place towards the repair or sustentation of the chancel, house of residence of such benefice, or of any of the buildings and appurtenances thereof, and of the glebe and demesne lands, and in the next place, where such benefice shall be likewise under sequestration at the suit of any creditor, then towards the satisfaction of such last-mentioned sequestration; and after the satisfaction thereof, then and in the next place towards the augmentation or improvement of any such benefice, or the house of residence thereof, or any of the buildings and appurtenances thereof, or towards the improvement of any of the glebe or demesne lands thereof, or to order and

STAT. 1 & 2
VICT. c. 106.

(1) *Necessary expenses of serving the cure*.—In *Dakins (Clerk) v. Seaman (Clerk)*, (9 M. & W. 777,) it was held, that where a curate is appointed by the special sequestrators of the bishop of the diocese, to serve the cure of a benefice during the vacation between the death of the last and the appointment of the next incumbent, he may, although not licensed by the bishop, and notwithstanding Stat. 1 & 2 Vict. c. 106, recover his reasonable stipend in an action of debt under Stat. 28 Hen. 8, c. 11, from the next incumbent, the tithes which accrued during the interval not being sufficient to pay him a reasonable stipend.—Mr. Baron Parke stating, “I am of opinion, that the plaintiff may maintain an action for his stipend. The main question is, whether the statute of Henry the Eighth is repealed by the statute of Victoria, and whether the curate can recover in a court of common law. It is to be observed, that as the words of the latter act are affirmative, both statutes are compatible, and may well stand together. The language of the statute of Victoria affords strong ground for the argument, that as the courts of common law cannot determine what sa-

lary the curate is to receive, so neither can they assist him in recovering it; and undoubtedly that argument applies, where the curate is appointed under that act; but if the curate is not appointed by the bishop, the statute of Henry the Eighth remains in full force and effect. It is said, that the canon law requires the curate to be licensed, but I should have great difficulty in determining, that the effect of the statute of Henry the Eighth is taken away by the canons of 1603; that question, however, need not be considered here; for I am not satisfied that the plaintiff need be licensed under the 48th canon. A licence applies to the case, where the appointment is permanent, but here the plaintiff is employed by the sequestrators, and is not appointed for any specified time. The sequestrators are to see, that the duties of the parish are performed by somebody, and accordingly they appoint the plaintiff for a short period; it may not, perhaps, be necessary for them to provide for more than two Sundays. Under the circumstances of the present case, I think the plaintiff is entitled to our judgment.”

STAT. 1 & 2
VICT. C. 106.

direct the same or any portion thereof to be paid to the treasurer of the governors of the bounty of Queen Anne, for the purposes of the said bounty, as such bishop shall, in his discretion, under all circumstances, think fit and expedient; and it shall also be lawful for the bishop, within six months after such order for sequestration, or within six months after any money shall have been actually levied by such sequestration, to remit to such spiritual person any proportion of such sequestered profits, or to cause the same or any part thereof, whether the same remain in the hands of the *sequestrator* (1), or shall have been paid to the said treasurer, to be

(1) *Sequestrator*:—The sequestrator of a benefice, appointed by the bishop under a writ of *sequestrari facias*, is the mere bailiff or agent of the bishop, and has no such interest in the profits as will enable him to maintain an action at law against a party who wrongfully receives them: thus in *Harding v. Hall*, (10 M. & W. 42,) Mr. Baron *Parker* observed, "I agree in opinion with my Lord Chief Baron, that in this case the nonsuit was right, and I still entertain the same opinion which I expressed when this matter was argued before me at Nisi Prius.

"The action was brought to recover certain profits of a living, which came to the hands of the defendants at different times. It appears that a person of the name of Iveson was the sequestrator under an execution at his suit, on two different judgments. He employed a person of the name of Collett to receive the profits of the living under the sequestration. Iveson became bankrupt, and his assignees still continued Collett in their employ, to receive the profits of the living. Iveson afterwards died, the assignees still continuing, through the agency of Collett, to receive the profits of the living: and they are now called upon to pay over the whole of those profits which had been received by Collett; those which came to their hands while Iveson was sequestrator, those received after his bankruptcy, and those received since the death of Iveson, by the assignees, by the agency of Collett. If there were any portion of those profits which could be the subject of an action by the sequestrator, I was wrong in directing a nonsuit.

"It seems to me, that there is no difficulty whatever in the case, except in regard of that portion of the profits which have been received by the assignees, after the determination of the sequestration to Iveson, by his death. There is no doubt what the character of a sequestrator is, and that it is one that cannot pass to his executors, administrators, or assigns; and therefore, if the plaintiff was entitled to recover as to that portion of the tithes received by the assignees since the death of Iveson, I ought not to have directed a nonsuit, but a verdict for the plaintiff, subject to the other questions in the cause.

"But it appears to me, that even for that portion of the profits of the living the plaintiff cannot recover; for the right which the sequestration gave him involves no interest whatever. Let us consider, what the right of the sequestrator is. When a judgment is obtained against a spiritual person, a *levari facias* issues to the bishop, and he is commanded, as in this case, 'to enter into the rectory and parish church of Lock-

ington, and take and sequester the same into his possession, and hold the same in his possession until he shall have levied the debt and damages, costs and charges, out of the rents, tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in his diocese,' and so forth. Therefore the command is to the bishop to enter and take possession of the living; and the bishop appoints a sequestrator to make such entry. Then the publication of the sequestration takes place; and the question is, what is the effect of this delegation by the bishop? The effect clearly is, to take the possession out of the rector, and to place it in some person in lieu of the rector. In the case of *Doe d. Morgan (Clerk) v. Black*, 3 Camp. 447,) it was decided that, after the publication, the right of ejectionment by the rector is taken away; therefore I assume, that the possession is vested in some other person: and the question is, who is the person so put into possession? It is the bishop, according to the terms of this writ, and nobody else. He directs the sequestrator to act for him; and though clothed with duties higher than those an ordinary bailiff has,—for he has undoubtedly more than to do, by consent of the bishop, differ from the duties of the sheriff's bailiff,—in point of law he is the servant of the bishop, and has no interest at all in any of the profits of the living, but is acting merely as a receiver. That, as it appears to me, is the character of the sequestrator, and that is the character which he appears to have had according to the cases. Thus, according to the case of *Jones v. Barrett*, (Bamb. 192) the sequestrator, having no interest in the profits of the living, cannot alone sue for tithes, or for the profits of the rectory, but the bishop is the proper person to do so. There is no authority whatever to shew that the sequestrator has any interest in the profits of the living. A case was cited from *Barnardiston's Reports*, of *Culder v. Ros*, (1 Barnard. K.B. 198,) which was erroneously made use of by Mr. *Baker*, as an able argument, to shew, that if the party have authority, not merely to receive but to distribute, he has an interest in the profits of the sequestration, and may support the action. But the case is no authority for that position: it is only the opinion of the lord chancellor as to what the Scotch law probably was in the case of the sequestration of the effects of a convicted traitor; and he gave an opinion, that if it was only to receive in that case he would have no interest, but if it was to distribute amongst the different creditors, without rendering any account to the court, it gave him a title to recover. It is

paid to such spiritual person; and every such sequestrator at the suit of the bishop, is hereby required, upon receiving an order under the hand of such bishop, forthwith to obey the same; and the said treasurer is hereby authorized and required, upon receiving a like order from such bishop, to make such payment out of any money in his hands; provided always, that any such spiritual person may, within one month after service upon him of the order for any such sequestration, appeal to the archbishop of the province, who shall make such order relating thereto, or to the profits that shall have been so sequestered as aforesaid, for the return of the same or any part thereof to such spiritual person, or to such sequestrator at the suit of any creditor, (as the case may be,) or otherwise as may appear to such archbishop to be just and proper; but nevertheless such sequestration shall be in force during such appeal.

STAT. 1 & 2
VICT. c. 106.

Appeal against
sequestration
to the arch-
bishop.

“LV. And be it enacted, that every spiritual person to whom any such monition or order in writing shall be issued as aforesaid, who shall be at the time of the issuing thereof absent from his benefice, contrary to the provisions of this act, but who shall forthwith obey such monition or order, and the profits of whose benefice shall by reason of such obedience not be sequestered, shall nevertheless pay all costs, charges, and expenses incurred by reason of the issuing and serving such monition or order, and that the proceedings thereon shall not be stayed until such payment shall be made.

Incumbents
returning to
residence on
monition to
pay the costs.

“LVI. And for effectually enforcing *bonâ fide* residence according to the intent of such monition and order, be it enacted, that if any spiritual person, not having a licence to reside out of the limits of his benefice, nor having other lawful cause of absence from the same, who after any such monition or order as aforesaid requiring him to reside, and before or after any such sequestration as aforesaid, shall in obedience to any such monition or order have begun to reside upon his benefice, shall afterwards, and before the expiration of twelve months next after the commencement of such residence, wilfully absent himself from such benefice for the space of one month together, or to be accounted at several times, it shall be lawful for the bishop, without issuing any other monition or making any order, to sequester and apply the profits of such benefice, as before directed by this act, for the purposes of enforcing the residence of such spiritual person, according to the true intent of the original monition issued by the bishop as aforesaid; and it shall be lawful for the bishop so to proceed in like cases from time to time as often as occasion may require; provided that in each such case such spiritual person may, within one

Incumbent
returning to
residence on
monition, but
again absent-
ing himself
within twelve
months, the
bishop may,
without further
monition,
sequester.

not intended to be laid down, as a general proposition of law, that if a person is appointed a receiver, where there may be conferred upon him an authority, not merely to receive, but also to distribute, that would give him an interest in the estate. The case cannot be carried to that extent: and there is no other authority for saying, that a sequestrator has an interest in the subject-matter of the sequestration.

“Then, it was contended, that this was like the case of an administrator. But his authority is founded on the statute of 31 Edw. 3, St. I. c. 11, [ante 66,] which expressly states, that the ordinary is to depute persons, who are to have actions to recover debts due to a deceased intestate. That gives an interest, by the very words of the statute, in all the personal effects of the deceased, and takes them out of the bishop and vests them in the administrator. It is by an express law, therefore, that an administrator has an interest in the effects of the intestate. Therefore, even as to that portion of the profits of the living that may be said to be analogous to the case put in the argument, of the tithe grower having set out tithes, and the interven-

tion of a stranger to take them away, I am compelled by the authorities, and by the nature of the case, to say, that no right of action would exist in the sequestrator. It appears to me, that the right would be in somebody else, either in the rector or in the ordinary, probably in the ordinary, since, according to the case of *Doe d. Morgan v. Bluck*, (3 Camp. 447,) the effect of the sequestration is to put the rector out of possession; and then it follows that the ordinary is in possession, in virtue of the writ by which he is required to take possession. Then I consider, that the sequestrator is the mere servant of the ordinary, and subject to his authority.

“The cases that have been cited from the Ecclesiastical Reports, of the sequestrator being called upon to account in the courts of the ordinary, for not performing his duties, are to be explained on the ground, that there the ordinary was calling his own officer to account for not performing the duties he had undertaken to do, he having received a warrant to act upon his mandate.

“Upon the whole, it appears to me, that this action cannot be sustained, and therefore that the nonsuit was right.”

STAT. 1 & 2
VICT. c. 106.

Reasons for
remitting
penalties for
non-residence
of a certain
amount to be
transmitted to
the queen in
council.

Benefice con-
tinuing so
sequestered
one year, or
being twice so
sequestered
within two
years, to
become void.

Contracts for
letting houses
in which any
spiritual
persons re-
quired by
bishop to
reside, to be
void.

Penalty for
holding adverse

month after the service upon him of the order for any such sequestration, appeal to the archbishop of the province, who shall make such order relating thereto, or to the profits sequestered, or to any part thereof, as to him may seem just and proper, but nevertheless such sequestration shall be in force during such appeal.

“LVII. And be it enacted, that in every case in which any archbishop or bishop shall think proper, after proceeding by monition for the recovery of any penalty under this act for non-residence of more than one third part of the yearly value of any benefice for any non-residence exceeding six months in the year, to remit the whole or any part of any such penalty, such archbishop shall forthwith transmit to her majesty in council, and such bishop shall forthwith transmit to the archbishop of the province to which he belongs, a statement of the nature and special circumstances of each case, and the reasons for the remission of any such penalty: and it shall thereupon be lawful for her majesty in council, or for the archbishop, as the case may be, to allow or disallow such remission in whole or in part, in the same manner as is provided in this act with relation to the allowance or disallowance of licences of non-residence granted in cases not hereinbefore expressly enumerated; provided always, that the decision of the archbishop with respect to cases transmitted to him from a bishop shall be final.

“LVIII. And be it enacted, that if the benefice of any spiritual person shall continue for the space of one whole year under sequestration issued under the provisions of this act for disobedience to the bishop's monition or order requiring such spiritual person to reside on his benefice, or if such spiritual person shall, under the provisions of this act, incur two such sequestrations in the space of two years, and shall not be relieved with respect to either of such sequestrations upon appeal, such benefice shall thereupon become void; and it shall be lawful for the patron of such benefice to make donation or to present or nominate to the same as if such spiritual person were dead, and the bishop, on such benefice so becoming void, shall give notice in writing under his hand to such patron, which notice shall either be delivered to such patron or left at his usual place of abode, or if such patron or place of abode shall be unknown, or shall be out of England, such notice shall be twice inserted in the London Gazette, and also twice in some newspaper printed and usually circulated in London, and in some other newspaper usually circulated in the neighbourhood of the place where such benefice is situate; and for the purposes of lapse the avoidance of the benefice shall be reckoned from the day on which such notice shall have been delivered as aforesaid, or from the day on which six months shall have expired after the second publication of such notice in the London Gazette, as the case may be; and every such notice in the Gazette and newspapers shall state that the patron or the place of abode of the patron is unknown, or that he is said to be out of England, as the case may be, and that the benefice will lapse, at the furthest, after the expiration of one year from the second publication thereof as aforesaid; and upon any such avoidance it shall not be lawful for the patron to appoint by donation or present or nominate to such benefice so avoided the person by reason of whose non-residence the same was so avoided.

“LIX. And be it enacted, that any agreement made for the letting of the house of residence, or the buildings, gardens, orchards, or appurtenances necessary for the convenient occupation of the same, belonging to any benefice, to which house of residence any spiritual person may be required, by order of the bishop as aforesaid, to proceed and to reside therein, or which may be assigned or appointed as a residence to any curate by the bishop, shall be made in writing, and shall contain a condition for avoiding the same, upon a copy of such order, assignment, or appointment being served upon the occupier thereof, or left at the house, and otherwise shall be null and void; and a copy of every such order, assignment, or appointment shall immediately on the issuing thereof be transmitted to one of the churchwardens of the parish, or such other person as the bishop shall think fit, and be by him forthwith served on the occupier of such house of residence, or left at the same; and any person continuing to hold any such house of residence, or any such building, garden, orchard, or appurtenances, after the day on which such spiritual

person shall be directed by such order to reside in such house of residence, or which shall be specified in any such order, assignment, or appointment, and after such copy shall be so served or left as aforesaid, shall forfeit the sum of forty shillings for every day he shall, without the permission of the bishop in writing under his hand for that purpose obtained, wilfully continue to hold any such house, building, garden, orchard or appurtenances, together with the expense of serving or leaving such order, assignment, or appointment, to be allowed by the bishop issuing the order or making such assignment or appointment; and it shall also be lawful for the spiritual person so directed to reside, or the curate to whom any such residence is assigned, to apply to any justice of the peace having jurisdiction in the place for a warrant for the taking possession thereof; and the justice to whom any such order for such possession is produced shall and he is hereby required, upon its being duly verified, to grant a warrant to some peace officer to deliver such possession, and possession may thereupon be taken of such house under such warrant at any time in the daytime, by entering the same by force, if necessary, without any other proceeding by ejectment or otherwise, any law or statute to the contrary notwithstanding; provided that any person who shall have been in possession of any such house of residence or premises under a verbal agreement only, or under any agreement in which the condition aforesaid for avoiding the same shall not be inserted, and who shall be turned out of possession by virtue of this act, shall be entitled to sue the person with whom he or she had entered into such agreement for damages occasioned by his or her being so turned out of possession, to be recovered in any of her majesty's superior courts at Westminster.

“LX. Provided always, and be it enacted, that no spiritual person shall be liable to any penalty for not residing in any such house of residence during such time as such tenant shall continue to occupy such house of residence or other building or appurtenances necessary to the occupation of the same.

“LXI. And be it enacted, that no oath shall be required of or taken by any vicar in relation to residence on his vicarage; any law, custom, constitution, or usage to the contrary notwithstanding.

“LXII. And be it enacted, that upon or at any time after the avoidance of any benefice it shall be lawful for the bishop and he is hereby required to issue a commission to four beneficed clergymen of his diocese, or if the benefice be within his peculiar jurisdiction, but locally situate in another diocese, then to four beneficed clergymen of such last-mentioned diocese, one of whom shall be the rural dean (if any) of the rural deanery or district wherein such benefice shall be situate, directing them to inquire whether there is a fit house of residence within such benefice, and what are the annual profits of such benefice, and if the clear annual profits of such benefice exceed one hundred pounds whether a fit house of residence can be conveniently provided on the glebe of such benefice, or otherwise; and if the said commissioners, or any three of them, shall report in writing under their hands to the said bishop that there is no fit house of residence within such benefice, and that the clear annual profits of such benefice exceed one hundred pounds, and that a fit house of residence can be conveniently provided on the glebe of such benefice, or on any land which can be conveniently procured for the site of such house of residence, it shall be lawful for the said bishop and he is hereby required to procure from some skilful and experienced workman or surveyor a certificate containing a statement of the condition of the buildings (if any), and of the value of the timber and other materials (if any) thereupon fit to be employed in building or repairing, or to be sold, and also a plan or estimate of the work fit and proper to be done for building or repairing such house of residence, with all necessary and convenient offices, and thereupon, by mortgage of the glebe, tithes, rents, rent-charges, and other profits and emoluments, arising or to arise from such benefice, to levy and raise such sum or sums as the said estimate shall amount to, after deducting the value of any timber or other materials which may be thought proper to be sold, not exceeding four years net income and produce of such benefice, after deducting all outgoings, (except only the salary of the assistant curate where such a curate is necessary,) which mortgage

STAT. 1 & 2
VICT. c. 106.
possession, 40s.
for every day.

Incumbent not
liable to pen-
alty for non-
residence while
the tenant
occupies.

Vicar's oath
relating to
residence
abolished.

On avoidance
of benefice not
having fit house
of residence,
bishop to raise
money to build
one by mort-
gage of glebe,
&c. for thirty-
five years.

STAT. 1 & 2
VICT. C. 106.

shall be made to the person or persons who shall advance the money so to be levied and raised for the term of thirty-five years, or until the money so to be raised, with interest for the same, and such costs and charges as may attend the recovery thereof, shall be fully paid and satisfied according to the provisions of this act; and the same mortgage shall be made by one or more deed or deeds in the form or to the effect for that purpose contained in the second schedule to this act, and shall bind the incumbent of such benefice for the time being and his successors until the principal and interest, costs and charges, shall be fully paid off and satisfied, and every incumbent for the time being is hereby made liable to the payment of so much of the principal, interest, and costs as under the directions hereinafter contained shall become payable during the time he shall be such incumbent, and every such incumbent and his representatives shall be and are hereby also made respectively liable to the proportion of the payments for the year which shall be growing at the time of the death of such incumbent or avoidance of such benefice according to the directions hereinafter contained, which said principal, interest, and costs, and the proportion of payment growing at the time of the death of such incumbent or of such avoidance, shall and may be recovered by action of debt in any court of record.

Bishop to transmit copies of report, &c. to patron and incumbent, who may object within two months, and if so, bishop may order plan to be modified or abandoned.

“LXIII. Provided always, and be it enacted, that the said bishop shall cause to be transmitted to the patron and the incumbent (if any) of such benefice copies of the report so to be made by such commissioners, and of the plan, estimate, and certificate so to be made by such workman or surveyor, two calendar months at the least before making any such mortgage as aforesaid; and that in case the patron and the incumbent, or either of them, shall object to the proposed site for a residence, or to the proposed plan for erecting or repairing such residence, or to the amount proposed to be raised, and shall deliver such objections in writing to the said bishop before the expiration of such period of two calendar months, the said bishop shall have full power to direct that the plan proposed to be carried into effect shall be altered or modified in such manner as he may think fit; provided also, that if the bishop shall, after receiving the report to be made by such commissioners, be of opinion that it is not expedient under the special circumstances of any such benefice to levy and raise any sum or sums of money by mortgage as hereinbefore required, or otherwise to take measures for providing a fit house of residence for such benefice, he shall state in detail such special circumstances and the grounds of his opinion in the next annual return to be made by him to her majesty in council, according to the directions hereinbefore contained.

Every mortgagee to execute a counterpart of the mortgage, to be kept by the incumbent, &c.

“LXIV. And be it enacted, that every such mortgagee shall execute a counterpart of every such mortgage, to be kept by the incumbent for the time being; and a copy of every such deed of mortgage shall be registered in the office of the registrar of the bishop of the diocese, after having been first examined by him with the original, which officer shall register the same, and be entitled to demand and receive the sum of five shillings, and no more, for such register; and every such deed shall be referred to upon all necessary occasions, the person inspecting the same paying one shilling for every such search; and the said deed or a copy thereof certified under the hand of the registrar, shall be allowed as legal evidence, in case any such mortgage deed shall happen to be lost or destroyed.

On failure of payment of principal and interest for forty days after due, mortgagee may distrain.

“LXV. And be it enacted, that whenever the principal and interest directed to be paid to the mortgagee under the provisions of this act shall be in arrear and unpaid for the space of forty days after the same shall become due, it shall be lawful for such mortgagee, his executors, administrators, or assigns, to recover the same, and the costs and charges attending the recovery thereof, by distress and sale in such manner as rents may be recovered by landlords or lessors from the tenants by the laws in being.

Money borrowed to be paid to such persons as the bishop shall appoint;

“LXVI. And be it enacted, that the money so to be raised shall be paid into the hands of such person or persons as shall be nominated and appointed by the bishop of the diocese by writing under his hand to receive and apply the same for the purposes aforesaid, in the form for that purpose contained in the said schedule, after such nominee shall have given a bond to the ordinary, with sufficient

person shall be directed by such order to reside in such house of residence, or which shall be specified in any such order, assignment, or appointment, and after such copy shall be so served or left as aforesaid, shall forfeit the sum of forty shillings for every day he shall, without the permission of the bishop in writing under his hand for that purpose obtained, wilfully continue to hold any such house, building, garden, orchard or appurtenances, together with the expense of serving or leaving such order, assignment, or appointment, to be allowed by the bishop issuing the order or making such assignment or appointment; and it shall also be lawful for the spiritual person so directed to reside, or the curate to whom any such residence is assigned, to apply to any justice of the peace having jurisdiction in the place for a warrant for the taking possession thereof; and the justice to whom any such order for such possession is produced shall and he is hereby required, upon its being duly verified, to grant a warrant to some peace officer to deliver such possession, and possession may thereupon be taken of such house under such warrant at any time in the daytime, by entering the same by force, if necessary, without any other proceeding by ejectment or otherwise, any law or statute to the contrary notwithstanding; provided that any person who shall have been in possession of any such house of residence or premises under a verbal agreement only, or under any agreement in which the condition aforesaid for avoiding the same shall not be inserted, and who shall be turned out of possession by virtue of this act, shall be entitled to sue the person with whom he or she had entered into such agreement for damages occasioned by his or her being so turned out of possession, to be recovered in any of her majesty's superior courts at Westminster.

"LX. Provided always, and be it enacted, that no spiritual person shall be liable to any penalty for not residing in any such house of residence during such time as such tenant shall continue to occupy such house of residence or other building or appurtenances necessary to the occupation of the same.

"LXI. And be it enacted, that no oath shall be required of or taken by any vicar in relation to residence on his vicarage; any law, custom, constitution, or usage to the contrary notwithstanding.

"LXII. And be it enacted, that upon or at any time after the avoidance of any benefice it shall be lawful for the bishop and he is hereby required to issue a commission to four beneficed clergymen of his diocese, or if the benefice be within his peculiar jurisdiction, but locally situate in another diocese, then to four beneficed clergymen of such last-mentioned diocese, one of whom shall be the rural dean (if any) of the rural deanery or district wherein such benefice shall be situate, directing them to inquire whether there is a fit house of residence within such benefice, and what are the annual profits of such benefice, and if the clear annual profits of such benefice exceed one hundred pounds whether a fit house of residence can be conveniently provided on the glebe of such benefice, or otherwise; and if the said commissioners, or any three of them, shall report in writing under their hands to the said bishop that there is no fit house of residence within such benefice, and that the clear annual profits of such benefice exceed one hundred pounds, and that a fit house of residence can be conveniently provided on the glebe of such benefice, or on any land which can be conveniently procured for the site of such house of residence, it shall be lawful for the said bishop and he is hereby required to procure from some skilful and experienced workman or surveyor a certificate containing a statement of the condition of the buildings (if any), and of the value of the timber and other materials (if any) thereupon fit to be employed in building or repairing, or to be sold, and also a plan or estimate of the work fit and proper to be done for building or repairing such house of residence, with all necessary and convenient offices, and thereupon, by mortgage of the glebe, tithes, rents, rent-charges, and other profits and emoluments, arising or to arise from such benefice, to levy and raise such sum or sums as the said estimate shall amount to, after deducting the value of any timber or other materials which may be thought proper to be sold, not exceeding four years net income and produce of such benefice, after deducting all outgoings, (except only the salary of the assistant curate where such a curate is necessary,) which mortgage

STAT. 1 & 2
VICT. c. 106.
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Incumbent not
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alty for non-
residence while
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Vicar's oath
relating to
residence
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On avoidance
of benefice not
having fit house
of residence,
bishop to raise
money to build
one by mort-
gage of glebe,
&c. for thirty-
five years.

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All money received for dilapidations, &c. shall be applied in part of the payments under the aforesaid estimate;

or in making some additional improvements, &c.

Where new buildings are necessary for the residence of the incumbent, the bishop may purchase any conveniently situated house, and a certain portion of land.

Buildings and lands to be conveyed to patron in trust for the incumbent for the time being.

Governors of Queen Anne's bounty empowered to lend certain sums to promote the execution of this act.

Colleges in

"LXIX. And be it enacted, that all sums of money recovered or received, by suit or compositions, from the representatives of any former incumbent of such benefice, and not laid out in the repairs of such buildings, shall go and be applied in part of the payments under such estimate as aforesaid; and that all money thereafter to be recovered or received, in case the same cannot be had before such buildings are completed, and the money paid for the same, shall be applied as soon as received in payment of the principal then due, as far as the same will extend; or in case the said mortgage money shall have been discharged, all such money arising from dilapidations shall be paid into the hands of the nominee to be appointed as aforesaid, or of some other person or persons to be nominated by the bishop, in case such nominee shall be dead or shall decline to act therein, to be laid out and expended in making some additional buildings or improvements upon the glebe of such benefice, to be approved by the bishop; and in the meantime, or in case such buildings shall not be necessary, then in trust to lay out the same in government or other good securities, and pay the interest thereof to the incumbent for the time being.

"LXX. And be it further enacted, that where new buildings are necessary to be provided for the residence of the incumbent of any benefice exceeding in value one hundred pounds a year, and avoided after the passing of this act, and where such new buildings cannot be conveniently erected on the glebe of such benefice, it shall be lawful for the bishop to contract, or to authorize, if he shall think fit, the person so to be nominated by him as aforesaid to contract, for the absolute purchase of any house or buildings in a situation convenient for the residence of the incumbent of such benefice, and also to contract for any land adjoining or lying convenient to such house or building, or to contract for any land upon which a fit house of residence can be conveniently built, and to raise the purchase money for such house or buildings and land adjoining, or for such land upon which a house of residence can be conveniently built, (as the case may be,) by mortgage of the glebe, tithes, rents, and other profits and emoluments arising or to arise from such benefice, in the same manner in all respects as is hereinbefore directed with respect to the mortgage hereinbefore authorized or directed to be made, which mortgage shall be binding upon the incumbent and his successors, and he and they and their representatives are hereby made liable to the payment of the principal, interest, and costs, in the same manner and to the same extent as hereinbefore directed with respect to the aforesaid mortgage; and the receipt of such nominee or nominees as aforesaid shall be a sufficient discharge to the person or persons who shall advance or pay the money so to be raised; provided always, that no greater sum shall be charged on any benefice under the authority of this act than four years net income and produce of such benefice (after such deduction as aforesaid).

"LXXI. And be it enacted, that the buildings and lands so to be purchased shall be conveyed to the patron of such benefice and his heirs or successors, as the case may be, in trust for the sole use and benefit of the incumbent of such benefice for the time being and his successors, and shall be annexed to such benefice, and be enjoyed and go in succession with the same for ever; but no contract of purchase made by the nominee shall be valid until confirmed by the bishop by writing under his hand; and every such purchase deed shall be in the form or to the effect contained in the schedule hereunto annexed, and shall be registered in such manner and in such office as the other deeds are hereby directed to be registered.

"LXXII. And be it enacted, that it shall be lawful for the governors authorized or appointed to regulate and superintend the bounty given by her majesty Queen Anne for the augmentation of the maintenance of the poor clergy, to advance and lend out of the money which has arisen or shall from time to time arise from that bounty, for promoting and assisting the purposes of this act, any sum not exceeding the amount hereby authorized to be raised upon such mortgage and security as aforesaid, and subject to the several regulations of this act, and to receive interest for the same not exceeding four pounds for one hundred pounds by the year.

"LXXIII. And be it enacted, that it shall be lawful for any college or hall

surety, in double the sum so to be borrowed or raised, with condition for his duly applying and accounting for the same according to the directions of this act; and the receipt of the person or persons so to be nominated shall be a sufficient discharge to the person or persons who shall advance and pay the money; and the person or persons so to be nominated shall enter into contracts with proper persons for such buildings or repairs as shall be approved by the said bishop, and shall be specified in an instrument written upon parchment and signed by him, and shall inspect and have the care of the execution of such contracts, and shall pay the money for such buildings and repairs, according to the terms of such agreements, and also the expenses of preparing the mortgage deed and incident thereto, and of making such certificate, plan, and estimate, and copies thereof as aforesaid, and shall take proper receipts and vouchers for the same; and as soon as such buildings or repairs shall be completed, and the money paid, shall make out an account of his receipts and payments, together with the vouchers for the same, and enter them in a book fairly written, which shall be signed by him, and laid before the bishop of the diocese and examined by him, and when allowed by writing under his hand, such allowance shall be a full discharge to the person so nominated in respect to the said accounts; and if any balance shall remain in the hands of such nominee or nominees, the same shall be laid out in some farther lasting improvements in building upon such glebe, or shall be paid and applied in discharge of so much of the said principal debt as such balance will extend to pay, at the discretion of the said bishop, by order signed by him; and an account shall also be kept, made out, and allowed of such further disbursements in manner aforesaid; all which accounts when made out, completed, and allowed, shall be deposited with the vouchers in the hands of the said registrar, and kept by him for the use and benefit of the incumbents of such benefice for the time being, who shall have a right to inspect the same whenever occasion shall require, paying to such registrar or deputy registrar the sum of one shilling for every such inspection.

“LXVII. And be it enacted, that the incumbent of every such benefice, in cases where such mortgage or mortgages shall be made as aforesaid, and his successors for the time being, shall, from and after the expiration of the first year of the said term, (in which year no part of the principal sum borrowed shall be repayable,) yearly and every year (each year to be computed from the date of such mortgage) pay to the mortgagee one thirtieth part of the principal sum until the whole thereof shall be repaid, and shall at the end of the first and each succeeding year pay the yearly interest on the principal sum, or so much thereof as shall from time to time remain unpaid; and that every such incumbent shall annually, at his own expense, from the time such buildings authorised to be made by this act shall be completed, insure, at one of the public offices established in London or Westminster for insurance of houses and buildings, the house and other buildings upon such glebe against accidents by fire, at such sum of money as shall be determined upon by the bishop; and in default of the payment of either the principal or interest in manner aforesaid, or neglect of the incumbent to make such insurance, the bishop shall have power to sequester the profits of the benefice till such payment or insurance shall be made.

“LXVIII. And be it enacted, that the sum payable at the end of any year in which there shall be an avoidance of such benefice shall be apportioned between the successor and the incumbent avoiding such benefice by death or otherwise, or his representatives, in such proportions as the profits of such living shall have been received by them respectively for the year in which such death or avoidance shall happen; and that in case any difference shall arise in adjusting or settling the proportions aforesaid, the same shall be determined by two indifferent persons, the one to be named by the said successor, and the other by the person making such avoidance, or his representatives in case of his death; and in case such nominees shall not be appointed within the space of two calendar months next after such death or avoidance, or if they cannot agree in adjusting such proportions within the space of one calendar month after they shall have been appointed, the same shall be determined by some neighbouring clergyman, to be nominated by the bishop, whose determination shall be final and conclusive between the parties.

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who shall contract for the buildings, &c. and see the same executed, and pay for them, &c.

How the balance remaining shall be disposed of.

Directions for payment of principal and interest of the mortgages.

As soon as the buildings are completed, incumbent to insure them against fire.

For proportioning the annual payment, in case of death or other avoidance.

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If duty inade-
quately per-
formed, the
bishop may
appoint a
curate;

but incumbent
may appeal.

In large bene-
fices an as-
sistant curate
may be re-
quired.

which such benefice is situate, or if no convenient residence can be procured within such parish or place, then within three statute miles of the church or chapel of the benefice in which he shall be licensed to serve, except in cases of necessity, as he approved of by the bishop, and specified in the licence, and such place of residence shall also be specified in the licence.

“LXXVII. And be it enacted, that whenever the bishop shall see reason to believe that the ecclesiastical duties of any benefice are inadequately performed, it shall be lawful for him to issue a commission to four beneficed clergymen of his diocese, or if the benefice be within his peculiar jurisdiction but locally situate in another diocese then to four beneficed clergymen of such last-mentioned diocese, one whereof shall be the rural dean, if any, of the rural deanery or district wherein such benefice is situated, directing them to inquire into the facts of the case; and it shall be lawful for the incumbent of the said benefice to add to such commissioners one other incumbent of a benefice within the same diocese; and if the said commissioners or the major part of them report in writing under their hands to the said bishop that in their opinion the duties of such benefice are inadequately performed, it shall be lawful for such bishop, if he shall see fit, by writing under his hand, to require the spiritual person holding such benefice, though he may actually reside or be engaged in performing the duties thereof, to nominate to him a fit person or persons, with sufficient stipend or stipends, to be licensed by him to perform or to assist in performing such duties, specifying therein the grounds of such requisition; and if such spiritual person shall neglect or omit to make such nomination for the space of three months after such requisition so made as aforesaid, it shall be lawful for the bishop to appoint and license a curate or curates, as the case shall appear to him to require, with such stipend or stipends as he shall think fit to appoint, not exceeding the respective stipends allowed to curates by this act in the case of non-resident incumbents, nor, except in the case of negligence, exceeding one half of the net annual value of such benefice; and such bishop shall cause a copy of every such requisition, and the evidence to found the same, to be forthwith filed in the registry of his court; provided always, that it shall be lawful for any such spiritual person within one month after the service upon him of such requisition to nominate a curate, or of notice of any such appointment and licence of such curate or curates, to appeal to the archbishop of the province, who shall approve or revoke such requisition, or confirm or annul such appointment, as to him may seem just and proper.

“LXXVIII. And be it enacted, that whenever the annual value of any benefice, the incumbent whereof was not in possession at the time of the passing of this act, shall exceed five hundred pounds, and the population thereof shall amount to three thousand persons, or though the population do not amount to three thousand persons, if there be in the said benefice a second church or chapel situated not less than two miles from the mother church, and with a hamlet or district connected with it containing four hundred persons, it shall be lawful for the bishop, if he shall see fit, to require the spiritual person holding such benefice, although he shall be resident thereon or engaged in performing the duties thereof, to nominate a fit and proper person to be licensed as a curate to assist in performing the duties of such benefice, and to be paid by the person holding the same; and if a fit person shall not be nominated to the bishop within three months after his requisition for that purpose shall have been delivered to the incumbent, or left at his last or usual place of abode, it shall be lawful for the bishop to appoint and license a curate, and shall think fit to appoint, not exceeding the respective stipends allowed to curates by this act, nor in any case exceeding one fifth part of the net annual value of such benefice; provided always, that such spiritual person or service upon him of such requisition to nominate a curate, or of notice of any such appointment of a curate, appeal to the archbishop of the province, who shall approve or revoke such requisition, or confirm or annul such appointment, as to him may appear just and proper.

And be it enacted, that in case of a stipend being assigned by the provisions of this act, to the curate of any benefice, the

within the universities of Oxford and Cambridge, or for any other corporate bodies possessed of the patronage of ecclesiastical benefices, to advance and lend any sum or sums of money of which they have the power of disposing in order to aid and assist the several purposes of this act for the building, rebuilding, repairing, or purchasing of any houses or buildings for the habitation and convenience of the clergy, upon benefices under the patronage of such college or hall, upon the mortgage and security directed by this act for the repayment of the principal, without taking any interest for the same.

“LXXIV. And be it enacted, that it shall be lawful for the said bishop, by writing under his hand, to make such allowance to the person or persons to be nominated by him for the purpose of paying and applying the money so to be raised as aforesaid as he shall think fit, not exceeding the sum of five pounds for every one hundred pounds so to be laid out and expended as aforesaid.

“LXXV. And be it enacted, that if any spiritual person holding any benefice, who shall not actually reside thereon nine months in each year, (unless such person shall, with the consent of the bishop, from time to time, signified in writing under his hand and revocable at any time, perform the ecclesiastical duties of the same, he either being resident on another benefice, of which he shall also be the incumbent, or having a legal exemption from residence on his benefice, or having a licence to reside out of the same, or to reside out of the usual house of residence belonging to the same,) shall for a period exceeding three months altogether, or to be accounted at several times, in the course of any one year absent himself from his benefice, without leaving a curate or curates duly licensed or approved by the bishop to perform such ecclesiastical duties, or shall, for a period of one month after the death, resignation, or removal of any curate who shall have served his church or chapel, neglect to notify such death, resignation, or removal to the bishop, or shall for the period of four months after the death, resignation, or removal of such curate neglect to *nominate to the bishop a proper curate*(1), in every such case the bishop is hereby authorized to appoint and license a proper curate, with such salary as is by this act allowed and directed, to serve the church or chapel of the benefice in respect of which such neglect or default shall have occurred; provided always, that such licence shall in every case specify whether the curate is required to reside within the parish or place, or not; and if the curate is permitted by the bishop to reside out of the parish or place, the grounds upon which the curate is so permitted to reside out of the same shall be specified in such licence; and the distance of the residence of any curate from any such church or chapel which he shall be licensed to serve shall not exceed three statute miles, except in cases of necessity, to be approved by the bishop, and specified in the licence.

“LXXVI. And be it enacted, that in every case where a curate is appointed to serve in any benefice upon which the incumbent either does not reside or has not satisfied the bishop of his full purpose to reside during four months in the year, such curate shall be required by the bishop to reside within the parish or place in

STAT. 1 & 2
VICT. c. 106.

Oxford and Cambridge, and other corporate bodies, patrons of livings, may lend any sums without interest, to aid the execution of this act.

Allowance to person nominated by the bishop to pay and apply money.

Non-resident incumbents neglecting to appoint curates, the bishop to appoint.

Curate to reside on benefices, under certain circumstances.

(1) *Nominate to the bishop a proper curate*.—It seems, that an ecclesiastical custom, which is not immemorial, will not, though acted upon for a long time, deprive a rector of his common law right to appoint his curate. *Arnold (Clerk) v. Bath & Wells (Bishop of)*, 5 Bing. 316.

In *Capel v. Child*, (2 C. & J. 558,) the Bishop of London issued a requisition, under Stat. 57 Geo. 3, c. 99, s. 50, [now repealed] requiring the vicar of Watford to nominate a curate with a stipend; on the ground, that it appeared to the bishop, of his own knowledge, that the ecclesiastical duties of the vicarage and parish church of Watford were inadequately performed, by reason of the vicar's negligence. The vicar appointed no curate, and did not appeal to the archbishop. The

bishop, after three months, licensed the Rev. Arthur Hubbard, clerk, as curate of Watford, with a stipend. The vicar refused to allow the Rev. Arthur Hubbard to officiate; upon which the bishop issued a mandate or summons to shew cause, why the vicar should not pay the stipend due, and ultimately proceeded to sequestration: it was held, that the requisition upon which the whole of the proceedings were founded, was in the nature of a judgment; and void, as the party had had no opportunity of being heard.

That such a requisition ought to state particular instances of negligence, or shew how the incumbent was negligent.

And, that Stat. 57 Geo. 3, c. 99, s. 50, did not apply to the case of a benefice with only one church and no chapel.

STAT. 1 & 2
VICT. C. 106.
not to exceed
a certain rate.

Stipends to
curates to be
according to
specified scale,
proportioned
to the value
and population
of the benefice.

Larger sti-
pend in cer-
tain cases of
larger value
and popula-
tion.

Bishop may
require two
curates.

Appeal.

Smaller sti-
pend in cer-
tain cases.

pounds per annum, together with the use of the house of residence, and the gardens and stables belonging thereto, or a further sum of fifteen pounds in lieu of the use of the rectory or vicarage house, or other house of residence, in case there shall be no house, or it shall not appear to the bishop convenient to assign the house to the curate.

“LXXXV. And be it enacted, that in every case in which any spiritual person shall have been, since the twentieth day of July, one thousand eight hundred and thirteen, or shall hereafter be instituted, inducted, nominated, or appointed to, or otherwise become incumbent of any benefice, and shall not duly reside thereon, the bishop shall appoint for the curate licensed under the provisions of this act to serve such benefice such stipend as is hereinafter next mentioned; (that is to say,) such stipend shall in no case be less than eighty pounds per annum, or than the annual value of the benefice, if such value shall not amount to eighty pounds; nor less than one hundred pounds per annum, or than the whole value, if such value shall not amount to one hundred pounds, in any parish or place where the population shall amount to three hundred persons; nor less than one hundred and twenty pounds per annum, or than the whole value, if such value shall not amount to one hundred and twenty pounds, in any parish or place where the population shall amount to five hundred persons; nor less than one hundred and thirty-five pounds per annum, or than the whole value, if such value shall not amount to one hundred and thirty-five pounds, in any parish or place where the population shall amount to seven hundred and fifty persons; nor less than one hundred and fifty pounds per annum, or than the whole value, if such value shall not amount to one hundred and fifty pounds, in any parish or place where the population shall amount to one thousand persons.

“LXXXVI. And be it enacted, that where the annual value of any such benefice shall exceed four hundred pounds, it shall be lawful for the bishop to assign to the curate, being resident within the same, and serving no other cure, a stipend of one hundred pounds, notwithstanding the population may not amount to three hundred persons; and that where the annual value of any such benefice shall exceed four hundred pounds, and the population shall amount to five hundred persons, it shall be lawful for the bishop to assign to the curate, being resident within the same, and serving no other cure, any larger stipend, so that the same shall not exceed by more than fifty pounds per annum the amount of the stipend hereinbefore required to be assigned to any such curate; and that where the population of any such benefice shall exceed two thousand persons, it shall be lawful for the bishop to require the incumbent thereof to nominate to him two persons to be licensed as curates; and if such spiritual person shall neglect or omit to make such nomination for the space of three months after such requisition so made as aforesaid, it shall be lawful for the bishop to appoint and license two curates or a second curate, and in all and every of such cases to assign to each curate as nominated or appointed such stipend as he shall think fit, not exceeding together the highest rate of stipend allowed by this act in the case of one such curate, except in cases where the incumbent shall consent to a larger stipend: provided always, that such incumbent may within one month after service upon him of such requisition, or of notice of any such appointment of two curates or a second curate, appeal to the archbishop of the province, who shall approve or revoke such requisition or confirm or annul such appointment, as to him may appear just and proper.

“LXXXVII. And be it enacted, that in every case in which the bishop shall be satisfied that any spiritual person holding any benefice within his diocese is non-resident, or has become incapable of performing the duties thereof from age, sickness, or other unavoidable cause, and that, from these or from any other special and peculiar circumstances, great hardship or inconvenience would arise if the full stipend specified in this act should be allowed to the curate of such benefice, it shall be lawful for such bishop, with the consent of the archbishop of the province, to be signified in writing under the hand of the said archbishop upon the licence to be granted to such curate, to assign to the curate such stipend less than the full amount in this act specified as shall appear to him just and reasonable: provided

incumbent whereof shall have been duly found a lunatic or person of unsound mind, the committee of the estate of any such lunatic or person of unsound mind shall pay such stipend to such curate out of the profits of the benefice which shall come to his hands.

“LXXX. And be it enacted, that it shall be lawful for the bishop, in his discretion, to order that there shall be two full services, each of such services, if the bishop shall so direct, to include a sermon or lecture on every Sunday throughout the year, or any part thereof, in the church or chapel of every or any benefice within his diocese, whatever may be the annual value or the population thereof; and also in the church or chapel of every parish or chapelry, where a benefice is composed of two or more parishes or chapelries, in which there shall be a church or chapel, if the annual value of the benefice arising from that parish or chapelry shall amount to one hundred and fifty pounds, and the population of that parish or chapelry shall amount to four hundred persons; provided always, that nothing herein contained shall be taken to repeal or affect the provisions of an act passed in the fifty-eighth year of the reign of his majesty King George the Third, intituled, ‘An Act for building and promoting the building of additional Churches in populous Parishes,’ by which the bishop of any diocese is empowered to direct the performance of a third or additional service in the several churches or chapels within his diocese under the circumstances therein mentioned.

“LXXXI. And be it enacted, that every bishop to whom any application shall be made for any licence for a curate to serve for any person not duly residing upon his benefice shall, before he shall grant such licence, require a statement of all the particulars by this act required to be stated by any person applying for a licence for non-residence; and in every case in which application shall be made to any bishop for a licence for any stipendiary curate to serve in any benefice, whether the incumbent be resident or non-resident, such bishop shall also require a declaration in writing to be made and subscribed by the incumbent and the curate, to the purport and effect that the one *bonâ fide* intends to pay, and the other *bonâ fide* intends to receive, the whole actual stipend mentioned in such statement, without any abatement in respect of rent or consideration for the use of the glebe house, and without any other deduction or reservation whatever.

“LXXXII. And be it enacted, that every curate obtaining such licence as aforesaid shall pay to the secretary or other proper officer of the bishop for the same the sum of ten shillings, over and above any stamp duty which may be chargeable thereon, which sum of ten shillings shall be in lieu of all fees heretofore demandable by such secretary or officer for such licence, or for any certificate connected therewith; and that whenever any person shall be licensed to two curacies within the same diocese at the same time, it shall be sufficient for such person to sign a declaration appointed to be signed by an act, intituled, ‘An Act of Uniformity,’ once only; and it shall be sufficient for such person to produce one certificate only of his having so signed such declaration.

“LXXXIII. And be it enacted, that it shall be lawful for the bishop of the diocese, and he is hereby required, subject to the several provisions and restrictions in this act contained, to appoint to every curate of a non-resident incumbent such stipend as is specified in this act; and every licence to be granted to a stipendiary curate, whether the incumbent of the benefice be resident or non-resident thereon, shall specify the amount of the stipend to be paid to the curate; and in case any difference shall arise between the incumbent of any benefice and his curate touching such stipend, or the payment thereof or of the arrears thereof, the bishop, on complaint to him made, may and shall summarily hear and determine the same, without appeal; and in case of wilful neglect or refusal to pay such stipend, or the arrears thereof, he is hereby empowered to enforce payment of such stipend, or the arrears thereof, by monition, and by sequestration of the profits of such benefice.

“LXXXIV. And be it enacted, that it shall not be lawful for the bishop to appoint for the curate of any benefice, to which the spiritual person holding the same was instituted, licensed, or otherwise admitted before the twentieth day of July, one thousand eight hundred and thirteen, any stipend exceeding seventy-five

STAT. 1 & 2
VICT. c. 106.
mittee of luna-
tic's estate.

Bishops may
enforce two
services on
Sundays in
certain cases.

Not to affect
the provision
of the Act 58
Geo. 3, c. 45,
s. 65.

Statement of
particulars
necessary to
be given, and
declaration to
be made, on
application for
a licence for a
curate.

Fee for licence.

Bishop shall
appoint
stipends to
curates;

and decide
differences
respecting
them.

Stipends to
curates of
incumbents
before 20th
July, 1813,

STAT. 1 & 2
VICT. C. 106.
not to exceed
a certain rate.

Stipends to
curates to be
according to
specified scale,
proportioned
to the value
and population
of the benefice.

Larger sti-
pends in cer-
tain cases of
larger value
and popula-
tion.

Bishop may
require two
curates.

Appeal.

Smaller sti-
pends in cer-
tain cases.

pounds per annum, together with the use of the house of residence, and the gardens and stables belonging thereto, or a further sum of fifteen pounds in lieu of the use of the rectory or vicarage house, or other house of residence, in case there shall be no house, or it shall not appear to the bishop convenient to assign the house to the curate.

“LXXXV. And be it enacted, that in every case in which any spiritual person shall have been, since the twentieth day of July, one thousand eight hundred and thirteen, or shall hereafter be instituted, inducted, nominated, or appointed to, or otherwise become incumbent of any benefice, and shall not duly reside thereon, the bishop shall appoint for the curate licensed under the provisions of this act to serve such benefice such stipend as is hereinafter next mentioned; (that is to say,) such stipend shall in no case be less than eighty pounds per annum, or than the annual value of the benefice, if such value shall not amount to eighty pounds; nor less than one hundred pounds per annum, or than the whole value, if such value shall not amount to one hundred pounds, in any parish or place where the population shall amount to three hundred persons; nor less than one hundred and twenty pounds per annum, or than the whole value, if such value shall not amount to one hundred and twenty pounds, in any parish or place where the population shall amount to five hundred persons; nor less than one hundred and thirty-five pounds per annum, or than the whole value, if such value shall not amount to one hundred and thirty-five pounds, in any parish or place where the population shall amount to seven hundred and fifty persons; nor less than one hundred and fifty pounds per annum, or than the whole value, if such value shall not amount to one hundred and fifty pounds, in any parish or place where the population shall amount to one thousand persons.

“LXXXVI. And be it enacted, that where the annual value of any such benefice shall exceed four hundred pounds, it shall be lawful for the bishop to assign to the curate, being resident within the same, and serving no other cure, a stipend of one hundred pounds, notwithstanding the population may not amount to three hundred persons; and that where the annual value of any such benefice shall exceed four hundred pounds, and the population shall amount to five hundred persons, it shall be lawful for the bishop to assign to the curate, being resident within the same, and serving no other cure, any larger stipend, so that the same shall not exceed by more than fifty pounds per annum the amount of the stipend hereinbefore required to be assigned to any such curate; and that where the population of any such benefice shall exceed two thousand persons, it shall be lawful for the bishop to require the incumbent thereof to nominate to him two persons to be licensed as curates; and if such spiritual person shall neglect or omit to make such nomination for the space of three months after such requisition so made as aforesaid, it shall be lawful for the bishop to appoint and license two curates or a second curate, and in all and every of such cases to assign to each curate so nominated or appointed such stipend as he shall think fit, not exceeding together the highest rate of stipend allowed by this act in the case of one such curate, except in cases where the incumbent shall consent to a larger stipend: provided always, that such incumbent may within one month after service upon him of such requisition, or of notice of any such appointment of two curates or a second curate, appeal to the archbishop of the province, who shall approve or revoke such requisition or confirm or annul such appointment, as to him may appear just and proper.

“LXXXVII. And be it enacted, that in every case in which the bishop shall be satisfied that any spiritual person holding any benefice within his diocese is non-resident, or has become incapable of performing the duties thereof from age, sickness, or other unavoidable cause, and that, from these or from any other special and peculiar circumstances, great hardship or inconvenience would arise if the full stipend specified in this act should be allowed to the curate of such benefice, it shall be lawful for such bishop, with the consent of the archbishop of the province, to be signified in writing under the hand of the said archbishop upon the licence to be granted to such curate, to assign to the curate such stipend less than the full amount in this act specified as shall appear to him just and reasonable: provided

always, that in the licence granted in every such case it shall be stated that for special reasons the bishop hath not thought proper to assign to the curate the full stipend required by this act: provided also, that such special reasons shall be entered fully in a separate book to be kept for that purpose, and to be deposited in the registry of the diocese, which book shall be open to inspection with the leave of the bishop, as in the cases of application for licences for non-residence.

“LXXXVIII. And be it enacted, that if any incumbent of two benefices, residing *bond fide* in different proportions of every year on one or other of such benefices the full period specified by this act, shall employ a curate to perform ecclesiastical duty interchangeably from time to time upon such of the benefices from which he shall be absent during his own actual residence upon the other thereof, it shall be lawful for the bishop to assign to such curate any stipend not exceeding such stipend as would be allowed under this act for the larger of such benefices, nor less than would be allowed for the smaller, as to the bishop shall under all the circumstances appear just and reasonable: provided always, that if any such incumbent shall employ a curate or curates for the whole year upon each of such benefices, such incumbent so residing *bond fide* as aforesaid, in such case it shall be lawful for the bishop to assign to either or each of such curates any such stipend less than the amount specified in this act as he shall think fit.

“LXXXIX. And be it enacted, that in every case where the bishop shall find it necessary or expedient for obtaining the proper performance of ecclesiastical duties to license any spiritual person holding any benefice to serve as curate of any adjoining or other parish or place, it shall be lawful for such bishop, if he shall think fit, to assign to such person so licensed a stipend less by a sum not exceeding thirty pounds per annum than the stipend which in the several cases in this act specified the bishop is required to assign; and in every case where the bishop shall find it necessary or expedient to license the same person to serve as curate for two parishes or places, it shall be lawful for such bishop, if he shall think fit, to direct that during such time as such curate shall serve the churches or chapels of such two parishes or places the stipend to be received by him for serving each of the said churches or chapels shall be less by a sum not exceeding thirty pounds per annum than the stipend which in the several cases hereinbefore specified the bishop is required by this act to assign.

“XC. And be it enacted, that all agreements made or to be made between persons holding benefices and their curates, in fraud or derogation of the provisions of this act, and all agreements whereby any curate shall undertake or in any manner bind himself to accept or be content with any stipend less than that which shall be assigned by his licence, shall be void to all intents and purposes, and shall not be pleaded or given in evidence in any court of law or equity; and, notwithstanding the payment and acceptance, in pursuance of any such agreement, of any sum less than that assigned by the licence, or any receipt, discharge, or acquittance that may be given for the same, the curate and his personal representatives shall be and remain entitled to the full amount of the stipend assigned by his licence; and the payment of so much thereof as shall be proved to the satisfaction of the bishop to remain unpaid shall, together with full costs of recovering the same as between proctor and client, be enforced by monition, and by sequestration of the profits of the benefice, to be issued by the bishop for that purpose on application made by the curate or his representatives; provided that such application shall in every such case be made to the bishop within twelve months after such curate shall have quitted his curacy, or have died.

“XCI. And be it enacted, that in every case in which the bishop shall assign to any curate a stipend equal to the whole annual value of the benefice in which he is licensed to serve, such stipend shall be subject to deduction in respect to all such charges and outgoings as may legally affect the value of such benefice, and to any loss or diminution which may lessen such value, without the wilful default or neglect of the spiritual person holding the benefice.

“XCII. And be it enacted, that in every such case as last aforesaid, it shall be

STAT. 1 & 2
VICT. c. 106.

Stipend of curate engaged to serve interchangeably at different benefices belonging to the same incumbent.

How the stipends shall be adjusted where the curate is permitted to serve in two adjoining parishes.

Agreements for stipends to curates contrary to this act void.

Curate's stipend, if of the value of the benefice, liable to all charges.

Bishop may

STAT. 1 & 2
VICT. c. 106.

Proviso for
payment by
succeeding in-
cumbent,
where profits
during seques-
tration insuffi-
cient.

Licences to
curates, and
revocations
thereof, to be
entered in the
registry of the
diocese.

"CI. Provided always, and be it enacted, that if the profits of such benefice which shall have come to the hands of such sequestrator during the vacancy thereof shall not be sufficient to pay such stipend, the same, or so much thereof as shall remain unpaid, shall be paid to such curate by the succeeding incumbent of such benefice out of the profits thereof; and such bishop is hereby empowered and required, if necessary, to enforce payment of the same by monition, and by acquisition of the profits of such benefice.

"CII. And be it enacted, that every bishop who shall grant or revoke any licence to any curate under this act shall cause a copy of such licence or revocation to be entered in the registry of the diocese; and an alphabetical list of such licences and revocations shall be made out by the registrar of each diocese, and entered in a book, and kept for the inspection of all persons, upon payment of three shillings, and no more; and a copy of every such licence and revocation shall be transmitted by the said registrar to the churchwardens or chapelwardens of the parish, township, or place to which the same relates, within one month after the grant of such licence or revocation thereof, to be by them deposited in the parish chest: provided always, that every such registrar shall for every such copy transmitted to such churchwardens or chapelwardens as aforesaid be entitled to demand and receive from the incumbent of such benefice a fee of three shillings, and no more: provided also, that in case the archbishop shall, on appeal to him, annul the revocation of any such licence, the bishop by whom such revocation shall have been made shall, immediately on receiving notice from the archbishop that he had annulled the same, make such or the like order as is hereinbefore directed to be made on the revocation of a licence for non-residence being annulled, which order shall be binding on the registrar and churchwardens respectively to whom the same shall be addressed.

Repeal of part
of 6 & 7 Gul.
4, c. 77.

"CIII. And whereas in many benefices in Wales and in the counties adjacent thereunto many of the inhabitants are imperfectly or not at all instructed in the English language, and it is expedient that persons to be hereafter instituted or licensed to such benefices, should possess an adequate knowledge of the Welsh language: and whereas in and by an act passed in the session of parliament holden in the sixth and seventh years of his late majesty's reign, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' the said commissioners were directed to prepare and lay before his then majesty in council a scheme for preventing the appointment of any clergymen not fully conversant with the Welsh language to certain benefices with cure of souls in Wales: and whereas it is expedient to repeal such enactment, and instead thereof to enact other provisions of more general and extensive application: be it therefore enacted, that the said enactment shall be and the same is hereby repealed.

Provision for
benefices in
certain Welsh
dioceses.

"CIV. And be it enacted, that within the several dioceses of Saint Asaph, Bangor, Llandaff, and Saint David's, it shall and may be lawful for the bishop, if he shall think fit, to refuse institution or licence to any spiritual person who after due examination and inquiry shall be found unable to preach, administer the sacraments, perform other pastoral duties, and converse in the Welsh language: provided always, that any such spiritual person may, within one month after such refusal, appeal to the Archbishop of Canterbury, who shall either confirm such refusal or direct the bishop to grant institution or licence, as shall seem to the said archbishop just and proper: provided also, that nothing herein-before contained shall be construed to affect or abridge any rights which the inhabitants of any benefice within the said four Welsh dioceses may at present by law possess of entering a caveat against or objecting in due course of law to the institution, collation, or licence of any spiritual person, or of proceeding to procure the deprivation of any such person.

Provision for
curates in

"CV. And be it enacted, that all the provisions and powers of this act relating to the appointment of curates where the ecclesiastical duties are inadequately per-

month after refusal of such permission as aforesaid by the bishop, appeal to the archbishop of the province, who shall either confirm such refusal or grant such permission as to him may seem just and proper.

“XCVI. And be it enacted, that every curate who shall reside in the house of residence of any benefice which shall become vacant shall peaceably deliver up possession thereof, with the appurtenances, upon having six weeks notice from the spiritual person admitted, collated, instituted, or licensed to such benefice, provided such notice be given within six months from the time of such admission, collation, institution, or licence; and that in all other cases it shall be lawful for the incumbent of any benefice, with the permission signified in writing under the hand of the bishop of the diocese, or for such bishop, at any time, upon six months notice in writing, to direct any curate to deliver up the house of residence, and the offices, stables, gardens, and appurtenances thereto belonging, and such portion of the glebe land as shall have been assigned to such curate, and such curate shall thereupon peaceably deliver up the possession of the premises pursuant to such notice: and if any curate shall refuse to deliver up such premises in any or either of the cases aforesaid he shall pay to the spiritual person holding the benefice the sum of forty shillings for every day of wrongful possession after the service of such notice.

“XCVII. And be it enacted, that no curate shall quit any curacy to which he shall be licensed until after three months notice of his intention given to the incumbent of the benefice and to the bishop, unless with the consent of the bishop, to be signified in writing under his hand, upon pain of paying to the incumbent a sum not exceeding the amount of his stipend for six months, at the discretion of the bishop, such sum to be specified in writing under the hand of the bishop, which sum may in such case be retained out of the stipend if the same or any part thereof shall remain unpaid, or, if the same cannot be retained out of the stipend, may be recovered by the spiritual person holding the benefice by action of debt.

“XCVIII. And be it enacted, that it shall be lawful for the bishop to license any curate who is or shall be actually employed by any non-resident incumbent of any benefice within his diocese although no express nomination of such curate shall have been made to such bishop by the incumbent; and that the bishop shall have power, after having given to the curate sufficient opportunity of showing reason to the contrary, to revoke, summarily and without further process, any licence granted to any curate, and to remove such curate, for any cause which shall appear to such bishop to be good and reasonable: provided always, that any such curate may, within one month after service upon him of such revocation, appeal to the archbishop of the province, who shall confirm or annul such revocation as to him shall appear just and proper.

“XCIX. And be it enacted, that in every case in which a benefice shall be under sequestration, except for the purpose of providing a house of residence as aforesaid, it shall be lawful to the bishop and he is hereby required, if the incumbent shall not perform the duties of the said benefice, to appoint and license a curate or curates thereto, and to assign to him or them a stipend or stipends, not exceeding, in the case of any one such curate, the highest rate of stipend allowed by this act, nor where more than one curate is appointed, a stipend exceeding one hundred pounds to more than one such curate, such stipend or stipends to be paid by the sequestrator of such benefice out of the profits thereof: provided always, that not more than one curate shall be appointed to any such benefice in any case in which there is not more than one church, or the population does not exceed two thousand persons.

“C. And be it enacted, that upon the avoidance of any benefice, by death, resignation, or otherwise, the sequestrator appointed by the bishop shall, out of the profits thereof which shall come to his hands, pay to the curate or curates appointed by such bishop to perform the ecclesiastical duties of such benefice during the vacancy thereof, such stipend or stipends as shall be ordered to be paid to him or them by such bishop, not exceeding the respective stipends allowed by this act, and in proportion only to the time of such vacancy.

STAT. 1 & 2
VICT. c. 106.
Appeal.

Curate peaceably to deliver up possession of house of residence within six months after notice, or pay 40s. per day.

Curate not to quit curacy without three months notice to incumbent and bishop, under a penalty.

Bishop may license curates employed without nomination, revoke any licence, and remove the curate, subject to appeal to the archbishop.

Bishop may appoint curates to all sequestered benefices.

Stipend of curate of sequestered benefice to be paid by sequestrator.

STAT. 1 & 2
VICT. c. 106.

Sequestrations
under this act
to have pri-
ority.

The mode of
appealing to
the archbishop
of the pro-
vince.

Regulations
respecting
monitions and
sequestrations.

to the provisions of this act shall be used, exercised, or enforced, save and except such jurisdiction of the bishop and archbishop under this act; anything in any act or acts of parliament, or law or laws, or usage or custom, to the contrary notwithstanding.

"CX. And be it enacted, that every sequestration issued under the provisions of this act shall have priority, and the sums to be thereby recovered shall be paid and satisfied in preference to all other sequestrations, and the sums to be thereby recovered, except such sequestrations as shall be founded on judgments duly doctored before the passing of this act, and also except such sequestrations as shall have been issued before any sequestration under this act under the provisions of an act passed in the seventeenth year of the reign of King George the Third, for promoting the residence of the parochial clergy, and the monies to be recovered by such excepted sequestrations respectively.

"CXI. And be it enacted, that all appeals under the provisions of this act to any archbishop shall be in writing signed by the party appealing; and that in order to discourage frivolous appeals no proceeding shall be had in any such appeal until the appellant shall, if required, have given security in such form and to such amount as the archbishop shall direct of payment to the bishop of such costs as shall be awarded by the archbishop if he shall decide against the appellant; and that after such security, if required, shall have been given, the said archbishop shall forthwith, either by himself or by some commissioner or commissioners appointed under his hand from among the other bishops of his province, make or cause to be made inquiry into the matter complained of, and shall after such inquiry, and in the latter case after a report in writing from his said commissioner or commissioners, give his decision in such appeal in writing under his hand; and when he shall decide the merits of the appeal against the appellant he shall also award and direct whether any and what amount of costs shall be paid by the appellant to the bishop respondent; and in like manner when he shall decide in favour of the appellant he shall also award and direct whether any and what amount of costs shall be paid by the bishop respondent to the appellant.

"CXII. And be it enacted, that in all cases in which proceedings under the act are directed to be by monition and sequestration, such monition shall issue under the hand and seal of the bishop, and such monition, and any other instru-

not plead to the jurisdiction unless the declaration shew, that the cause of action accrued within a county palatine, and that, even then, the plea must aver either that the defendant dwells in the county, or that he had sufficient goods and chattels there by which he may be attached, otherwise the plea cannot be allowed, lest a failure of justice should ensue. I do not say whether that is too generally laid down or not. A similar doctrine is afterwards stated as to the claim of consueance (p. 632). Now, in the present case, the plea could not give any other jurisdiction in which the plaintiff could have a remedy; for, by the statute, no action at law lies any where. The defendant could not give the plaintiff a better writ. The only difficulty I felt as to the effect of sect. 74 arose from the words in sect. 53, that the bishop's licence 'shall be evidence of the amount of the salary so appointed to any curate in all courts of law or equity;' which seems to imply, that such a question might come before one of those courts. But that expression is not sufficient to take away the effect of sect. 74, if the facts bring the case within it. Then as to the averments in the plea. The non-residence is stated, merely to shew the authority of the bishop to appoint a salary. It is then alleged, that diffe-

rences and disputes arose, and are depending between the plaintiff and defendant, touching the stipend assigned in the licence, and the payment thereof, and of the arrears thereof, in the very words of sect. 53; clearly shewing the case to be one in which the bishop had jurisdiction: and then it is said that the action, so far as in the introductory part of the plea is mentioned, is brought touching and concerning the said stipend, and the payment and arrears thereof. There is, therefore, a pointed averment as to the bishop's jurisdiction over the subject-matter of this cause. Then it is said that the plea ought to shew, what the subjects of dispute were. But the effect of that statement would be directly to contravene the object of the legislature, and of the plea itself; inasmuch as, when the subjects of dispute were so placed on the record, they might be traversed, and so would be brought, at once, before another tribunal than that of the bishop, namely, a jury, or this court. A mere traverse of the fact, generally stated, that disputes had arisen, would not have that effect. At all events, the plea here follows the words of the act, and is sufficient." *West (Clerk) v. Turner (Clerk)*, 6 A. & E. 614; vide etiam *Rex v. Peterborough (Bishop of)*, 3 B. & C. 48.

formed shall within the several dioceses of Saint Asaph, Bangor, Llandaff, and Saint David's, extend and apply to cases wherein the bishop shall see reason to believe that the ecclesiastical duties of any benefice are not satisfactorily performed by reason of the insufficient instruction in the Welsh language of the spiritual person serving such benefice.

"CVI. And be it enacted, that no spiritual person shall serve more than two benefices in one day unless in case of unforeseen and pressing emergency, in which case the spiritual person who shall so have served more than two benefices shall forthwith report the circumstance to the bishop of the diocese.

"CVII. And be it enacted, that all the powers, authorities, provisions, regulations, matters, and things in this act contained, in relation to bishops in their dioceses, shall extend and be construed to extend to the archbishops in the respective dioceses of which they are bishops, and also in their own peculiar jurisdictions, as fully and effectually as if the archbishops were named with the bishops in every such case.

"CVIII. And be it enacted, that every archbishop and bishop, within the limits of whose province or diocese respectively any benefice, exempt or peculiar, shall be locally situate, shall, except as herein otherwise provided, have, use, and exercise all the powers and authorities necessary for the due execution by them respectively of the provisions and purposes of this act, and for enforcing the same with regard thereto respectively, as such archbishop and bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop; and where any benefice, exempt or peculiar, shall be locally situate within the limits of more than one province or diocese, or where the same or any of them shall be locally situate between the limits of the two provinces, or between the limits of any two or more dioceses, the archbishop or bishop of the cathedral church to whose province or diocese the parish church of the same respectively shall be nearest in local situation shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of this act, and enforcing the same, with regard thereto respectively, as such archbishop or bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively, and the same for all the purposes of this act shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; provided that the peculiars belonging to any archbishopric or bishopric, though locally situate in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this act as for all other purposes of ecclesiastical jurisdiction.

"CIX. And be it enacted, that in every case in which jurisdiction is given to the bishop of the diocese or to any archbishop, under the provisions of this act, and for the purposes thereof, and the enforcing the due execution of the provisions thereof, all other and *concurrent jurisdiction* in respect thereof *shall*, except as herein otherwise provided, *wholly cease*(1), and no other jurisdiction in relation

STAT. 1 & 2
VICT. c. 106.
certain Welsh
dioceses.

No spiritual
person to serve
more than two
benefices in
one day.

Provisions
relating to
bishops to
apply to arch-
bishops in their
own dioceses.

Power of arch-
bishops and
bishops as to
exempt or
peculiar bene-
fices, &c.

Where juris-
diction is given
to bishop, &c.
all concurrent
jurisdiction to
cease.

(1) *Concurrent jurisdiction . . . shall . . . wholly cease*.—It was holden under Stat. 57 Geo. 3, c. 99, s. 74, (of which Stat. 1 & 2 Vict. c. 106, s. 109, is a re-enactment,) that the common law courts were entirely ousted of jurisdiction, in disputes touching any stipend appointed by the bishop to a curate, under that act, or the payment or arrears of such salary.

Therefore, in *assumpsit* by a curate against a rector for such stipend, a plea founded on Stat. 57 Geo. 3, c. 99, was considered to have been properly pleaded in bar, and not in abatement.

That a special plea, founded on that statute, was sufficient, if it alleged, that disputes had arisen and were depending, touching the stipend, and the payment thereof, and of the arrears thereof, and that the action was

brought concerning the stipend and the payment thereof, and of the arrears thereof, touching which the disputes had arisen, within the meaning of the statute, not further specifying the subjects of dispute:—Mr. Justice *Patteson* observing, "Section 74 of Stat. 57 Geo. 3, c. 99, is quite general in its enactment, directing that, in every case in which jurisdiction is given to the bishop for enforcing the due execution of the act, all other jurisdiction in respect thereof shall cease. If, therefore, it be shewn sufficiently by the plea, that the bishop has jurisdiction, the jurisdiction of this court is taken away. Then it is said that the plea here should have been in abatement. In 1 *Tidd's Practice*, (631, 9th ed.) it is laid down, that in transitory actions the defendant can-

STAT. 1 & 2
VICT. C. 106.

Sequestrations
under this act
to have priority.

The mode of
appealing to
the archbishop
of the province.

Regulations
respecting
monitions and
sequestrations.

to the provisions of this act shall be used, exercised, or enforced, save and except such jurisdiction of the bishop and archbishop under this act; anything in any act or acts of parliament, or law or laws, or usage or custom, to the contrary notwithstanding.

"CX. And be it enacted, that every sequestration issued under the provisions of this act shall have priority, and the sums to be thereby recovered shall be paid and satisfied in preference to all other sequestrations, and the sums to be thereby recovered, except such sequestrations as shall be founded on judgments duly docketed before the passing of this act, and also except such sequestrations as shall have been issued before any sequestration under this act under the provisions of an act passed in the seventeenth year of the reign of King George the Third, for promoting the residence of the parochial clergy, and the monies to be recovered by such excepted sequestrations respectively.

"CXI. And be it enacted, that all appeals under the provisions of this act to any archbishop shall be in writing signed by the party appealing; and that in order to discourage frivolous appeals no proceeding shall be had in any such appeal until the appellant shall, if required, have given security in such form and to such amount as the archbishop shall direct of payment to the bishop of such costs as shall be awarded by the archbishop if he shall decide against the appellant; and that after such security, if required, shall have been given, the said archbishop shall forthwith, either by himself or by some commissioner or commissioners appointed under his hand from among the other bishops of his province, make or cause to be made inquiry into the matter complained of, and shall after such inquiry, and in the latter case after a report in writing from his said commissioner or commissioners, give his decision in such appeal in writing under his hand; and when he shall decide the merits of the appeal against the appellant he shall also award and direct whether any and what amount of costs shall be paid by the appellant to the bishop respondent; and in like manner when he shall decide in favour of the appellant he shall also award and direct whether any and what amount of costs shall be paid by the bishop respondent to the appellant.

"CXII. And be it enacted, that in all cases in which proceedings under this act are directed to be by monition and sequestration, such monition shall issue under the hand and seal of the bishop, and such monition, and any other instru-

not plead to the jurisdiction unless the declaration shew, that the cause of action accrued within a county palatine, and that, even then, the plea must aver either that the defendant dwells in the county, or that he had sufficient goods and chattels there by which he may be attached, otherwise the plea cannot be allowed, lest a failure of justice should ensue. I do not say whether that is too generally laid down or not. A similar doctrine is afterwards stated as to the claim of consueance (p. 632). Now, in the present case, the plea could not give any other jurisdiction in which the plaintiff could have a remedy; for, by the statute, no action at law lies any where. The defendant could not give the plaintiff a better writ. The only difficulty I felt as to the effect of sect. 74 arose from the words in sect. 53, that the bishop's licence 'shall be evidence of the amount of the salary so appointed to any curate in all courts of law or equity;' which seems to imply, that such a question might come before one of those courts. But that expression is not sufficient to take away the effect of sect. 74, if the facts bring the case within it. Then as to the averments in the plea. The non-residence is stated, merely to shew the authority of the bishop to appoint a salary. It is then alleged, that differ-

ences and disputes arose, and are dependent between the plaintiff and defendant, touching the stipend assigned in the licence, and the payment thereof, and of the arrears thereof, in the very words of sect. 53; clearly shewing the case to be one in which the bishop had jurisdiction: and then it is said that the action, so far as in the introductory part of the plea is mentioned, is brought touching and concerning the said stipend, and the payment and arrears thereof. There is, therefore, a pointed averment as to the bishop's jurisdiction over the subject-matter of this cause. Then it is said that the plea ought to shew, what the subjects of dispute were. But the effect of that statement would be directly to contravene the object of the legislature, and of the plea itself; inasmuch as, when the subjects of dispute were so placed on the record, they might be reversed, and so would be brought, at once, before another tribunal than that of the bishop, namely, a jury, or this court. A mere traverse of the fact, generally stated, that disputes had arisen, would not have that effect. At all events, the plea here follows the words of the act, and is sufficient." *West (Clerk) v. Turner (Clerk)*, 6 A. & E. 614; vide etiam *Rex v. Peterborough (Bishop of)*, 3 B. & C. 48.

ment or notice issued in pursuance of the provisions of this act, and not otherwise specially provided for, shall be served personally upon the spiritual person therein named or to whom it shall be directed, by showing the original to him and leaving with him a true copy thereof, or, in case such spiritual person cannot be found, by leaving a true copy thereof at his usual or last known place of residence, and by affixing another copy thereof upon the church door of the parish in which such place of residence shall be situate, and also, in the case of such monition, by leaving another copy thereof with the officiating minister or one of the churchwardens of the said parish, and also by affixing another copy thereof on the church door of the parish in which the benefice of such spiritual person shall be situate; and such monition or other instrument, or notice as aforesaid shall, immediately after the service thereof, be returned into the consistorial court of such bishop, and be there filed, together with an affidavit of the time and manner in which the same shall have been served; and thereupon, in case of such monition, it shall be competent to the party monished to show cause, by affidavit or otherwise, as the case may require, why a sequestration should not issue according to the tenor of such monition; and if such spiritual person shall not, within the time assigned by such monition, show sufficient cause to the contrary, such sequestration shall issue under the seal of the consistorial court of such bishop, and shall be served and returned into the registry of such court in like manner as is hereinbefore directed with respect to monitions issued under the provisions of this act.

STAT. 1 & 2
VICT. c. 106.

“CXIII. Provided always, and be it enacted, that in any case of non-residence in which a monition shall have been served upon any spiritual person under the provisions of this act, requiring such spiritual person to reside on his benefice, no sequestration shall issue until an order requiring such spiritual person to proceed and reside upon such benefice within thirty days, as hereinbefore enacted, shall have been served upon him in the same manner as is hereinbefore directed as to the service of monitions.

Sequestration not to issue after monition to reside, until service of order.

“CXIV. And be it enacted, that all penalties and forfeitures which shall be incurred under this act by any spiritual person holding a benefice shall and may be sued for and recovered in the court of the bishop of the diocese in which such benefice is situate, and by some person duly authorized for that purpose by such bishop by writing under his hand and seal, and in no other court, and by or at the instance of no other person whatever; and that the payment of every such penalty or forfeiture, together with the reasonable expense incurred in recovering the same, shall and may be enforced by monition and sequestration; and that it shall and may be lawful for such bishop, by any order made for that purpose in writing under his hand, and to be registered in the registry of the diocese, which the registrar is hereby required to do, to direct that every such penalty or forfeiture so recovered as aforesaid, and which shall not have been remitted in whole or in part, or so much thereof as shall not have been remitted, shall be applied towards the augmentation or improvement of such benefice or of the house of residence thereof, or of any of the buildings or appurtenances thereof.

Recovery of penalties against spiritual persons.

“CXV. And be it enacted, that all fees, charges, costs, and expenses incurred or directed to be paid by any spiritual person holding any benefice under the provisions of this act, which shall remain unpaid for the period of twenty-one days after demand thereof in writing delivered to or left at the usual or last place of abode of such spiritual person, may be recovered by monition and sequestration; provided always, that it shall be lawful for the person or persons of whom any such fees, costs, charges, and expenses shall be so demanded to apply to the bishop of the diocese to order the taxation thereof, and such bishop shall thereupon order some proper person to tax and settle the same; and the certificate of allowance, by the person so to be appointed, of such fees, costs, charges and expenses so to be taxed, shall be final.

Recovery of fees, &c.

“CXVI. And be it enacted, that if the registrar of any diocese shall refuse or neglect to make any entry, or to do any other matter or thing prescribed by this act, he shall forfeit for every such refusal or neglect the sum of five pounds.

Penalty on registrar for neglect.

“CXVII. And be it enacted, that all penalties and forfeitures under this act

Recovery of

STAT. 1 & 2
VICT. c. 106.

penalties against laymen or unbeneficed clergymen.

Penalties not recoverable for more than one year.

Application of penalties.

Commencement and conclusion of the year.

How months to be calculated.

Certified copy of entry of licence to be evidence.

Statements, how to be verified.

Definition of the term "cathedral preferment,"

and "benefice."

Who to be considered patron.

incurred by persons not spiritual, or by spiritual persons not holding benefice, shall be sued for and recovered by any person who shall sue for the same by action of debt in any of her majesty's courts of Record at Westminster.

"CXVIII. And be it enacted, that no penalty shall be recovered against any spiritual person, under the provisions of this act, other or further than those which such spiritual person may have incurred subsequent to the first day of January, in the year immediately preceding the year in which such proceedings shall be commenced.

"CXIX. And be it enacted, that all penalties recovered under the provisions of this act, the application of which is not specially directed thereby, shall be paid over to the treasurer of the governors of the bounty of Queen Anne, to be applied to the purposes of the said bounty.

"CXX. And be it enacted, that for all the purposes of this act, except as herein otherwise provided, the year shall be deemed to commence on the first day of January, and be reckoned therefrom to the thirty-first day of December, both inclusive.

"CXXI. And be it enacted, that for all the purposes of this act the months therein named shall be taken to be calendar months, except in any case in which any month or months are to be made up of different periods less than a month, and in every such case thirty days shall be deemed a month.

"CXXII. And be it enacted, that in every case where by the provisions of this act the copy of any licence is required to be filed or entered in the registry of the diocese, a copy thereof, certified by the registrar, shall be admissible as evidence in all courts and places whatever.

"CXXIII. And be it enacted, that when authority is given by this act to any archbishop or bishop to require any statement or facts to be verified by evidence, or to inquire or to cause inquiry to be made into any facts, such archbishop or bishop may require any such statement or any of such facts to be verified in such manner as the said archbishop or bishop shall see fit; and that when any oath, affidavit, or affirmation, or solemn declaration, is or may be by or in pursuance of the provisions of this act required to be made, such oath, affidavit, or affirmation, or solemn declaration, shall and may be made either before such archbishop or bishop, or the commissioner or commissioners, or one of them, of such archbishop or bishop respectively, or before some ecclesiastical judge or his surrogate, or before a justice of the peace, or before a master or master extraordinary in Chancery, who are hereby authorized and empowered in all and every of the cases aforesaid to administer such oath, affidavit, and affirmation, or to take such declaration, as the case may be.

"CXXIV. And be it enacted, that in all cases where the term 'cathedral preferment' is used in this act, it shall be construed to comprehend (unless it shall otherwise appear from the context) every deanery, archdeaconry, prebend, canonry, office of minor canon, priest vicar, or vicar choral, having any prebend or endowment belonging thereto, or belonging to any body corporate consisting of persons holding any such office, and also every precentorship, treasurer'ship, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church, and every mastership, wardenship, and fellowship in any collegiate church; and that in all cases where the term 'benefice' is used in this act, the said term shall be understood and taken to mean benefice with cure of souls, and no other, (unless it shall otherwise appear from the context,) and therein to comprehend all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging or reputed to belong, or annexed or reputed to be annexed, to any church or chapel, anything in any other act to the contrary notwithstanding.

"CXXV. (1) And be it enacted, that in every case in which the consent of, or the execution of any deed or deeds, instrument or instruments, by the patron of any cathedral preferment, or of any benefice, sinecure rectory, or vicarage, or the

owner or improprisor of any lands, tithes, tenements, or hereditaments, is required for carrying into effect any of the purposes of this act, and also in every case in which it may be necessary to give any notice to any such patron for any of the said purposes, the consent of execution by or notice to the patron or person entitled to make donation or present or nominate to such cathedral preferment, benefice, sinecure rectory, or vicarage, in case the same were then vacant, or the person or persons who shall be in the actual possession, receipt, or perception of the rents, proceeds, or profits of such lands, tithes, tenements, or hereditaments for an estate or interest not less than an estate for life, shall respectively be sufficient.

STAT. 1 & 2
VICT. c. 106.

“CXXVI.(1) And be it enacted, that in any case in which the consent of the patron of any benefice shall be required to the exercise of any power given by this act, or in which any notice shall be required by this act to be given to the patron of any benefice, and the patronage of such benefice shall be in the crown, the consent of the crown to the exercise of such power shall be testified, and such notice shall be given respectively in the manner hereinafter mentioned; (that is to say,) if such benefice shall be above the yearly value of twenty pounds in the Queen's Books, the instrument by which the power shall be exercised shall be executed by and any such notice shall be given to the lord high treasurer or first lord commissioner of the Treasury for the time being; and if such benefice shall not exceed the yearly value of twenty pounds in the Queen's Books, such instrument shall be executed by and any such notice shall be given to the lord high chancellor, lord keeper or lords commissioners of the great seal, for the time being; and if such benefice shall be within the patronage of the crown in right of the duchy of Lancaster, such instrument shall be executed by and any such notice shall be given to the chancellor of the said duchy for the time being; and the execution of such instrument by and any such notice given to such person or persons shall be deemed and taken for the purposes of this act to be an execution by and a sufficient notice to the patron of the benefice.

How consent
of patron to
be testified,
where patron-
age in the
crown.

“CXXVII.(1) And be it enacted, that in any case in which the consent of the patron of any benefice shall be required to the exercise of any power given by this act, and the patron of such benefice shall be a minor, idiot, lunatic, or feme covert, it shall be lawful for the guardian or guardians, committee or committees, or husband of such patron, (but in case of a feme covert with her consent in writing,) to execute the instrument by which such power shall be exercised in testimony of the consent of such patron; and such execution shall for the purposes of this act be deemed and taken to be an execution by the patron of the benefice.

How where
patron is an
incapacitated
person.

“CXXVIII.(1) And be it enacted, that in any case in which the consent of the patron of any benefice shall be required to the exercise of any power given by this act, or in which any notice shall be required by this act to be given to the patron of any benefice, and the advowson and right of patronage of such benefice shall be part of the possessions of the duchy of Cornwall, the consent of the patron of such benefice to the exercise of such power shall be testified and such notice shall be given respectively in the manner hereinafter mentioned; (that is to say,) the instrument by which the power shall be exercised shall be executed by and any such notice shall be given to the Duke of Cornwall for the time being, if of full age, but if such benefice shall be within the patronage of the crown in right of the duchy of Cornwall, such instrument shall be executed by and any such notice shall be given to the same person or persons who is or are by this act authorized to testify the consent of the crown to the exercise of any power given by this act in respect of any benefice in the patronage of the crown; and the execution of such instrument by and any such notice given to such person or persons shall be deemed and taken for the purposes of this act to be an execution by and a sufficient notice to the patron of the benefice.

How where
patronage is
attached to the
duchy of Corn-
wall.

“CXXIX. And be it enacted, that the distance between any two benefices for Distance, how

(1) Vide Stat. 4 & 5 Vict. c. 39, s. 24.

STAT. 1 & 2
VICT. c. 106.
to be com-
puted.

the purposes of this act shall be computed from the church of the one to the church of the other by the nearest road or footpath, or by an accustomed ferry; and if on one of the said benefices there be two or more churches, then the distance shall be computed from or to the nearest of such churches, as the case may be; or if on one of such benefices there be no church, then in such manner as shall be directed by the bishop of the diocese in which the benefice proposed to be taken and held by any spiritual person in addition to one already held by him shall be locally situate.

Population,
how to be
computed.

"CXXX. And be it enacted, that whenever the population of any place shall be required by this act to be ascertained, the same shall be taken from the last returns of population made under any act of parliament for that purpose at the time when the question shall arise, if such returns shall apply to the place respecting which the question shall be, but if such place shall only form part of a parish or district named in such returns, then such returns shall be taken to represent truly the population of the parish or district named therein, and from them the population of the place required shall be computed, according to the best evidence of which the subject shall be capable.

Tables of fees
to be taken by
officers with
respect to
admissions to
benefices, by
whom to be
established.

"CXXXI. And be it enacted, that the Archbishop of Canterbury, the lord high chancellor, and the Archbishop of York, with the assistance of the vicar-general of the said two archbishops, and of one of the masters of the high court of Chancery, to be selected for that purpose by the lord high chancellor, shall ordain and establish tables of fees, and shall have power from time to time to amend or alter such tables of fees, to be taken in respect of donation, presentation, nomination, collation, institution, installation, induction, or licence, or any instrument, matter, or thing connected with the admission of any spiritual person to any cathedral preferment or any benefice throughout England and Wales, by any officer, secretary, clerk, or minister to whom belong the duties of preparing, sealing, transacting, or doing any of such instruments, matters, and things; and before the fees contained in such tables or such amended tables shall be demanded, taken, or received by any of the said persons, such tables or amended tables shall be submitted to her majesty's privy council, who may disallow the same or any part thereof; and notice shall be given in the London Gazette of such submission to the privy council; and if within the space of three months from the time of giving such notice the same shall not be disallowed, such fees, or such parts thereof shall not be disallowed, shall from and after the expiration of the said three months be deemed and taken to be lawful fees, and thenceforward such fees, and such others, save only such as may be altered or subsequently ordained, as before provided, shall be demanded, taken, or received by any of such officers, secretaries, clerks, or ministers respectively, under any colour or pretence whatsoever: provided always, that the said persons shall not ordain or establish any fees exceeding the fee which for the twenty years next preceding the passing of this act shall have been usually taken for or in respect of the same instrument, matter, or thing in case of admission to any cathedral preferment or any benefice within the diocese of London: provided also, that the said persons shall have power to ordain graduated scales of fees in respect of benefices below the yearly value of five hundred pounds.

Act not to
affect powers
of bishops.

"CXXXII. And be it enacted, that nothing in this act contained shall be deemed, construed, or taken to derogate from, diminish, prejudice, alter, or affect otherwise than is expressly provided, any powers, authorities, rights, or jurisdictions already vested in or belonging to any archbishop or bishop under or by virtue of any statute, canon, usage, or otherwise howsoever.

Act not to
extend to
Ireland.

"CXXXIII. And be it enacted, that no provision in this act contained shall extend or be construed to extend to that part of the United Kingdom called Ireland."

"THE FIRST SCHEDULE REFERRED TO IN THE FOREGOING ACT.

STAT. 1 & 2
VICT. c. 106.

"Questions to be annually transmitted by each Bishop to every Spiritual Person holding any Benefice within his Diocese or Jurisdiction.

"1. What is the name of your benefice?

"2. In what county?

"3. Name of incumbent, and date of admission?

"4. Is there a glebe house belonging to your benefice?

"5. Were you resident in the glebe house, or, there being no glebe house, or none fit for your residence, were you resident in any and what house appointed by the bishop in his licence, during the last year, for the term prescribed by law?

"6. Being non-resident, were you performing the duties of your parish for the said time? If so, state where you resided, and at what distance from the church or chapel.

"7. Were you in the last year serving any other church or chapel in the neighbourhood as incumbent? If so, state the name thereof, and the distance from the above-named church or chapel; and when and for how long you served the same?

"8. Were you serving any other church or chapel in the neighbourhood as curate? If so, state the name thereof, and the distance from your own church or chapel; and when and for how long you served the same.

"9. What are the services in your church? Is a sermon or lecture given at every or which of such services?

"10. Were these services duly performed last year? If not, for what reason?

"11. What are the services in your chapel or chapels, if any? Is a sermon or lecture given at every or which of such services?

"12. Were these services duly performed last year? If not, for what reason?

"13. Have you any assistant curate or curates? If so, state his or their names; also whether he or they is or are licensed, and the amount of his or their stipend or respective stipends.

"14. If you were non-resident, were you so by licence?

"15. If non-resident by licence, state the ground of licence, and the time when it will expire.

"16. If non-resident without licence, were you so by exemption?

"17. If non-resident by exemption, state the ground of exemption, and whether such exemption was claimed for the whole year, or during what part thereof.

"18. If you were non-resident, and did not perform the duties of your benefice, what ecclesiastical duties, if any, were you performing, and where do you now reside?

"OBSERVE. The foregoing questions are to be answered by every incumbent, whether resident or not.

"Further Questions to be answered, in addition to the foregoing, in case the Incumbent be non-resident.

"19. What is the name of your curate?

"20. Does he reside in the glebe house?

"21. Does he pay any and what rent or consideration for the use of the glebe house; or is any deduction made on account thereof from the stipend assigned to him in his licence?

"22. If not resident in the glebe house, does he reside in the parish?

"23. If not resident in the parish, where does he reside, and at what distance from your church or chapel?

"24. Does he serve any other church or chapel as incumbent? If so, state the name thereof, and the distance from your own church or chapel.

"25. Does he serve any other church or chapel as curate? If so, state the name thereof and the distance from your own church or chapel.

"26. Is he licensed?

"27. What is his salary from you?

STAT. 1 & 2
VICT. C. 106.

"28. Has he from you any other allowances or emoluments? State what and the average value thereof respectively.

"29. What is the gross and what is the net annual value of your benefice?

"N.B. All the questions have reference to the year immediately preceding that in which they are transmitted.

"THE SECOND SCHEDULE REFERRED TO IN THE FOREGOING ACT.

"Form of the Mortgage.

"This indenture, made the _____ day of _____ in the year of our Lord _____ between the right reverend father in God _____ lord bishop of _____ of the one part, and _____ of the other part: whereas the said bishop, pursuant to the directions of an act passed in the second year of the reign of her majesty Queen Victoria, intituled, 'An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy,' hath determined to levy and raise the sum of _____ pounds, to be laid out and expended in building, rebuilding, or repairing, [*as the case may be,*] the parsonage house and other necessary offices upon the glebe belonging to the rectory, vicarage, &c. of _____ [*describing it*], [*or, in purchasing a house and land for the residence and occupation of the incumbent of the rectory, &c.*]: and whereas the said _____ hath agreed to lend and advance the sum of _____ pounds, upon a mortgage of the glebe, tithes, rent-charges, rents, and other profits and emoluments of the said benefice, pursuant to the directions and the true intent and meaning of the said act. Now this indenture witnesseth, that the said bishop, in consideration of the sum of _____ pounds, paid at or before the sealing and delivery hereof into the hands of (a person or persons [*as the case shall be*] nominated by the said bishop to receive the same, pursuant to the directions of the said act, (which nomination is hereunto annexed,) and which receipt of the said sum of _____ pounds the said _____ have or hath acknowledged by an endorsement on this deed,) hath granted, bargained, sold, and demised, and by these presents doth grant, bargain, sell, and demise, unto the said _____ his executors, administrators, and assigns, all the glebe lands, tithes, rent charges, rents, moduses, compositions for tithes, salaries, stipends, fees, gratuities, and other profits and emoluments whatsoever, arising, coming, growing, renewing, or payable to the incumbent of the said benefice in respect thereof, with all and every the rights, members, and appurtenances thereunto belonging; to have, hold, receive, take, and enjoy the said premises and their appurtenances unto the said _____ his executors, administrators, and assigns, from henceforth for the term of thirty-six years, fully to be complete and ended: provided always, that if the incumbent for the time being of the said benefice and his successors shall, from and after the expiration of the first year of the said term, yearly and every year, (such year to be computed from the date hereof,) pay to the said _____ his executors, administrators, and assigns, one thirtieth part of the sum of _____ pounds, until the whole thereof shall be repaid, and at the end of the first and each succeeding year pay interest at the rate of _____ per cent. per annum on the said sum of _____ pounds, or so much thereof as shall from time to time remain unpaid, according to the true intent and meaning of the said act and of these presents, and also all costs and charges which shall be occasioned by the non-payment thereof, these presents and everything herein contained shall be void: provided also, that it shall be lawful for the incumbent for the time being of the said benefice, and his successors, peaceably and quietly to hold and enjoy the said glebe lands, tithes, rent-charges, rents, moduses, compositions for tithes, stipends, fees, gratuities, and other emoluments and profits whatsoever, arising or to arise from or in respect of the said benefice, until default shall be made by him or them respectively in the payment of the interest and principal, or some part thereof, at the times and in the manner aforesaid. In witness, &c.

STAT. 1 & 2
VICT. c. 107.
7 & 8 Geo. 4,
c. 72.

1 & 2 Gul. 4,
c. 38.

2 & 3 Gul. 4,
c. 61.

1 Vict. c. 75.

To remove doubts as to jurisdiction of bishops in certain cases, with respect to the patronage of churches and chapels, under 1 & 2 Gul. 4, c. 38, a. 2.

and fifty-ninth years of His late Majesty, and in the third year of the Reign of His present Majesty, for building and promoting the building of additional Churches in populous Parishes;’ and whereas another act was passed in the seventh and eighth years of the reign of his majesty King George the Fourth, intituled, ‘An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes;’ and whereas another act was passed in the first and second years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to amend and render more effectual an Act passed in the seventh and eighth years of the Reign of His late Majesty, intituled, “An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes;”’ and whereas another act was passed in the second and third years of the reign of his said late majesty, to render more effectual the aforesaid act passed in the fifty-ninth year of the reign of his majesty King George the Third; and whereas another act was passed in the first year of the reign of her present majesty Queen Victoria, intituled, ‘An Act to prolong for ten years Her Majesty’s Commission for building new Churches;’ and whereas it is expedient to explain, amend, and render more effectual some of the provisions of the said several recited acts; be it therefore enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that where the population of any parish or extra-parochial place, according to the returns then last made in pursuance of any act or acts of parliament, shall amount to two thousand persons, and where the existing church or churches, chapel or chapels, situate therein, do not afford accommodation for more than one third of the inhabitants of such parish or extra-parochial place for their attendance upon divine service according to the rites of the united church of England and Ireland, or where, in any parish or extra-parochial place, three hundred persons, whatever may be the amount of the whole population in any such parish or extra-parochial place, shall be resident upwards of two miles from the existing church or chapel, and within one mile of the site upon which a new chapel is built or proposed to be built and endowed under the provisions of the said recited act passed in the first and second years of his late majesty King William the Fourth, or this act, and where, in any such case, as aforesaid, any person or persons belonging to the church of England shall have built, or shall declare his, her, or their intention of building, a church or chapel, or shall have purchased or shall hereafter purchase, or shall declare his, her, or their intention of purchasing, any building, fit, in the opinion of the bishop of the diocese, to be used as a church or chapel for the performance of divine service as aforesaid, such church, chapel, or building being in such a situation within the said parish or extra-parochial place as shall, in the opinion of the bishop of the diocese, be adapted to the convenience of that portion of the inhabitants for whom such additional accommodation is required, it shall and may be lawful, in any such case as aforesaid, for such bishop, if he shall see fit, to declare by writing under his hand and seal that, (after certain conditions are or shall have been already performed with respect to endowment and the providing a fund for the repairs of such church or chapel, and the appropriation of free seats, which are in the said last-mentioned act in such cases more particularly specified,) the right of nominating a minister to such church or chapel, when so built or purchased, shall for ever thereafter be vested in the person or persons so building and endowing or purchasing and endowing the same, his, her, or their heirs and assigns, or in certain trustees, or in some ecclesiastical person or body corporate, and his and their successors, in the said last-mentioned act specified; provided always, that nothing herein contained shall be construed to alter or repeal the provisions in the said last-mentioned act respecting any church or chapel under the said act intended for the accommodation of three hundred persons resident upwards of two miles from the existing church or chapel being built nearer than two miles from such existing church or chapel; provided also, that it shall be left to the bishop of the diocese to determine whether one third part of the sittings required in the said last-mentioned act to be free in every church or chapel built or to be built under the provi-

sions of the said act shall be free, or whether the same or any part thereof shall be let at such low rents as such bishop may from time to time direct; anything in the said last-mentioned act or this act contained to the contrary notwithstanding.

“I. And be it further enacted, that where notices by the said last-recited act are required to be sent to or served upon the patron and incumbent a notice to the patron alone shall be sufficient in those cases where, at the time such notices are required to be sent or served as aforesaid, there shall be no incumbent of the parish in which such church or chapel is built or proposed to be built and endowed under such last-recited act or this act, and where such parish shall have remained without an incumbent for the space of twelve months.

“III. And be it further enacted, that for the purposes of the said last-mentioned act or this act an endowment of forty pounds per annum arising out of houses, lands, tithes, rent-charges, tenements, or other hereditaments, or any or either of the said securities, whether wholly or jointly, shall be considered as equivalent to the sum of one thousand pounds directed by the said recited act to be secured in those cases where the bishop of the diocese is authorized, if he sees fit, to grant the perpetual right of nominating a minister in the manner in the said last-mentioned act or this act specified.

“IV. And be it further enacted, that in those cases where by the said last-mentioned act her majesty's commissioners for building new churches are empowered, if they shall see fit, with the consent of the bishop of the diocese, to declare the right of nominating a minister to such church or chapel, built or intended to be built and endowed to the satisfaction of the said commissioners in the manner in the said last-mentioned act specified, it shall and may be lawful for the said commissioners to accept, by way of endowment for such church or chapel, such sum as they may consider satisfactory, whether the same be secured on land or on money charged on land or vested in the funds, or on houses, tenements, or other hereditaments, or any or either of the said securities, whether wholly or jointly; and it shall be lawful for the said commissioners, if they shall think fit, in any or either of such modes of endowment, to declare, with the consent of the bishop of the diocese, the right of nominating a minister as aforesaid, in like manner as they are empowered to do under the said last-mentioned act, when the other conditions therein mentioned shall have been complied with.

“V. And be it further enacted, that the powers granted by the said last-mentioned act to the said commissioners with respect to the granting the right of nomination as aforesaid, and the provisions of such act and of this act relating thereto, shall extend to cases where a building has been or shall be purchased by any person or persons, fit, in the opinion of the said commissioners, to be used, when consecrated, as a church or chapel for the performance of divine service as aforesaid.

“VI. And be it further enacted, that all grants, conveyances, and assurances of any site for any church or chapel, or any churchyard, under the provisions of the said last-mentioned act or this act, in respect of any messuages, buildings, lands, grounds, tenements, or hereditaments, whether belonging to her majesty, as part of the duchy of Cornwall or of the duchy of Lancaster, or otherwise, or to any body or persons whatever, may and shall be made according to the form following, or in such other form as the case may require, or as near thereto as the circumstances of the case will admit; *videlicet*,

“‘I, [or We, or the corporate title, if a corporation,] under the authority of an act passed in the first year of the reign of her present majesty, intituled, “An Act to amend and render more effectual the Church Building Acts,” do hereby freely and voluntarily give to her majesty's commissioners for building new churches, [or to
 .] [as the case may require,] *and by these presents freely and voluntarily, and without any valuable consideration*, [if the lands, et cetera, are conveyed for a valuable consideration leave out the words in italics, and insert “do for and in consideration of the sum of
 to me, or us, or the
 paid,”] hereby, under the authority of the said recited act, grant, convey,

STAT. 1 & 2
VICT. c. 107.

Certain notices may be served on patron alone if there be no incumbent.

In certain cases an endowment of 40*l.* per annum from houses, lands, &c. to be considered as equivalent to 1000*l.* invested.

Commissioners for building new churches may accept by way of endowment real and personal securities, wholly or jointly.

Powers of commissioners applicable to certain buildings when the same are consecrated.

Form of grant or conveyance with respect to churches and chapels under 1 & 2 Gul. 4, c. 38.

STAT. 1 & 2
VICT. C. 107.

and release to the said all [describing the premises to be conveyed], and all [my, or our, or the] right, title, and interest of [if a corporation] to and in the same and every part thereof, to hold to the said and their successors for the purposes of the said act, and to be devoted, when consecrated, to ecclesiastical purposes for ever, by virtue and according to the true intent and meaning of the before-mentioned act. In witness, et cetera.

"And all such conveyances and assurances shall be valid and effectual in the law to all intents and purposes, and shall be a complete bar to all estates tail and other estates, rights, titles, trusts, interests, and incumbrances whatsoever.

To remove doubts as to the meaning and extent of the 23rd section of the Act 1 & 2 Gal. 4, c. 38.

"VII. And whereas it is by the said recited act passed in the first and second years of his late majesty King William the Fourth, amongst other things, enacted, that in certain parishes of large extent, where there exist chapels of ease at a considerable distance from the parish church, having chapelries, townships, or districts belonging or supposed to belong thereto, when any person or persons should be willing to endow any such chapel with such a provision secured upon land, money in the funds, tithes, or other hereditaments as should in the opinion of the bishop of the diocese be sufficient to ensure a competent stipend to the minister of such chapel, it should be lawful for the bishop, with certain consents therein mentioned, to declare that such chapel, when so endowed, should thenceforth be separate from and independent of the parish church, and that the chapel, township, or district belonging or supposed to belong thereto should be thenceforth a separate and distinct parish for all spiritual purposes; and that it should be lawful for the patron, with the consent of the incumbent, to make any agreement with the bishop of the diocese touching the future right of nomination to such chapel, such agreement to take effect in the manner therein mentioned; and whereas doubts may arise as to the extent and meaning of such provisions: be it therefore enacted, that such provisions shall extend to any churches or chapels, with chapelries, townships, or districts as aforesaid, whether the same were or shall be erected and consecrated before or after the passing of the said last-mentioned act.

Land, parcel of duchy of Cornwall, may be conveyed for purposes of recited acts.

"VIII. And whereas doubts are entertained whether since the duchy of Cornwall became vested in her majesty any lands, grounds, tenements, or hereditaments, parcel of the said duchy, can be granted, conveyed, or enfranchised under the provisions of the herein before-recited acts for the purposes thereof; be it therefore enacted, that it shall be lawful for any three or more of the officers of the said duchy, who by virtue of their several offices are or shall be concerned in the general superintendence and management of the revenue and affairs of the said duchy, and duly authorized by her majesty and her successors during the time that the duchy of Cornwall is not held separately from the crown, by any deed or instrument under their hands and seals in the form prescribed by the said recited act of the third year of his late majesty King George the Fourth, or as near thereto as circumstances will permit, to grant, convey, or enfranchise lands, grounds, tenements, or hereditaments for any such purposes of the said recited acts, or any or either of them, as are in the said acts or any or either of them specified in relation to grants to be made by public departments under the said recited acts.

Extending powers, &c. given by 58 Geo. 3, c. 45, as to conveying lands.

"IX. And be it enacted, that all the powers and authorities given and conferred by the said act passed in the fifty-eighth year of his majesty King George the Third, intituled, 'An Act for the building and promoting the building of additional Churches in populous Parishes,' for enabling the bodies politic and persons therein mentioned to convey, and the commissioners to take, land for the sites of churches and chapels, shall extend to the transfer, by sale or exchange only, of land for a site for a house of residence of any incumbent, provided the same do not exceed five acres.

Commissioners may assign a district to churches and chapels in certain cases.

"X. And be it enacted, that in all cases where a church or chapel has been or shall be hereafter built by subscription, and endowed and subsequently augmented by a grant from Queen Anne's bounty, and where the patronage of such church or chapel shall have been acquired under any of the acts passed for regulating the distribution of such bounty, it shall be lawful for the said commissioners, with the consent of the said bishop and the patron and incumbent of the parish, district

parish, or district parish in which the said church or chapel may be, to assign a district to such church or chapel, and make the same a district parish, and that the patronage of such church or chapel shall not be affected thereby.

“XI. And be it further enacted, that after any instrument declaring the right of nomination to any church or chapel shall have been executed by her majesty’s said commissioners, or by the bishop of the diocese, as the case may require, under the provisions of the said last-mentioned act or this act, and the same shall have been registered in the registry of the diocese, it shall not be necessary, after three years from the time at which such instrument has been executed and registered as aforesaid, to prove that the facts stated in such instrument are correct, as to the amount of population or church accommodation in the parish or extra-parochial place in which the said church or chapel shall have been built, or as to the amount of population resident upwards of two miles from any existing church or chapel, and within one mile of the site on which such new church or chapel is erected, or as to the cost of building or purchasing and fitting up the same, or as to its endowment and repairing fund, or proportion of pews and free sittings, but such facts so stated in such instrument as aforesaid shall after such period as aforesaid be admitted in all courts as true and correct; and such instrument of nomination shall be after such period in all courts conclusive evidence that the declarations by the said last-mentioned act required to be made by the person or persons having built, building, or intending to build, or purchase and endow, a church or chapel, according to the provisions of the said last-mentioned act, have been duly made, and that the several other conditions, declarations, applications, notices, matters, and things required by the said last-mentioned act or this act to be respectively performed, made, given, and done previous to the declaration of the right of nomination as aforesaid being made and given by the aforesaid party or parties, and by the bishop of the diocese, or her majesty’s said commissioners, as the case may require, have been respectively duly complied with, performed, made, given, and done according to the provisions of the said recited act or this act; and further, that the patron or patrons of the mother church of such parish hath not or have not, within two calendar months after being served with such notice as by the said act is required, bound him, her, or themselves, by bond or other sufficient security, to her majesty’s said commissioners, or to the bishop of the diocese, as the case may require, that he, she, or they should, within two years thereafter, build or purchase, and completely finish and endow, an additional church or chapel in such parish, to the satisfaction of the bishop of the diocese, and that he, she, or they should also comply with and perform all and singular the conditions in the said act mentioned; and provided also, that nothing herein contained shall invalidate or be construed to invalidate any instruments declaring the right of nomination to a church or chapel, under the provisions of the said last-mentioned act, which have been executed by the bishop of any diocese, or by her majesty’s said commissioners, before the passing of this act, but that the same, and every matter and thing done in respect or in consequence thereof, in pursuance of the provisions of the said recited act, shall be as valid and effectual as if this act had not been passed: provided always, that nothing in this act contained shall be construed as giving to any bishop, or to the said commissioners, any power or authority not given to him or them by the said last-mentioned act as to any church or chapel, respecting the right of nomination to which any proceeding at law or equity shall be depending at the time of passing this act.

“XII. And whereas by the said recited act passed in the fifty-eighth year of the reign of his late majesty King George the Third it was enacted, that it should be lawful for his majesty in council, if he should judge fit, on a representation to be made to him by the said commissioners of the expediency of the same, with the consent of the bishop of the diocese and the patron, to direct, by an order in council, the division of any parish into two or more distinct and separate parishes, for all ecclesiastical purposes whatever: and whereas it was by the said last-recited act also enacted, that it should be lawful for his majesty in council, if he should judge fit, on a representation to be made to him by the said commissioners, with

STAT. 1 & 2
VICT. c. 107.

After instrument of nomination to a church or chapel under 1 & 2 Gul. 4, c. 38, has been executed and registered three years, the validity thereof not to be questioned in courts of law.

Any parish or extra-parochial place may be divided into distinct and district parishes or district chapelries at the same time, or at separate times.

STAT. 1 & 2
VICT. C. 107.

the consent of the bishop of the diocese in like manner, in any case in which they should be of opinion that it was not expedient to divide any populous parish or extra-parochial place into such complete, separate, and distinct parishes as aforesaid, by an order in council to direct the division of the same into ecclesiastical districts: and whereas it may be found expedient to divide off from any parish or extra-parochial place any part or parts thereof, and to form the same, at once or at different times, into a distinct and separate parish or parishes, and into a district parish or district parishes, and district chapelry or chapelries, or to make such extra-parochial place, or any part thereof, a district parish; be it therefore enacted, that it shall be lawful for her majesty in council, where she shall judge fit, on a representation to be made to her by the said commissioners of the expediency of the same, to direct, by an order in council, the dividing off from any original parish or extra-parochial place any part or parts thereof, and forming the same into a distinct and separate parish or distinct and separate parishes, or into a district parish or district parishes, either at the same time or at separate times, and to make any extra-parochial place, or any part thereof, a district parish or district chapelry, or a part of such district parish or district chapelry, and also at any time to direct the dividing off any such separate and distinct parish or district parish so formed into other distinct and separate or district parish or parishes, or district chapelry or chapelries; provided always, that all such divisions, and all parishes so divided, shall respectively be under and subject to the like consents and to the same rules and regulations as are provided in the said recited acts or this act with respect to distinct and separate parishes and district parishes and district chapelries respectively; and that the nomination to the chapel of a chapelry district so taken from any distinct and separate parish or district parish as aforesaid shall belong to the incumbent of the distinct and separate parish or district parish out of which such district chapelry shall have been taken, and that the subdivision of a district parish shall not take effect during the time of the existing minister of such district church, without his consent.

Licence of stipendiary curate of district chapelry not to be void by avoidance of parish church, unless revoked by the bishop.

The powers of the Act 1 & 2 Geo. 4, c. 45, extended, with respect to endowments to chapels of consolidated chapelries.

“XIII. And be it further enacted, that in all district churches and district chapelries the licence of the stipendiary curate appointed to serve the chapel of such chapelry shall not be rendered void by the avoidance of the church of the parish or district parish in which such chapel is situate, unless the same shall be revoked by the bishop of the diocese under his hand and seal; but such licence shall continue in force, unless otherwise directed as aforesaid by such bishop, notwithstanding the avoidance of the church of the parish or district parish, any statute, law, canon, or usage to the contrary notwithstanding.

“XIV. And whereas by an act passed in the first and second years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to extend the Provisions of an Act passed in the twenty-ninth year of the Reign of His Majesty King Charles the Second, intituled, ‘An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies,’ and for other Purposes,’ it is amongst other things enacted, that it should be lawful for any rector or vicar for the time being of any rectory or vicarage, by a deed duly executed by him, to annex to any chapel of ease or parochial chapel, or to any district church or chapel, or any chapel having a district assigned thereto, whether then already built or thereafter to be built, (such chapel of ease or other chapel or church, with the district or place to which the same belongs, being situate within the limits or within the original limits of the said rectory or vicarage,) any part or parts of the tithes or other annual revenues belonging to such rectory or vicarage, or to grant to the incumbent for the time being of any such chapel of ease or other chapel or church, and his successors, any annual sum of money, and to charge the same on all or any part of such tithes or other revenues as aforesaid, or on any lands or other hereditaments belonging to the said rectory or vicarage; provided that every such grant and annexation should be made with the consent of the archbishop or bishop of the diocese within which the rectory or vicarage should be situate, or if the rectory or vicarage should be situate within a peculiar jurisdiction belonging to any archbishop or bishop, then with the consent of the archbishop or

bishop to whom such peculiar jurisdiction should belong, and also with the consent of the patron or patrons of the said rectory or vicarage, such consents to be signified as in the said act is expressed: and whereas it is expedient that the powers of the last-recited act should be enlarged; be it therefore further enacted, that in all cases in which any contiguous parts of several parishes may have been or shall hereafter be united into a separate and distinct district for all ecclesiastical purposes, and such district shall have been or shall hereafter be duly constituted a consolidated chapelry, it shall be lawful for the rectors or vicars for the time being of the several parishes parts of which shall have been so united to have, use, and exercise respectively all the same powers and authorities for annexing to any such consolidated chapelry any part or parts of the tithes or other annual revenues belonging to their rectories or vicarages respectively, and for granting to the incumbent for the time being of any such consolidated chapelry and his successors any annual sum of money, to be payable by equal quarterly or equal half-yearly payments, and for charging the same on all or any part of such tithes or other revenues as aforesaid, or on any land or other hereditaments belonging to the said rectories or vicarages respectively, as are by the said last-recited act given to rectors and vicars for the augmentation of chapels of ease, and such other chapels and churches as are therein and herein before specified: provided always, that the exercise of such powers shall be subject to the like consents (to be signified in the same manner) as is required by the said act with regard to the exercise of the powers of the said act for the augmentation of chapels of ease, and the other chapels and churches therein specified; and in every case in which any such tithes or other revenues shall be annexed by virtue of this act to any consolidated chapelry, the incumbent for the time being thereof shall thenceforth have all the same remedies for recovering and enforcing payment of the premises which shall be so annexed as the rectors or vicars for the time being of the said rectories or vicarages respectively might have had if such annexation had not been made; and in every case in which any annual sum of money shall be granted by virtue of this act to the incumbent of a consolidated chapelry, such incumbent and his successors shall have all such remedies for recovery and enforcing payment thereof, by action of debt, against the incumbent of the rectory or vicarage by whom any such annual sum shall have been granted, or the incumbent thereof for the time being, or by distress upon the hereditaments to be charged therewith, or otherwise as shall in that behalf be specified and given by the deed by which the grant shall be made.

“XV. And be it further enacted, that the power of surrendering any right of patronage, presentation, or appointment to any benefice, donative, perpetual curacy, or of any spiritual person to any church or chapel, or any endowments or emoluments for the use of any church or chapel, or the incumbent thereof, and of making any agreement relative thereto with the said commissioners or the bishop of the diocese, which is given by the said recited act passed in the third year of the reign of his late majesty George the Fourth to bodies politic, corporate, or collegiate, corporations aggregate or sole, and to the persons and parties and for the purposes in the said act specified, shall extend to any surrender or agreement for such purposes, whether the same be made to or in favour of or entered into with or by any lay or spiritual person or persons, or corporation aggregate or sole; provided that such surrender or agreement be sanctioned by the said commissioners under their common seal, and by the bishop of the diocese under his hand and seal.

“XVI. And whereas it may be expedient in certain cases that a church or chapel should be constituted the parish church of the parish in which the same is situate, in the stead of the ancient parish church, and that such ancient parish church should thenceforth become a district church or chapel of ease in such parish; be it therefore enacted, that it shall be lawful for the said commissioners, with the consent in writing of the bishop of the diocese and of the patron of the said parish church, and with the consent also of the vestry or persons possessing the power of vestry, to order and direct, by instrument under their common seal, that any church or chapel in any parish shall become and be and remain the parish church of such parish, in the stead of the ancient parish church; and the

STAT. 1 & 2
VICT. c. 107.

Surrender of rights of patronage permitted for certain purposes by s. 15 of 3 Geo. 4, c. 72, to apply to cases whether the surrendereance be lay or spiritual.

Commissioners, with consent of bishop, &c. may make any church or chapel the parish church of any parish, and the parish church a district church or chapel of ease.

STAT. 1 & 2
VICT. c. 107.

said church or chapel so constituted the parish church shall thenceforth become and be and remain, and be taken in law to be, the parish church of such parish, as fully and effectually, for all purposes, and in relation to all rights, emoluments, endowments, dues, privileges, and all other matters and things, civil or ecclesiastical, theretofore belonging to the parish church, or patron or lay impropriator (if any thereof), as if the same had been always the parish church of such parish; and the said commissioners are hereby empowered to authorize and direct the transfer of the endowments, emoluments, or rights of or belonging to the old and existing church of such parish, or to the incumbent for the time being thereof, to any such church or chapel so made and constituted the parish church as aforesaid, and to the incumbent thereof for the time being, and his successors; and it shall be lawful in every such case for any trustees of any such ancient church as aforesaid, or of any rights, emoluments, and endowments of or belonging to any such church, or to the incumbent thereof for the time being, and they are hereby required, (and indemnified for so doing,) to transfer all such rights, emoluments, and endowments, according to the direction of the said commissioners, to such church or chapel so constituted the parish church as aforesaid, or to the incumbent thereof; and immediately from and after any such transfer as aforesaid all tithes or commutations for tithes, moduses or other compositions for tithes, and all emoluments, dues, fees, offerings, oblations, and other profits and advantages, and all messuages, glebe and other lands, tenements, or hereditaments, rents, sums of money, or real or personal chattels whatsoever, and all rights and privileges whatsoever and wheresoever, wherewith any such ancient church may be endowed, or to which the minister thereof then is or at any time theretofore was or ought to be entitled, shall severally and respectively become and be vested in the minister for the time being of the said church or chapel so made the parish church as aforesaid, and his successors for ever, in as full and ample a manner as the minister of the ancient church might or could have received and enjoyed the same in case such substitution or transfer had not been made; and every such instrument of substitution and transfer shall be registered in the registry of the diocese, and enrolled in the high court of Chancery; and all acts of parliament, laws, and customs relating to the publishing banns of marriage, and celebration of marriages, christenings, churchings, and burials, and to all ecclesiastical fees, oblations, and offerings, shall apply to every such church or chapel so constituted the parish church as aforesaid, in like manner in every respect as to the former parish church of the said parish; and such former parish church shall from such time be and be deemed to be a district church or a chapel with or without a district, as the said commissioners shall in such case direct: provided always, that no such instrument of substitution or transfer shall take effect till after the first avoidance of such ancient parish church, unless with the consent in writing of the actual incumbent thereof, in which case such incumbent shall be and is hereby declared to be to all intents and purposes the rector, vicar, or perpetual curate, as the case may be, of the church or chapel so constituted the parish church, instead of rector, vicar, or perpetual curate of the former parish church, without any presentation, institution, induction, collation, or other form of law being had, observed, or required: provided also, that the chancel (if any) of such former parish church shall continue to be repaired in such manner and by the same person or persons as are now by law or custom liable to the repairs thereof.

Incumbent of former parish church to be incumbent of the new parish church.

“XVII. And be it further enacted, that the incumbent of such parish next succeeding after such substitution and transfer as aforesaid shall be and is hereby declared to be the rector, vicar, or perpetual curate, as the case may be, of such church so made the parish church as aforesaid; and that the person or persons who for the time being would have had a right of presenting, nominating, or appointing the incumbent to the former parish church, in case such transfer and substitution as aforesaid had not been made, shall thenceforth, in lieu thereof, when any vacancy occurs, have such and the like right of presenting, nominating, or appointing the incumbents of the church so made the parish church as aforesaid, as he, she, or they respectively would have had with respect to the former parish church.

"XVIII. And be it further enacted, that it shall be lawful for her majesty's said commissioners, with the consent in writing of the bishop of the diocese, to make such provision under their common seal for the maintenance of the minister and clerk of the respective churches as aforesaid, out of the pew rents of either of such churches, as to her majesty's said commissioners shall seem expedient: provided always, that nothing in this act contained shall affect the rights of persons holding pews free of rent by faculty or prescription in any such former parish church.

"XIX. And be it further enacted, that this act shall extend only to that part of the United Kingdom called England and Wales, and to the isle of Man, and to the islands of Guernsey, Jersey, Alderney, and Sark."

extend only to England and Wales, isle of Man, &c.

STAT. 1 & 2
VICT. c. 107.
Commissioners may provide for ministers of such churches out of the pew rents.
Saving of rights of pew-owners.
This act to

XXVIII. STAT. 1 & 2 VICTORIÆ, c. 108 (1). A.D. 1838.

STAT. 1 & 2
VICT. c. 108.

"An Act for suspending, until the first day of August, One thousand eight hundred and thirty-nine, and to the end of the then Session of Parliament, the Appointment to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories."

"Whereas an act was passed in the seventh year of the reign of his late majesty, intituled, 'An Act for suspending for one year Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories:' and whereas another act was passed in the same session of parliament, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage;' in which latter act are contained certain provisions which were to continue in force only for one year after the passing thereof, or, if parliament should be then sitting, till the end of the session of parliament: and whereas another act was passed in the last session of parliament to continue the provisions of the first-recited act and the temporary provisions of the second-recited act until the first day of August in the year one thousand eight hundred and thirty-eight, and, if parliament should be then sitting, until the end of the then session of parliament: and whereas it is expedient to continue the provisions of the said recited acts for a further time; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the first-recited act and the temporary provisions of the second-recited act shall continue and be in force until the first day of August in the year one thousand eight hundred and thirty-nine, and, if parliament shall be then sitting, until the end of that session of parliament.

6 & 7 Gul. 4,
c. 67.

6 & 7 Gul. 4,
c. 77.

7 Gul. 4 & 1
Vict. c. 71.

First recited act, and certain parts of second recited act, further continued.

Patron of any vacant dignity, &c. to be considered the patron of any benefice with cure of souls, the patron of which the holder, if filled up, would have been patron.

This act not to prevent visitations or consecrations.

"II. And be it further enacted, that during the vacancy of any dignity, prebend, canonry, or benefice without cure of souls, which is now vacant under the provisions of the said recited acts, or which shall hereafter become vacant during the continuance of such provisions by virtue of this act, the holder or incumbent of which respectively, if a successor had been duly admitted thereto, would have been in right thereof the patron of any benefice with cure of souls, the patron of such dignity, prebend, canonry, or benefice without cure shall be considered for all legal purposes to be the patron for the time being of any such benefice with cure of souls.

"III. Provided always, and be it enacted, that, notwithstanding anything contained in this act or in the first-recited act, any bishop or archdeacon may hold visitations of the clergy within the limits of his diocese or archdeaconry, and at such visitations may admit churchwardens, receive presentments, and do all other acts, matters, and things by custom appertaining to the visitation of bishops and archdeacons, in the places assigned to his jurisdiction and authority under or by virtue of the enactments of the secondly-recited act, and any bishop may conse-

STAT. 1 & 2
VICT. c. 108.

Bishop may, on visitation of portion of another diocese transferred to him by order in council, be assisted by his own chancellor, &c.; and all acts of such chancellor to be valid.

crate a new church or chapel or a new burial ground within his diocese, as assigned under the provisions of the last-mentioned act.

“IV. Provided always, and be it further enacted, that every bishop to whom any portion of another diocese shall have been transferred by any order in council under the provisions of the last-recited act passed in the session held in the sixth and seventh years of the reign of his late majesty shall, during the visitation of such portion of his diocese so transferred, be assisted by his own chancellor or commissary and attended by his own registrar; and that during any such visitation the chancellor or commissary aforesaid shall in the name of such bishop, and in conformity with the usages observed in such diocese, inhibit all inferior and concurrent jurisdictions, receive presentments, admit churchwardens to their office, issue marriage licences, grant probate of wills and letters of administration to the effects of intestates, and exercise in every respect the same jurisdiction which the chancellor or commissary of any preceding bishop has exercised in such portion of his diocese so transferred pending the visitation of the diocesan, and the duration of any inhibition which may have issued in consequence of such visitation, anything in the last-recited act to the contrary notwithstanding; and that all acts which have been or shall be done by any chancellor or commissary so assisting such bishop as aforesaid shall be taken to be good and valid in law to all intents and purposes whatsoever.

This act not to prevent any appointment of the late chaplains of the House of Commons, or the succession of the Reverend H. Huntingford, &c.

“V. Provided also, and be it enacted, that nothing contained in this act or in the first-recited act shall be construed to prevent the appointment, presentation, or collation of the Reverend Frederick Vernon Lockwood, the Reverend Edward Repton, or the Reverend Temple Frere, (formerly chaplains to the House of Commons,) to any canonry, prebend, or dignity which is now vacant, or which shall hereafter become vacant during the continuance of the provisions of the recited acts, by virtue of this act, to which it may please her majesty to appoint them or any of them; nor to prevent the Reverend Henry Huntingford, now prelector or lecturer in the cathedral church of Hereford, from succeeding to the canonry or residentiaryship in the said church which has become vacant by the death of the Reverend John Clutton, doctor of divinity; nor to prevent the Bishop of Hereford from disposing of the canonry and prebend in the cathedral church of Hereford now held by the Reverend Henry C Hobart, M.A., should the same become vacant; nor to prevent the appointment of the Reverend Henry Jenkins, professor of Greek in the university of Durham, to the canonry designed for him by the late William Bishop of Durham, and now held by Richard Prosser, doctor of divinity, when the same shall become vacant.”

STAT. 1 & 2
VICT. c. 109.
[Ir.]

XXIX. STAT. 1 & 2 VICTORIÆ, c. 109 (1). [IRELAND.] A.D. 1838.

“An Act to abolish Compositions for Tithes in Ireland (2), and to substitute Rent-Charges in lieu thereof.”

“Whereas it is expedient to abolish compositions for tithes in Ireland, and in lieu thereof to substitute rent-charges payable by persons having a perpetual estate

(1) *Vide* Stat. 3 & 4 Vict. c. 13; and in the reigns of George the Fourth, William Stat. 4 & 5 Vict. c. 37. the Fourth, and Queen Victoria, respecting

(2) *Tithes in Ireland*.—The following is a list of the statutes which have been passed

Compensation for tithes withheld in 1797 and 1798, amending Stat. 39 Geo. 3, (Ir.) for enabling persons to recover	1 Geo. 4, c. 48.
Compositions for a limited time, establishing	4 Geo. 4, c. 39.
Amended by	5 Geo. 4, c. 63.
.....	7 & 8 Geo. 4, c. 68
The foregoing three acts were amended, and such compositions rendered permanent, by	2 & 3 Gal. 4, c. 119.
Which act was amended by	3 & 4 Gal. 4, c. 108
..... suspending proceedings for recovering payment of certain instalments of the money advanced under the acts for establishing	5 & 6 Gal. 4, c. 79
.....	6 & 7 Gal. 4, c. 95.
Revised and continued by	7 Gal. 4 & 1 Vict. c. 58.
	(Expired.)

or interest in the lands subject thereto, a reasonable allowance being made for the greater facility and security of collection arising out of such transfer of liability from the occupiers to the owners of lands; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that the right of all persons in and to all tithes or compositions for tithes heretofore accrued or at any time hereafter to accrue due in Ireland shall wholly cease and determine; provided that nothing herein contained shall extend to any arrears of compositions heretofore accrued due and payable to or by any person entitled to the receipt or bound to the payment of the same by virtue of any such certificate of agreement as is mentioned in an act passed in the second and third year of his late majesty's reign, intituled, 'An Act to amend three Acts passed respectively in the fourth, fifth, and in the seventh and eighth years of the Reign of His late Majesty King George the Fourth, providing for the establishing of Compositions for Tithes in Ireland, and to made such Compositions permanent;' and provided further, that nothing herein contained shall extend to any compositions for tithes the right whereto may be vested in her majesty under the provisions hereinafter following, nor to any tithes or composition for tithes for the recovery whereof any suit, action, or other proceeding shall have been commenced previous to the sixteenth day of July in this present year in any court of law or equity, but that the plaintiff may either prosecute such action or other proceeding, or discontinue or dismiss the same without payment of costs, at his option; and if he shall think fit to discontinue or dismiss the same, and if such tithes or compositions for tithes shall have accrued due for the years one thousand eight hundred and thirty-four, one thousand eight hundred and thirty-five, one thousand eight hundred and thirty-six, or one thousand eight hundred and thirty-seven, or any of them, then and in such case he shall be entitled to the like relief as other persons entitled to tithes or compositions for tithes for those years may have under the provisions of this act.

"II. And whereas by an act made in the third and fourth years of the reign of his late majesty, intituled, 'An Act for the Relief of the Owners of Tithes in Ireland, and for the Amendment of an Act passed in the last Session of Parliament, intituled, "An Act to amend three Acts passed respectively in the fourth, fifth, and in the seventh and eighth years of the Reign of His late Majesty King George the Fourth, providing for the establishing of Compositions for Tithes in Ireland, and to make such Compositions permanent,"' the persons from time to time entitled to the receipt of any composition for tithes to which the memorialist who received any advance under authority of the said act was then entitled, or which has been established in lieu of the tithes to which such memorialist was entitled, were made liable to the repayment, by five annual instalments, of the advances so made, and the persons so from time to time liable to the payment of such instalments were authorized to recover, together with and in addition to the compositions payable to them, certain sums directed by the said act to be added to and made payable

STAT. 1 & 2
VICT. c. 109.
[Is.]

Compositions
for tithes abo-
lished.

Not to extend
to arrears of
compositions
payable by
virtue of any
agreement
under 2 & 3
Gul. 4, c. 119;
nor to compo-
sitions for
tithes, the
right whereto
may be vested
in her majesty
under the pro-
visions hereof;
nor to those
pending suits.

In case of
discontinuance
of suits.

Not to affect
the provisions
of 3 & 4 Gul.
4, c. 100, ex-
cept as herein
contained.

Compositions abolished, and rent-charges substituted	1 & 2 Vict. c. 109.
Amended by	3 & 4 Vict. c. 13.
..... authorizing the immediate distribution of a portion of the fund applicable to the relief of persons entitled to arrears of compositions under Stat. 1 & 2 Vict. c. 109	4 & 5 Vict. c. 5.
Leases of tithes authorized to be made by ecclesiastical persons, so as to bind their successors	4 & 5 Vict. c. 37.
See further	2 & 3 Vict. c. 3.
Owners, for the relief of	3 Geo. 4, c. 125.
Amended by	3 & 4 Gul. 4, c. 37.
Recovery of tithes, facilitating	4 & 5 Gul. 4, c. 90.
Amended by	6 & 7 Gul. 4, c. 99.
..... in certain cases, facilitating	3 & 4 Gul. 4, c. 100.
	1 & 2 Vict. c. 109.
	54 Geo. 3, c. 68.
	5 & 6 Gul. 4, c. 74.
	2 & 3 Gul. 4, c. 41.
	4 & 5 Vict. c. 5.
	4 & 5 Vict. c. 37.

STAT. 1 & 2
VICT. c. 109
[1a.]

therewith; and whereas four of the said annual instalments have accrued due, and the fifth of such instalments will fall due on the first day of November in this present year; and whereas only a small proportion of the said instalments so accrued due have been paid, and proceedings for the recovery of the same have been from time to time suspended by the authority of parliament, and it is expedient that payment of the said instalments shall be remitted, but only under certain circumstances, to be sworn by the parties liable to the payment of such instalments; and whereas by reason of the hereinbefore contained enactment extinguishing the right of all persons to compositions for tithes it is necessary to make special provision, saving the right to such instalments, and to the sums so added to the said compositions, and payable to the persons liable to such instalments; be it therefore enacted, that the several persons who would have been entitled to the receipt of the said composition for tithes if this act had not been passed shall be and remain liable to the queen's majesty for the repayment by instalments of the advances made under authority of the hereinbefore recited act of the third and fourth year of the reign of his late majesty, and that the said hereinbefore contained enactment extinguishing the right to compositions for tithes accrued or to accrue due shall not be taken to extend to the additions by the said act made to such compositions, but that the several sums directed by the said act to be added to and made payable, together with and in addition to the said compositions, shall be payable to and recoverable by the persons who would have been entitled to the said compositions by and from the persons who would have been liable to the payment of such compositions, if this act had not been passed, as if such sums had been by the said act made separately payable and recoverable as compositions for tithes; and that, save as aforesaid, all and every the provisions in the said act contained in any way relating to the recovery of such instalments and sums, or enabling any person liable to the payment of such compositions to recover against any person any sum whatsoever on account of such liability, shall, subject to the provisions hereinafter contained, remain in full force and effect as if the right to the said compositions were still subsisting.

Persons liable to payment of instalments may apply for remission by memorial to the lord lieutenant, who may refer the same for investigation, and upon report thereof, remit the whole or part thereof.

“III. And be it enacted, that it shall and may be lawful for any person liable to the payment of any of the said instalments now due and unpaid, or who may be liable to the payment of any instalment which shall become due on the first day of November in this present year, to apply by memorial to the lord lieutenant of Ireland, describing the character in which he may be so liable, and stating what, if any, of the compositions, together with and in addition to which any sums were made payable in respect of the advances repayable by such instalment under the said recited act, may at or previous to the passing of this act, or would at the time of such instalments falling due, be, if this act had not been made, payable by persons being both the owners and occupiers of the lands charged with such compositions, and also stating what, if any, of the said sums so added to such compositions have been received by the memorialist, and praying that the whole or any part of such instalment may be remitted; and the said lord lieutenant in council shall refer each such memorial to such person or persons as he may think proper, who shall require the memorialist to prove before him or them the several matters and things stated in such memorial by such evidence as the nature of the case may admit, and shall investigate the facts and circumstances by all such ways and means as he or they shall think fit, subject to such rules and directions as the said lord lieutenant of Ireland in council shall from time to time subscribe, and shall report thereon to the said lord lieutenant in council, who shall thereupon have power and authority, as hereinafter directed, to remit the whole or any part of such instalment, and the clerk of the council shall certify the same to the commissioners of the Treasury; and if they shall remit the whole of such instalment, the said commissioners of the Treasury shall direct satisfaction thereof to be duly entered and recorded in the proper office of the Exchequer; and if they shall remit only a part of such instalment, the said commissioners of the Treasury shall direct satisfaction of the whole to be duly entered and recorded upon payment of the residue of such instalment.

"IV. And be it enacted, that it shall be lawful for such person or persons to whom any such memorial may be referred to examine upon oath or affirmation (which oath or affirmation he or they is or are hereby authorized to administer) any person willing to be examined touching any matter or thing relating to the subject of such reference, and also to receive any affidavit or deposition in writing upon oath or affirmation made before any justice of the peace (and which any such justice is hereby authorized to administer).

"V. Provided always, and be it enacted, that the said lord lieutenant in council shall remit every such instalment as aforesaid, unless the same shall be found to be due by any lay improprator in respect of advances made on account of any tithes or compositions for tithes charged upon lands the estate and property of such improprator, or unless the person liable to such instalment shall be found to have received the whole or some part of the sums so added to the said compositions or unless the whole or some part of the sums so added to the said compositions shall be found to be payable by persons being both the owners and occupiers at the same time of the lands charged with such compositions; and in the two last-mentioned cases the said lord lieutenant and council shall remit so much but no more of such instalment as shall be equivalent to the sums so added to the said compositions, and which shall not have been received by the person liable to such instalment, or shall not be payable by persons being both the owners and occupiers at the same time of the lands charged with such compositions; and the decision of the said lord lieutenant in council shall be final and conclusive of the right of any memorialist to the remission of the whole or any part of any instalment under this act.

"VI. And be it enacted, that in any case where the said lord lieutenant in council shall remit the whole of any such instalment it shall not be lawful for the person so relieved from his liability thereto to sue for or recover any sum added to the said compositions in respect of the advances on account whereof such instalment was made payable; and in any case when the said lord lieutenant in council shall remit a part of any instalment it shall not be lawful for the person so relieved to sue for or recover any such sum so added to the said compositions from or against any person other than a person being both the owner and occupier of the lands charged with the said composition; and all and every other the persons liable to the payment of any sum added to the said compositions, or payable in respect of such additional sums under the provisions of the said recited act of the third and fourth year of his late majesty's reign on account of advances thereunder, shall, in the event of the remission of the whole or any part of the instalment payable on account of such advances, be and they are hereby exonerated and discharged from the payment thereof, without prejudice nevertheless to any payment heretofore made under the provisions of the said recited act.

"VII. And be it enacted, that every parcel of land charged with or in respect whereof the said tithe compositions or any applotment or assessment thereof would have been payable if this act had not been passed, shall be and become severally liable to and charged with the payment of an annual sum or rent-charge equal to three fourths of the annual amount of such tithe compositions, and that such rent-charges shall, except as hereinafter excepted, be payable by the party having in such lands respectively the first estate of inheritance, or other estate or interest equivalent to a perpetual estate or interest as hereinafter defined, under which or derived wherefrom there shall be no such perpetual estate or interest, according to the quantity of such lands comprised in each such estate or interest: provided always, that any landlord who shall have undertaken the payment of any composition for tithes under the provisions of the hereinbefore recited act of the second and third years of the reign of his late majesty shall, for and during the continuance of his estate and interest in the lands charged with the rent-charge payable in lieu of such composition, be liable to the payment of such rent-charge, provided he has an estate not less than an estate of inheritance in such lands; and that such rent-charges shall take effect from the first day of November last past, and that the first payment of such rent-charges shall become due on the first day of November in this present year, and be then paid by one entire payment; and that the said

STAT. 1 & 2
VICT. c. 109.
[1a.]

Person to whom memorial is referred may examine on oath, and receive affidavits.

Cases in which instalments shall not be remitted.

In case of the remission of the whole or part of any instalment, the sums added to the composition shall be also remitted, unless due by undertaking landlords, or persons who would be liable to rent-charge.

All lands subject to the payment of tithe compositions charged with an annual sum by way of rent-charge equal to three fourths of such compositions, to be payable by the party having the first estate of inheritance, &c. in such lands.

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VICT. c. 109.
[12.]

One entire
sum to be
charged on
each estate,
although lands
separately
applotted.

Rent-charges
to be com-
puted on the
gross amount.

Ascertaining
rent-charges.

What shall be
deemed equi-
valent to an

rent-charges accruing due in each succeeding year shall be payable by two equal half-yearly payments, one whereof to become due on the first day of May, and the other on the first day of November, in each such year: provided always, that although such tithe compositions may have been separately applotted or assessed upon different portions of such lands, the lands comprised in each such estate or interest shall be charged with the annual payment as aforesaid of one entire sum or rent-charge equal to three fourths of the gross annual amount of such several applotments or assessments: provided also, that the amount of such rent-charges shall be computed on the gross amount of such tithe compositions as stated in the certificates and applotment books thereof respectively, without regard to the deduction of fifteen pounds per centum claimable by persons undertaking the payment of such tithe compositions under the provisions of the above-recited act of the second and third years of his late majesty's reign: provided always, that all certificates and applotment books of such compositions shall be deemed and taken as valid and effectual for the purpose of ascertaining the rent-charges to be paid in lieu thereof, save so far as the same may be varied in pursuance of the provisions in this act, in which case the rent-charge shall be ascertained by such amended certificate or applotment book.

"VIII. And be it enacted, that any estate or interest held under any deed or instrument containing any provision, contract, or *covenant for the perpetual renewal* (1) thereof and any estate or interest held for any term of years, whereof a

(1) *Covenant for the perpetual renewal*.—In *Henderson v. Derry* (Dean of), (1 Irish Circ. Rep. 631.), it appeared, that the respondent was the rector of the parish where the premises, in respect of which the tithe rent-charge was claimed, were situate, and that the appellant was the occupier of such premises; which were part of the estates in fee of the Longford family, and had been originally demised to Lord Londonderry, for certain lives, with a covenant for perpetual renewal. Lord Londonderry had subsequently demised the same premises to one Campbell, for lives, with a covenant to renew to him, as often as his (Lord Londonderry's) lease should be renewed. In 1788, Campbell demised to one Thompson, for three lives, with a *toties quoties* covenant for renewal, similar to the last. Thompson's interest in the premises, became vested in one Burnside, who, in 1812, mortgaged it for his whole estate, to one Catherine Dunn, to secure 600*l.* and interest. The appellant, afterwards married Catherine Dunn. The mortgagor had gone to, and had died in America, leaving an infant son his heir at law. The appellant had proceeded under the Mortgage Act, to get a receiver, but an arrangement had been entered into, and a deed executed in pursuance of it, by which the appellant was to go into possession, and continue in such possession, until his debt should be paid by the receipt of the rents. He had, accordingly, gone into possession, and had continued therein for twenty years. All the lives mentioned in the several demises had been more than twelve years dead. The formal proofs were admitted.

Counsel for the appellant stated, that the first question in the case was, whether the covenant by Campbell with Thompson, was a covenant for perpetual renewal, within the meaning of Stat. 1 & 2 Vict. c. 109, s. 8. That it was not an absolute covenant between immediate landlord and tenant, which was the

kind contemplated by that section: and that as all the lives were long since dead, the appellant was only tenant from year to year, not holding under any deed, and, therefore, not liable at law as occupier. That in equity he could not be liable, as he went into possession to hold only until his debt should be paid, in which case the mortgagor, as having the entire estate, was the person who was liable. That the respondent ought to have proceeded either against the heir at law of the mortgagor, or against the lands; and as the 27th section gave the rent-charge priority over all other charges and mortgages, the appellant could not set up his mortgage in bar of the respondent's claim.

Mr. Baron *Pennefather* observed, "As to the first point, I think that the covenant in this case, is a covenant for perpetual renewal, within the meaning of the statute, the words of which, 'any covenant, contract, or provision,' &c., are very comprehensive, and I therefore think that the lessee would be liable to the rent-charge. Then, as to the other point, it is clear, that there need not be a legal estate; but in this case it appears, that the entire interest is in the appellant, and that he is now entitled to get a renewal. I do not think, that there is anything in the special agreement, about the appellant going into possession, which would alter the position of mortgagor and mortgagee. The 27th section of the act was made in aid of, and not to the prejudice of the tithe rent-charge; but the appellant wishes to introduce substantially into that section, a clause not to be found there, *viz.*, that no mortgage shall be charged as a *ter-tenant*, or occupier. The mortgage is charged as the transferee of the entire interest, in the same manner as he would be liable to the payment of the rent, and to the performance of a covenant in the lease, whether he took possession or not; not because the covenant is one which runs with the land, but because he is the

least one hundred shall be to come and unexpired on the thirtieth day of October in this present year, and any estate held by lease or demise immediately from and under any archbishop, bishop, or other ecclesiastical person, in any lands belonging to the see or other spiritual promotion or dignity of such archbishop, bishop, or other ecclesiastical person, or under the ecclesiastical commissioners for Ireland, being parcel of the lands vested or which may become vested in them under the provisions of an act made in the third and fourth years of the reign of his late majesty, intituled, 'An Act to alter and amend the Laws relating to the Temporalities of the Church in Ireland,' shall be deemed and taken to be, for all purposes relating to the said rent-charges, equivalent to a perpetual estate or interest; and that each tenant in dower or tenant by courtesy, and each person having, under the limitations of any settlement by deed, will, act of parliament, or otherwise, any estate for life or other particular estate thereby created or limited, out of or in any estate of inheritance, or out of or in any such equivalent estate as hereby defined, shall be, during such his interest, liable to the payment of such rent-charge as fully to all intents and purposes as if he were seised of or entitled to the whole estate in such inheritance or perpetual interest.

"IX. And be it enacted, that where by the laws now in force in Ireland any person shall be entitled to hold and occupy under any lease or demise the lands thereby demised free from the payment of tithes or composition of tithes, he shall not be liable to the payment of the said rent-charge, but the party having in such lands the first estate of inheritance or other equivalent estate or interest as before described, expectant or in reversion, and who would not be entitled to a *like exemption* (1) under the laws aforesaid, shall be liable to such payment: provided always, that in case of the forfeiture, surrender, or other determination of any estate or interest, the owner whereof may be liable to the payment of such rent-charge as aforesaid, the party having the first estate of inheritance or other equivalent estate or interest as before described, in remainder or reversion, shall become liable to the said payment of such rent-charge: provided also, that in case of any such devolution of interest, no more than the amount of one year's arrear of rent-charge shall be a charge on the lands subject to the payment of such annual rent-charge.

"X. And be it enacted, that whenever any person who would have been liable to the payment of any composition for tithes if this act had not been made, shall hold the lands in respect whereof such composition for tithes would have been so

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[1a.]

estate of inheritance of perpetual estate.

3 & 4 Gul. 4,
c. 37.

If leases under the laws now in force be free of tithes, the estate held thereunder shall not be liable to rent-charge. On determination of any estate chargeable with rent-charge, the next estate shall become chargeable.

If any person who would have been

transferee of the estate, which he must be, before he is chargeable with the covenant."

(1) *Like exemption*.—The lessees, and all persons deriving through them, of leases made after the 16th of August, 1832, and before the 15th of August, 1838, and not made in pursuance of any covenant, are exempt from the payment of tithe rent-charge, as long as their leases shall continue; thus in *Moore v. Garde*, (1 Irish Circ. Rep. 354,) (which was an appeal by consent from a civil bill decree,) the action was for tithe rent-charge, and was brought against the appellant, as having the first estate of inheritance.

It appeared, that the appellant held under a lease for lives, renewable for ever, which bore date the 11th of July, 1835, and did not appear to have been made in pursuance of any previous agreement. By the 13th section of the Tithe Composition Act, (Stat. 2 & 3 Gul. 4, c. 119,) the lessees of all leases made after the 16th August, 1832, and not made by virtue of any covenant, are exempt from the payment of tithes, or composition of tithes; and by the ninth section of the Tithe Rent-charge Act, (Stat. 1 & 2 Vict. c. 109,) this exemption is confirmed to those who were then entitled to it, as long as their interest

should continue. It was contended, that before the appellant in the present case was not, therefore, liable to the tithe rent-charge, and that the decree must be reversed. O'Leary on Tithe Rent-Charge, 73.

It was urged by the counsel for the respondents; that although it did not appear on the face of the appellant's lease, that it was made in pursuance of any covenant or agreement, yet such was the fact, and that the best way of ascertaining it, was by examining the appellant, the words of the statute permitting such evidence; and that if it were not so, the proviso would have been almost inoperative.

Upon such facts and arguments, Mr. Serjeant Grease observed: "I think that if I were to allow the appellant in this case to be examined, I would be setting a most dangerous precedent; and I shall, therefore, not do so. If parcel evidence were admitted to explain any part of a lease, it might as well be admitted to vary the amount of rent, or alter the nature of the contract in some other way, and such a practice would be fraught with the most dangerous consequences."

"Decree reversed, and a dismiss entered on the merits."

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VICT. c. 109.
[18.]

Effect of certificates of compositions as to right of parties entitled thereto.

"XXVI. And whereas doubts have arisen with respect to the effect of certificates for the composition of tithes in Ireland made under the authority of the said acts for establishing such compositions, as respects the rights or titles of persons having or claiming to have estates or interests in the tithes or compositions to which such certificates respectively relate; and whereas the said rent-charges will be payable to or divided among the several persons entitled thereto according to the proportions of such compositions payable to them respectively as in such certificates stated; be it therefore enacted, that no certificate made under the said acts or any of them, or which may be amended under the provisions of this act, shall, as against any person claiming any estate or interest in tithes or composition for tithes in Ireland, and asserting such claim by any proceeding at law or in equity, be deemed to be evidence of the right or title of any person in such certificate described; and that if it shall be decided by any court of competent jurisdiction that any person other than the person in such certificate described, or those deriving under such person, would have been entitled to such composition or to the tithes to which the same shall relate, the person so declared entitled shall be thereupon authorized and entitled to receive the rent-charge or proportion thereof accruing due under authority of this act, in lieu of the composition in such certificate mentioned, as if originally named therein; but until such decision such certificate, and all payments made under the same, shall be good, valid, and effectual against all persons whatsoever.

Rent-charges, how to be recovered.

"XXVII. And be it enacted, that the said rent-charges shall have priority over all other charges, liens, mortgages, and incumbrances whatsoever affecting the lands chargeable therewith, and shall and may be recovered by the ways and means hereinafter mentioned; (that is to say,) by bill in equity, action of debt or on the case, or if not exceeding twenty pounds, by civil bill in the court of the assistant barrister or chairman of the sessions of the county wherein the land charged therewith may be situate, or by distress, subject to the provisions hereinafter contained.

Several parties may be included in one bill in equity.

"XXVIII. And be it enacted, that it shall and may be lawful to include in the same bill in equity or in the same petition all or any number of the persons in any one parish who may make default in payment of such rent-charges, in like manner as might have been done in suits in equity for the recovery of tithes or tithe compositions in lieu of which the said rent-charges are given, without being liable to any objection on the ground of multifariousness, but with liberty to any of such defendants, on payment of the demand against such defendant, and his proportion of the costs, to have his name struck out of the bill or petition.

Where person liable to payment of rent-charge shall occupy the land, the arrear may be distrained for.

"XXIX. And be it enacted, that where the person liable to the payment of any rent-charge shall occupy the land in respect whereof the same may be payable it shall and may be lawful to make any distress or distresses for any arrears of such rent-charge or proportion thereof; and such distress shall be subject in all respects to the like regulations and attended with the like privileges and advantages as are by law established in respect of any distress by any landlord for the recovery of rent.

Where rent-charge in arrear, and the person liable thereto shall not be in occupation of the lands charged therewith, or where such person may not be known, a court of equity may order the rents of such lands to be received

"XXX. Provided always, and be it enacted, that in all cases where any land charged with the said rent-charge shall be held or occupied by any person other than the person liable under the provisions of this act to the payment thereof, it shall not be lawful to make any distress upon such lands, or upon any other lands, goods, or chattels of such person, for such rent-charge, but in all such cases, and also in all cases where the person liable to the payment of such rent-charge may not be known to the party entitled to such rent-charge, and such rent-charge shall be in arrear and unpaid for the space of thirty-one days after the same shall have become due, it shall be lawful for the court of Chancery or Exchequer in Ireland, upon application as hereinafter mentioned, and in default of its being shown to such court that the person in occupation of such land is liable to the payment of such rent-charge, to appoint a receiver, or to extend any receiver already appointed over the said lands to the matter of the said petition, to receive the rent or such part of the rents of the lands charged with such rent-charge as shall be

sufficient to pay such rent-charge and all arrears thereof, until the whole of such arrears shall be discharged, together with such fees as shall be appointed by such court for such receiver, and also the costs out of pocket of such application, and that out of the sums so received such fees and costs shall be ordered to be paid; and such order shall be made upon petition and affidavit, after reasonable time given to show cause; and notice of the intention to make such application shall, ten days previous to making the same, be served upon the person, or the known attorney, agent, or steward of the person, in receipt of or entitled to such rents, either by delivering such notice to the party personally, or by leaving the same at his usual place of residence, or in case such person be not known, or there be any difficulty in effecting such service, then by serving such notice in such manner as the court may, under the circumstances, think proper to direct; and that the said receiver shall be empowered by the said court to recover the said rents, or so much thereof as may be necessary, by distress and all such other remedies as receivers in any manner appointed by courts of equity in Ireland are empowered to recover rents according to the rules and practice of such courts respectively.

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[1a.]

in liquidation
of such rent-
charge, &c.

“XXXI. Provided always, and be it enacted, that in all cases in which the party liable to the payment of any such rent-charge, or to any such annual sum as is hereinbefore made payable to the party liable to such rent-charge, or to any leases holding mediately or immediately under him, in addition to the rent payable to such party or lessee, shall be of the persuasion of the people called quakers, then the same shall be recoverable in manner hereinafter mentioned; (that is to say,) if the person so liable shall occupy the land in respect whereof such rent-charge or annual sum may be payable, then the same shall be recoverable from such person by distress upon the goods and chattels of such person, whether situate on the premises in respect of which the distress is made or elsewhere, but nevertheless to the same amount only and with the same consequences in all respects as if made on the premises; and the goods and chattels so distrained may be sold, without keeping or impounding the same; but if the person so liable and being of such persuasion as aforesaid shall not occupy the land in respect whereof such rent-charge or annual sum may be payable, then the same (without limit as to the amount) shall be recoverable in such manner as by an act of the fifth and sixth years of the reign of his late majesty King William the Fourth, intituled, ‘An Act for the more easy Recovery of Tithes,’ is expressly or by reference prescribed for the recovery of ecclesiastical demands of or under the value of fifty pounds from quakers, but with a like exception in case the actual title to such rent-charge or annual sum, or the amount thereof, or the liability or exemption of the property to or from the same, shall be *bonâ fide* in question; and in any case in which the person so liable shall be of the persuasion aforesaid, and any other remedy or proceeding than hereinbefore mentioned shall notwithstanding be commenced or prosecuted against him, it shall be lawful for him, or any one on his behalf, to serve the party so entitled as aforesaid with a declaration or notice in writing, stating that he possesses such an estate or interest as it is by this act provided shall make the person having such estate or interest liable to such rent-charge or annual sum, and that he is of the persuasion aforesaid; and such other remedy or proceeding shall be thereupon forthwith discontinued, and the costs previously incurred shall be taxed, and the party who may have taken such proceeding shall proceed to recover such rent-charge or annual sum by distress, or by such remedy as in the said recited act of the fifth and sixth years of the reign of his late majesty is provided, according to the circumstances, and shall be entitled to recover therewith, and as part thereof, the costs of such proceeding so discontinued; and such notice shall be evidence of the liability of the party by whom or on whose behalf the same may have been given, and of his being of the persuasion aforesaid; provided always, that if upon any such proceeding a sufficient distress cannot be found to satisfy the said rent-charge or sum and the costs, if any, together also with the reasonable costs of distress, then the other remedies provided or allowed by this act may be resorted to in the same manner as if the person liable to the payment were not of the persuasion of the people called quakers; provided always, that in

How rent-
charges, &c.
to be recovered
from quakers.

5 & 6 Gul. 4,
c. 74.

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[1a.]

day of October, to appeal to the said lord lieutenant in council against such certificate in like manner as by the said last-mentioned acts such appeals might have been made within the time thereby limited; and notice of every such appeal shall be posted on the church door or usual place of posting notices of application of grand jury presentments in the barony or half barony in which the parish to which such application may refer is situate, and once inserted by or on behalf of the appellant party in some newspaper circulating within such parish within ten days next after such appeal shall have been lodged with the clerk of the petty council: provided always, that where the effect of any composition may have been suspended previous to the passing of this act by virtue of any lease or agreement in writing, the owners and occupiers of any lands upon which collectively a sum exceeding one half of the amount of such composition may have been apportioned shall be deemed and taken to be qualified within the meaning of this act to make such appeal.

Appeals to be heard in the manner provided by 2 & 3 Gul. 4, c. 119;

but no order to be made, except for confirming the composition, unless fraud, concealment, or misrepresentation, affecting the amount of composition, be proved.

Lord lieutenant may cause apportionment to be amended.

“XIV. And be it enacted, that every such appeal shall be heard and determined, and an order made thereupon for confirming or for decreasing or increasing or modifying the amount of such composition, in like manner as is provided by the said last-mentioned act with respect to appeals thereby authorized to be made against such certificates; and all the enactments and provisions contained in the same act relating to the appeals thereby authorized to be made against such certificates, and the costs thereof, shall extend and be applied to appeals authorised by this act, and the costs thereof, except so far as the same are repugnant to the provisions of this act: provided always, that no order shall be made on any such appeal, otherwise than for confirming the composition stated in the certificate, unless it shall be proved that some fraud, concealment, misrepresentation, or circumvention was practised by or on the part of some party interested in such composition, whereby the commissioner may have been deceived, or whereby the knowledge of any fact or facts which was or were essential to enable the commissioner to make a just decision was withheld from him, and whereby the amount of such composition was unduly affected: provided also, that when an appeal from any certificate of composition has before the passing of this act been decided upon the merits by the lord lieutenant in council, or by any judge of assize, no further appeal relating thereto shall be made by virtue of this act.

“XV. And be it enacted, that it shall be lawful for any person or persons in any parish who would have been, in case this act had not been made, individually or collectively liable to the payment of more than one fourth of the amount of the whole composition established in and for such parish, whether the several sums payable by him or them respectively shall be or may have been payable to any party entitled to the receipt of any composition, or to any landlord who may have taken upon him the payment of such composition, to apply to the said lord lieutenant in council, praying the amendment of the apportionment of any composition, and such application shall be made by memorial, to be lodged at any time before the first day of October next with the said clerk of the council, and notified by public advertisement and otherwise, in like manner as appeals against certificates of compositions; and if by any such memorial it shall be made to appear to the satisfaction of the said lord lieutenant in council that any such apportionment of such composition is defective or unjust, or does not with sufficient precision ascertain the lands and holdings in respect whereof the said rent-charges will be payable, it shall and may be lawful for the said lord lieutenant in council to direct such apportionment to be amended, and for that purpose to appoint some one or more skilful person or persons who shall therein have and exercise the like powers, privileges, and authorities, and observe the several regulations in the said acts for establishing compositions of tithes expressed and contained, but subject nevertheless to such instructions and directions as the said lord lieutenant in council shall prescribe for the avoiding any defect or uncertainty to which the original apportionment may have been liable: and such amended apportionment shall be returned to the clerk of the said council.

sufficient to pay such rent-charge and all arrears thereof, until the whole of such arrears shall be discharged, together with such fees as shall be appointed by such court for such receiver, and also the costs out of pocket of such application, and that out of the sums so received such fees and costs shall be ordered to be paid; and such order shall be made upon petition and affidavit, after reasonable time given to show cause; and notice of the intention to make such application shall, ten days previous to making the same, be served upon the person, or the known attorney, agent, or steward of the person, in receipt of or entitled to such rents, either by delivering such notice to the party personally, or by leaving the same at his usual place of residence, or in case such person be not known, or there be any difficulty in effecting such service, then by serving such notice in such manner as the court may, under the circumstances, think proper to direct; and that the said receiver shall be empowered by the said court to recover the said rents, or so much thereof as may be necessary, by distress and all such other remedies as receivers in any manner appointed by courts of equity in Ireland are empowered to recover rents according to the rules and practice of such courts respectively.

“XXXI. Provided always, and be it enacted, that in all cases in which the party liable to the payment of any such rent-charge, or to any such annual sum as is hereinbefore made payable to the party liable to such rent-charge, or to any lessee holding mediately or immediately under him, in addition to the rent payable to such party or lessee, shall be of the persuasion of the people called quakers, then the same shall be recoverable in manner hereinafter mentioned; (that is to say,) if the person so liable shall occupy the land in respect whereof such rent-charge or annual sum may be payable, then the same shall be recoverable from such person by distress upon the goods and chattels of such person, whether situate on the premises in respect of which the distress is made or elsewhere, but nevertheless to the same amount only and with the same consequences in all respects as if made on the premises; and the goods and chattels so distrained may be sold, without keeping or impounding the same; but if the person so liable and being of such persuasion as aforesaid shall not occupy the land in respect whereof such rent-charge or annual sum may be payable, then the same (without limit as to the amount) shall be recoverable in such manner as by an act of the fifth and sixth years of the reign of his late majesty King William the Fourth, intituled, ‘An Act for the more easy Recovery of Tithes,’ is expressly or by reference prescribed for the recovery of ecclesiastical demands of or under the value of fifty pounds from quakers, but with a like exception in case the actual title to such rent-charge or annual sum, or the amount thereof, or the liability or exemption of the property to or from the same, shall be *bond fide* in question; and in any case in which the person so liable shall be of the persuasion aforesaid, and any other remedy or proceeding than hereinbefore mentioned shall notwithstanding be commenced or prosecuted against him, it shall be lawful for him, or any one on his behalf, to serve the party so entitled as aforesaid with a declaration or notice in writing, stating that he possesses such an estate or interest as it is by this act provided shall make the person having such estate or interest liable to such rent-charge or annual sum, and that he is of the persuasion aforesaid; and such other remedy or proceeding shall be thereupon forthwith discontinued, and the costs previously incurred shall be taxed, and the party who may have taken such proceeding shall proceed to recover such rent-charge or annual sum by distress, or by such remedy as in the said recited act of the fifth and sixth years of the reign of his late majesty is provided, according to the circumstances, and shall be entitled to recover therewith, and as part thereof, the costs of such proceeding so discontinued; and such notice shall be evidence of the liability of the party by whom or on whose behalf the same may have been given, and of his being of the persuasion aforesaid; provided always, that if upon any such proceeding a sufficient distress cannot be found to satisfy the said rent-charge or sum and the costs, if any, together also with the reasonable costs of distress, then the other remedies provided or allowed by this act may be resorted to in the same manner as if the person liable to the payment were not of the persuasion of the people called quakers; provided always, that in

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[In.]

in liquidation
of such rent-
charge, &c.

How rent-
charges, &c.
to be recovered
from quakers.

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c. 74.

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[1a.]

Rent-charges
to be variable,
in like manner
as tithe com-
positions.

no case whatever shall any execution or decree or order issue or be made under this act against the person or persons of any defendant or defendants being of the persuasion of the people called quakers.

“XXXII. And whereas the compositions for tithes by this act abolished are liable to be increased or diminished from time to time with reference to the average price of corn as advertised in the Dublin Gazette during the preceding seven years, and it is just that the said rent-charges which will by virtue of this act become payable in lieu of such compositions, and the amount whereof is regulated thereby, should be subject to a similar variation; be it therefore enacted, that it shall and may be lawful for any three or more persons in any parish or place, each charged with the annual payment of three pounds or upwards in respect of any such rent-charges, and for any party entitled to the receipt of such rent-charges, or any proportion thereof respectively, to make application for the increase or diminution of the composition in lieu whereof such rent-charges may be payable, at such periods from time to time and in such manner, as if he or they were liable to the payment or entitled to the receipt of such composition, he or they might respectively make such application; and the like notice of any such application shall be given, and all such and the like proceedings had thereupon, as by the provisions of the said several acts for establishing compositions for tithes in Ireland authorized and directed in the case of application thereunder; and such compositions shall be increased or diminished, and the apportionment thereof amended, accordingly, and the rent-charges payable in lieu thereof increased or diminished in like proportion; provided that when the price of any particular species of corn shall be stated in the certificate of such composition the justices to whom such application may be made shall ascertain the average price of that species of corn from the said Gazette, and such comparison shall be made between the price thereof as stated in such certificate and the price thereof as so ascertained from the said Gazette during each period of seven years; and provided further, that where the price of corn shall not be stated in any such certificate of composition the said justices shall ascertain from the said Gazette the average price of corn for the period of years with reference whereunto such composition may have been calculated, and deal therewith as if the same had been originally stated in such certificate.

Holders of
leases of tithes,
&c. may sur-
render the
same, or com-
pel the lessors
to reduce the
rents.

“XXXIII. And be it enacted, that if any lease or demise of tithes or composition in lieu of tithes shall be in force and undetermined at the passing of this act, it shall and may be lawful for the lessee in such lease, or his representative, within two calendar months after the passing of this act, to surrender such lease to his immediate lessor, or his representative; or it shall be lawful for such lessor or his representatives, instead of surrendering such lease, to serve on such lessor or his representatives, within such period of two months, a notice in writing requiring him or them to reduce the rent reserved by such lease in proportion to the reduction of the profits arising thereunder by reason of the conversion of the tithes thereby demised, or the composition established in lieu thereof, into rent-charge under the provisions of this act; and in case such lessor or his representatives shall omit or refuse during the period of one calendar month from the service of such notice to agree to make the abatement specified in such notice, or such other abatement as shall be satisfactory to the person serving such notice, the matter of such notice shall be referred to three arbitrators, one to be appointed by such lessee or his representative, another by such lessor or his representatives, and the third by the two arbitrators appointed as aforesaid, within ten days after notice in writing to be given by such lessee or his representative for that purpose; and in case such lessor or his representatives shall omit or refuse within ten days after the service of such notice as last aforesaid to appoint an arbitrator on his or their behalf, it shall and may be lawful for such lessee or person serving such notice to apply to the court of Chancery or Exchequer in Ireland, by petition, stating the facts, whereupon such court shall have power and authority to nominate and appoint an arbitrator to act on the part of such lessor so omitting or refusing to act as aforesaid, and the appointment of such arbitrator shall be equally valid to all intents and purposes as if made by such lessor; and in case of the death or incapacity, neglect or refusal to

act of any of the said arbitrators, another shall be appointed in his stead by the party by whom or in whose behalf he was so appointed, or by the said arbitrators appointed by the parties, as the case may be, within ten days next after notice thereof; and the said arbitrators, or any two of them, shall and they are hereby authorized and empowered to inquire and ascertain, by all such ways and means as they shall think proper, whether any and what abatement of the rent reserved in any such lease should be made to the lessee therein named for or on account of the deduction in the amount of tithe recoverable under such lease arising from the operation of this act; and the said arbitrators, or any two of them, shall specify in their award the amount of the abatement to be made in the rent reserved in the said lease, and the amount so specified shall be no longer payable or recoverable under such lease, and such award shall be of like force and effect as a release of so much of the said rent as is thereby directed to be abated; and the said arbitrators shall execute two copies of their said award, one to be delivered to the lessor in such lease, or his representatives, and the other to be deposited in the public office for registering memorials of deeds, conveyances, and wills in Ireland; and such arbitrators, or any two of them, shall have power and are hereby authorized to award that such lease shall cease and determine and be surrendered, and the same shall, if they shall so determine, thenceforth cease and determine.

“XXXIV. And whereas it was by the hereinbefore recited act of the third and fourth years of his late majesty's reign enacted, that exchequer bills to an amount not exceeding one million pounds in the whole should be issued and applied to the relief of the owners of tithes or compositions for tithes in Ireland in manner by the said act directed; and whereas in pursuance thereof exchequer bills to the amount of six hundred and forty thousand pounds were so issued and applied; and whereas an act was passed in the sixth and seventh years of his late majesty's reign, intituled, ‘An Act to amend an Act passed in the first and second years of His present Majesty, for the Extension and Promotion of Public Works in Ireland,’ whereby, after reciting that, over above the sum required for the purposes of the said first-recited act, exchequer bills to the amount of one hundred thousand pounds, or thereabouts, had been made out and delivered to the teller of the exchequer in Ireland, it was enacted that such of the said exchequer bills as were then in the possession of the said teller, not exceeding the said sum of one hundred thousand pounds, should be applied to the purposes of the said act for the extension and promotion of public works; and whereas it is expedient to apply the residue of the said sum of one million pounds now remaining unappropriated, being two hundred and sixty thousand pounds, together with the sums which may have arisen or shall arise in her majesty's exchequer on account of the instalments payable to the crown under the provisions of the said act of his third and fourth years of his late majesty's reign, or this act, to the indemnification, in certain cases, of persons who may not have received payment of compositions for tithes accrued due for the four years last past, that is, for any of the years one thousand eight hundred and thirty-four, one thousand eight hundred and thirty-five, one thousand eight hundred and thirty-six, and one thousand eight hundred and thirty-seven; be it therefore enacted, that it shall be lawful for the commissioners of her majesty's Treasury of the United Kingdom of Great Britain and Ireland at any time or times to cause or direct any number of exchequer bills to be made out at the receipt of the exchequer at Westminster for any sum or sums of money not exceeding in the whole the sum of two hundred and sixty thousand pounds, to be applied to the purposes of this act, such exchequer bills to be made out in the same manner, or like manner, form, and order, and according to the same or like rules and directions, as are prescribed in an act passed in the forty-eighth year of the reign of his majesty King George the Third, intituled, ‘An Act for regulating the Issue and Paying off of Exchequer Bills.’

“XXXV. And be it enacted, that all and every the clauses, provisos, powers, privileges, advantages, penalties, forfeitures, and disabilities contained in the said act shall be applied and extended to the exchequer bills to be made out in pursuance of this act, as fully and effectually to all intents and purposes as if the

STAT. 1 & 2
VICT. c. 109.
[L.]

The residue of the money applicable to the relief of the owners of tithes under 3 & 4 Gul. 4, c. 100, shall be applied, together with the sums arising to credit of the account hereinafter mentioned, in payment of the arrears of compositions for 1834, 1835, 1836, and 1837. 6 & 7 Gul. 4, c. 108.

Treasury may raise 260,000*l.* by exchequer bills, in like manner as is prescribed by 48 Geo. 3, c. 1.

The clauses, &c. in recited act extended to this act.

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VICT. C. 109.
[I.A.]

Effect of certificates of compositions as to right of parties entitled thereto.

"XXVI. And whereas doubts have arisen with respect to the effect of certificates for the composition of tithes in Ireland made under the authority of the said acts for establishing such compositions, as respects the rights or titles of persons having or claiming to have estates or interests in the tithes or compositions to which such certificates respectively relate; and whereas the said rent-charges will be payable to or divided among the several persons entitled thereto according to the proportions of such compositions payable to them respectively as in such certificates stated; be it therefore enacted, that no certificate made under the said acts or any of them, or which may be amended under the provisions of this act, shall, as against any person claiming any estate or interest in tithes or composition for tithes in Ireland, and asserting such claim by any proceeding at law or in equity, be deemed to be evidence of the right or title of any person in such certificate described; and that if it shall be decided by any court of competent jurisdiction that any person other than the person in such certificate described, or those deriving under such person, would have been entitled to such composition or to the tithes to which the same shall relate, the person so declared entitled shall be thereupon authorized and entitled to receive the rent-charge or proportion thereof accruing due under authority of this act, in lieu of the composition in such certificate mentioned, as if originally named therein; but until such decision such certificate, and all payments made under the same, shall be good, valid, and effectual against all persons whatsoever.

Rent-charges, how to be recovered.

"XXVII. And be it enacted, that the said rent-charges shall have priority over all other charges, liens, mortgages, and incumbrances whatsoever affecting the lands chargeable therewith, and shall and may be recovered by the ways and means hereinafter mentioned; (that is to say,) by bill in equity, action of debt or on the case, or if not exceeding twenty pounds, by civil bill in the court of the assistant barrister or chairman of the sessions of the county wherein the land charged therewith may be situate, or by distress, subject to the provisions hereinafter contained.

Several parties may be included in one bill in equity.

"XXVIII. And be it enacted, that it shall and may be lawful to include in the same bill in equity or in the same petition all or any number of the persons in any one parish who may make default in payment of such rent-charges, in like manner as might have been done in suits in equity for the recovery of tithes or tithe compositions in lieu of which the said rent-charges are given, without being liable to any objection on the ground of multifariousness, but with liberty to any of such defendants, on payment of the demand against such defendant, and his proportion of the costs, to have his name struck out of the bill or petition.

Where person liable to payment of rent-charge shall occupy the land, the arrear may be distrained for.

"XXIX. And be it enacted, that where the person liable to the payment of any rent-charge shall occupy the land in respect whereof the same may be payable it shall and may be lawful to make any distress or distresses for any arrears of such rent-charge or proportion thereof; and such distress shall be subject in all respects to the like regulations and attended with the like privileges and advantages as are by law established in respect of any distress by any landlord for the recovery of rent.

Where rent-charge in arrear, and the person liable thereto shall not be in occupation of the lands charged therewith, or where such person may not be known, a court of equity may order the rents of such lands to be received

"XXX. Provided always, and be it enacted, that in all cases where any land charged with the said rent-charge shall be held or occupied by any person other than the person liable under the provisions of this act to the payment thereof, it shall not be lawful to make any distress upon such lands, or upon any other lands, goods, or chattels of such person, for such rent-charge, but in all such cases, and also in all cases where the person liable to the payment of such rent-charge may not be known to the party entitled to such rent-charge, and such rent-charge shall be in arrear and unpaid for the space of thirty-one days after the same shall have become due, it shall be lawful for the court of Chancery or Exchequer in Ireland, upon application as hereinafter mentioned, and in default of its being shown to such court that the person in occupation of such land is liable to the payment of such rent-charge, to appoint a receiver, or to extend any receiver already appointed over the said lands to the matter of the said petition, to receive the rents or such part of the rents of the lands charged with such rent-charge as shall be

compositions for tithes accrued and now remaining due and payable in Ireland for the years one thousand eight hundred and thirty-four, one thousand eight hundred and thirty-five, one thousand eight hundred and thirty-six, or for the year one thousand eight hundred and thirty-seven, to make application, at any time within two calendar months next after the passing of this act, to the lord lieutenant of Ireland in her majesty's privy council there, praying relief in respect of such compositions for tithes; and such application shall be made by memorial, with a schedule thereunto annexed, to be prepared and verified in manner by the said recited act of the third and fourth years of his late majesty's reign directed in respect of applications for relief to be made thereunder: provided that in case of the death, illness, absence, disability, or incapacity of any person entitled to relief under this act, it shall be lawful for the personal representatives, guardian, attorney, steward, or agent of such person to make such application as aforesaid, and that in such case the contents of the memorial and schedule shall be verified upon oath by such personal representatives, guardian, attorney, steward, or agent, as the case may be: provided that it shall not be lawful to include in any such memorial and schedule any compositions for tithes the payment whereof may have been agreed for and undertaken by any person under the hereinbefore recited act of the second and third years of his late majesty's reign; and provided further, that in the schedule to be annexed to each such memorial, the applicant shall specify and distinguish, according to the best of his knowledge and belief, the tithe compositions to which he shall claim to be or have been so entitled, if any, payable by persons having, when such compositions accrued due, such like estates or interests in the lands chargeable with such compositions respectively as would, under the provisions hereinbefore contained, have made the owners thereof liable to the payment of the rent-charges hereinbefore mentioned if this act had been in force, and such rent-charges payable at the time when such compositions accrued due; and provided further, that all compositions included in any such memorial and schedule shall be stated according to the original amount thereof respectively, exclusive of any addition to such compositions made under the said recited act of the third and fourth years of his late majesty's reign on account of any advances made thereunder; and the said lord lieutenant and council shall cause each such memorial and schedule to be revised by such persons and in such manner, and the several matters and things stated in or appearing thereby proved upon such evidence, as to them shall seem proper; and if they shall so think fit they shall declare the memorialist entitled to relief under this act; and upon and after the completion of the proceedings hereinafter authorized for the recovery of the compositions payable by persons having such estates or interests as hereinbefore described, the said lord lieutenant shall certify to the commissioners of the Treasury the sum which shall be found due to each such memorialist, exclusive of any sums recovered by any such proceedings as hereinafter directed and paid to him: provided always, that if upon the revision of any such memorial and schedule any sum claimed therein should appear to have been previously paid or satisfied, or if such memorial or schedule should contain any false and wilful misrepresentation, then and in such case it shall be lawful for the said lord lieutenant to direct such sum by way of penalty, not exceeding the amount of such unfounded demand or the item in respect whereof such false and wilful misrepresentation may have been made, as he shall think proper, to be deducted from and out of any sum payable to the memorialist under the provisions hereinafter contained; and he shall certify to the said commissioners of the Treasury the sum so to be deducted, and the same shall be deducted accordingly.

"XLII. And be it enacted, that whenever any person making any such application under this act shall be declared to be entitled to relief hereunder the right in and to all such compositions for tithes included in his memorial and schedule as may have accrued and remain due from or by persons having at the time when such compositions may have so accrued due such like estates or interests in the lands chargeable therewith respectively as would, under the provisions hereinbefore contained, have made the owners thereof liable to the payment of the rent-charges hereinbefore mentioned if this act had been in force, and such rent-charge

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[Ire.]

received payment of their compositions for 1834, 1835, 1836, or 1837, shall apply for relief by memorial;

such relief not to extend to compositions payable by undertaking landlords.

Upon application for relief under this act, proclamation to be issued, enjoining payment of arrears due by such persons as would be liable

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VICT. c. 109.
[In.]

to pay rent-
charges under
this act.

Proceedings in
case of default.

Receipt to be
given to parties
making pay-
ment, which
shall be a
sufficient
acquittance.

In default of
obedience to
proclamation,
an application
by petition to
be made to the
court of Chan-
cery or Exche-
quer, or assist-
ant barrister,
for an order
against de-
faulters for the
sum due.
Court to exa-
mine and make
order.

Objection to
petition for
want of form,
&c. not to be
received.
Deaths of par-
ties not to
abate petition.
Notice of pro-
ceedings upon
petition to be
given.

payable at the time when such compositions accrued due, shall vest in her majesty; and the said lord lieutenant shall issue a proclamation, to be posted on conspicuous places within the proper pariah, (whereof the publication in the Dublin Gazette shall be sufficient evidence, as also of such declaration by the lord lieutenant in council,) enjoining and requiring all persons named in the schedule annexed to each such memorial, and having such estates or interests as aforesaid respectively, to pay to such bank or person as the said lords commissioners of the Treasury shall appoint to receive the same the several sums in such schedule stated to be due and owing by them severally, or so much thereof as they shall respectively admit to be due, and warning all such persons that in default of their paying the same within one calendar month from the date thereof such proceedings as are by this act warranted will be forthwith taken for the levy and recovery of the composition so remaining due and unpaid; and the cashier of the bank, or person authorised to receive such sums, shall give to every party making any such payment a receipt, which shall be an acquittance for the monies therein expressed to have been received; and if for the full amount in such schedule stated, or for such lesser amount in lieu thereof as her majesty's attorney-general for Ireland shall direct to be received, such receipt shall be an acquittance for all composition for tithe which might be claimed from such party by the person upon whose application the proclamation aforesaid may have been issued, or by the crown in right of such person under the provisions of this act.

"XLIII. And be it enacted, that upon the expiration of the time in the said proclamation limited, and in default of payment as aforesaid, it shall and may be lawful for the said attorney-general to apply by petition, either to the court of Chancery or Exchequer in Ireland, or, in any case where the sum sought to be recovered shall not exceed twenty pounds, then, at the option of the said attorney-general, to the court of the assistant barrister of the county or riding where the person in default shall reside, or if he shall reside in the county of Dublin, to the court of the chairman of the sessions of the peace for the said county, praying the order of such court, assistant barrister, or chairman against any person in default, who shall be named and distinguished in any such schedule as aforesaid as having such estate or interest as hereinbefore described in the lands charged with any composition due and in arrear; and the said courts shall summarily examine into the matter of every such petition, and for that purpose call before them and examine *ex vivo* any person upon oath, or ascertain the truth by interrogatories in writing or by affidavit, and thereupon make such order or orders, as to such court shall seem just; and the costs shall be in the discretion of the court as if the proceeding was between subject and subject; and in case any person against whom any such order shall be so prayed shall not, by himself or some attorney or counsel, attend at the time appointed for proceeding upon such petition, and show that he had not when such composition accrued due such an estate or interest as hereinbefore described in the lands chargeable with such composition, the liability of such person shall be taken *pro confesso*, and an order shall be forthwith made as against every such person for such amount of composition as shall be proved to be so due and in arrear in respect of the said lands; and the sum expressed in any such order, and the costs, shall be taken to be a debt due to her majesty, and recovered accordingly; provided that the like costs shall be payable on any such application to any assistant barrister or chairman as on any proceeding by civil bill.

"XLIV. And be it enacted, that no objection to any such petition on account of the demands thereby sought to be recovered being distinct and multifarious, nor for want of parties or want of form, shall be received; and no such petition shall abate on account of the death of any of the parties; and in case of any such death the said attorney-general may proceed against the representatives of any person so dying, having first served them with a notice thereof; and upon its appearing to the court that such notice had been given such court shall inquire into the matter of such petition as against the representative of any person so dying in the same manner as against the said person were he living, and the said court respectively shall proceed thereon accordingly: provided always, that at least fourteen days

before any proceeding shall be taken under any such petition as aforesaid, a notice thereof shall be served upon the person against whom any order may be thereby prayed.

“XLV. And be it enacted, that all monies paid, received, or recovered on account of any tithes or compositions for tithes vested in her majesty by virtue of the hereinbefore contained provision shall, after deducting the costs and charges attendant on the receipt or recovery thereof, be, in such manner as the said commissioners of the Treasury shall direct, paid over to the respective parties in whose right so transferred to the crown the same may have been received or recovered.

“XLVI. And be it enacted, that it shall be lawful for the said commissioners of the Treasury, or any three or more of them, to order and direct that such sum or sums of money as may be necessary to defray the expenses attendant upon the revision of the said memorials and schedules shall be paid to such persons, at such times and in such manner as they shall think fit, from and out of the monies accruing to the credit of the said account to be kept as hereinbefore provided at the said bank of Ireland and Exchequer; and the residue of the monies arising to the credit of the said account shall be applied to the relief of the several memorialists who shall be declared to be entitled to relief under this act as hereinbefore provided; and such residue shall be distributed rateably amongst them in proportion to, but not exceeding, the amount of the several sums found due to them respectively on account of the arrears of composition payable in and for the said years one thousand eight hundred and thirty-four, one thousand eight hundred and thirty-five, one thousand eight hundred and thirty-six, and one thousand eight hundred and thirty-seven, included in the said several schedules, exclusive of any sums received or recovered and paid to such persons under the hereinbefore contained provision; and the said commissioners of the Treasury, or any three or more of them, shall direct payment to be made to each such memorialist accordingly; and the surplus (if any) shall be carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland.

“XLVII. And whereas certain sums of money are now due and accruing due to the ecclesiastical commissioners for Ireland by reason of instalments accrued due in the year one thousand eight hundred and thirty-five, and one thousand eight hundred and thirty-six, and one thousand eight hundred and thirty-seven, and this present year, on account of monies lent and advanced by the trustees and commissioners of first-fruits in Ireland for the purposes of building mansions or glebe houses and making other improvements, or for the purchase of houses for the habitation and residence of incumbents of benefices and their successors, or for the purchase of glebes or demesne lands for the erection of such glebe houses or offices, and which sums were vested in the said ecclesiastical commissioners by the hereinbefore recited act passed in the third and fourth years of his late majesty's reign: and whereas it is expedient to relieve the incumbents who have been unable to pay such instalments for the said years one thousand eight hundred and thirty-five, and one thousand eight hundred and thirty-six, and one thousand eight hundred and thirty-seven, and this present year, from immediate liability thereto, but so nevertheless that such sums shall remain charged upon their respective benefices and promotions, and upon the incumbents having or succeeding to the profits and emoluments thereof, but that the same shall be repaid by instalments computed at a reduced rate; be it therefore enacted, that no suit or proceeding shall be taken by or on behalf of her majesty, or by or in the name of the said ecclesiastical commissioners, or any other person, for the recovery of any such instalment which may have accrued due on the first day of July one thousand eight hundred and thirty-five, or on the first day of July one thousand eight hundred and thirty-six, or on the first day of July one thousand eight hundred and thirty-seven, or on the first day of July in this present year, on account of any monies lent or advanced by the said trustees and commissioners of first-fruits for the purposes aforesaid.

“XLVIII. And be it enacted, that from and after the passing of this act the respective sums which shall at such time be and remain due to the said ecclesias-

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[1a.]

The money recovered by these proceedings to be paid over to the parties entitled thereto.

The expenses of the revision of memorials and schedules to be first defrayed out of the fund in the Exchequer, and the residue distributed rateably among the memorialists.

Arrears of instalments of certain monies advanced by commissioners of first-fruits, and due 1st July, 1835, 1836, 1837, and 1838, not to be sued for.

Incumbent to pay money

STAT. 1 & 2
VICT. c. 109.
[1R.]

advanced by
the commis-
sioners of
first-fruits by
yearly instal-
ments at a
reduced rate,
commencing
1st July, 1839.

Tithe compo-
sition acts
shall be taken
to extend to
her majesty.

The provisions
of this act
shall extend to
her majesty.

Proviso.

Clerk of the
peace to fur-
nish a copy or
extract of the
memorial and
schedule or
return required
by 3 & 4 Gul.
4, c. 100, on
payment of a
stated sum.

Notices, how
to be served.

tical commissioners on account of any money lent or advanced by the said trustees or commissioners of first-fruits, for the purposes aforesaid, shall to all intents and purposes be deemed and taken to be the sum and sums originally lent, and which ought to be repaid by instalments on or before every first day of July in every year, and that every such sum shall be repaid to the said commissioners by annual instalments at and after the rate of three pounds for every hundred pounds so lent and advanced and remaining due and unpaid as aforesaid, and at and after no higher rate, and that the first of such instalments shall become due on the first day of July one thousand eight hundred and thirty-nine, and the remaining instalments on the first day of July in each succeeding year, until the whole sum lent and advanced and remaining unpaid as aforesaid shall have been repaid; and that such instalments shall be payable by the present incumbent of each benefice or his successors, and recoverable by the like means as now provided by law for the recovery of instalments payable in discharge and on account of monies lent and advanced by the said trustees and commissioners of first-fruits for the purposes aforesaid, and in all respects according to the like provisions.

“XLIX. And whereas doubts have arisen how far the several acts for establishing compositions for tithes in Ireland extend to tithes forming part of the hereditary revenues and possessions of the crown in Ireland; for the removal of which doubts be it enacted and declared, that the said act shall be deemed to extend to the queen's majesty, her heirs and successors, as if named therein, and that all compositions for tithes belonging or which may have belonged to her said majesty are and shall be and be deemed to have been good, valid, and effectual to all intents and purposes as any compositions established in lieu of tithes belonging to any other person.

“L. And be it enacted, that all and every the provisions of this act shall apply and extend to the said compositions for tithes belonging to the queen's majesty, and that rent-charges shall become payable in lieu thereof, and that such rent-charges shall be collected and recovered and in all other respects managed and dealt with according to the provisions of the acts in force relative to the hereditary possessions and land revenues of the crown in Ireland; and that nothing herein contained shall extend in any respect to alter or repeal the provisions of any act or acts now in force with respect to the application of the annual income arising from such tithes or compositions, or the sale thereof, or the application of the monies arising from any such sales, but that such last-mentioned provisions shall extend and apply to the annual income arising from the rent-charges which will become payable in lieu of such tithes or compositions under the provisions of this act, and to authorize sales thereof, and to direct the application of the monies arising from the sale of such rent-charges, according to the nature thereof respectively, in like manner as to the annual income arising from such tithes and the monies arising from sales thereof: provided always, that nothing in this act contained shall in any manner prejudice or affect the right of her said majesty in or to any quit rent or other rent or payment reserved upon or arising out of any grant, or payable on account of any advowsons, rectories, vicarages, or other benefice or preferment, or office spiritual, or tithes.

“LI. And whereas by the said act of the third and fourth years of the reign of his late majesty King William the Fourth it is enacted that a certified copy of or extract from the memorial and schedule or return attached thereto, a duplicate of which is by that act required to be lodged with the clerk of the peace, shall be sufficient evidence to all intents and purposes of the several matters and things therein set forth; be it enacted, that every clerk of the peace with whom any such duplicate, memorial, and schedule or return attached thereto is lodged, shall and he is hereby required to furnish a certified copy of or extract from the same respectively to any person requiring the same, on payment of a sum not exceeding three-pence for every ninety words contained in such copy or extract, and every sum of money set forth in such copy or extract shall be reckoned only as a single word.

“LII. And be it enacted, that whenever any notice required to be given by

this act cannot be delivered to the person to whom such notice is directed, it shall be sufficient to leave the same at the last or most usual place of abode of such persons, if such persons shall be in Ireland, or if such person or persons shall be in any other part of the United Kingdom, or beyond the seas, then to publish the same in the Dublin Gazette; and in all cases in which any notice shall be required to be given to or delivered by or on behalf of her majesty, her heirs, or successors, under any of the provisions of this act, it shall be sufficient if such notice be given to or delivered by the commissioners for the time being of her majesty's woods, forests, land revenues, works, and buildings, or any person authorized by them to receive or give such notice on her majesty's behalf.

STAT. 1 & 2
VICT. c. 109.
[1a.]

“LIII. And be it enacted, that if any person who shall make or take any oath, affirmation, affidavit, or deposition, under or in pursuance of this act, shall therein wilfully or knowingly swear, affirm, depose, or answer falsely, every such person, being duly convicted thereof, shall incur and suffer such pains, penalties, and disabilities, as persons convicted of wilful and corrupt perjury are by law liable to.

Persons taking
false oaths,
&c. guilty of
perjury.

“LIV. And be it enacted, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the words ‘lord lieutenant of Ireland’ shall extend to any lords justices or other chief governor or governors of Ireland; and the word ‘land’ shall extend to manors, messuages, and other hereditaments, whether corporeal or incorporeal, and whether freehold or copyhold, or of any other tenure; and the words ‘persons entitled to compositions for tithes,’ or to any ‘composition,’ shall be construed to extend to and include all ecclesiastical persons, and bodies corporate, sole, or aggregate, lay or ecclesiastical, or collegiate, and all incumbents of parishes, whether rectors, vicars, or curates, and all impropiators, and appropriators, and all persons whomsoever, being the owners of or entitled or interested in any manner whatsoever, at law or in equity, whether in their own right or by virtue of any order or process of any court, as trustees, devisees, personal representatives, lessees, sequestrators, receivers, or otherwise, to any tithes, or portion or portions of tithes, or composition established in lieu of tithes, or portion or portions of such composition, or who would have been so entitled to any such composition if the same had not been suspended by virtue of any lease or agreement; and the word ‘person’ shall extend to and comprise all and every bodies politic and corporate, sole and aggregate, lay and ecclesiastical, and collegiate; and the words ‘compositions for tithes’ shall extend and be applied to any portion or portions of a composition, and to any tithes or portion of tithes, and to any part of a yearly payment thereof as well as to a composition; and the word ‘county’ shall extend and be applied to any riding, county of a city, or county of a town, or city and county, as well as a county at large; and the word ‘parish’ shall extend and be applied to any part of a parish forming a distinct benefice, and to extra-parochial place or places separately chargeable with any composition for tithes, as well as to a parish; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Interpretation
of words used
in this act.

“LV. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.”

Act may be
altered this
session.

XXX. STAT. 1 & 2 VICTORIÆ, c. 110. A.D. 1838.

STAT. 1 & 2
VICT. c. 110.

“An Act for Abolishing Arrest on Mens Process in Civil Actions, except in certain Cases; for extending the Remedies of Creditors against the Property of Debtors; and for amending the Laws for the Relief of Insolvent Debtors in England.”

“LV. And be it enacted, that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any such prisoner, being

Assignees’
power not to

STAT. 1 & 2
VICT. c. 110.
extend to the
income of a
benefice, &c.
Sequestration
of profit of
benefice may
be obtained.

a beneficed clergyman or curate, to the *income of such benefice* (1) or curacy, for the purposes of this act: provided always, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profits of any such benefice, for the payment of the debts of such prisoner; and the order appointing an assignee or assignees of such prisoner, in pursuance of this act, shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceedings to authorize the same; and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levari facias*, founded upon any judgment against such prisoner."

STAT. 2 & 3
VICT. c. 3.
[IR.]

XXXI. STAT. 2 & 3 VICTORIÆ, c. 3. [IRELAND.] A.D. 1839.

"An Act to authorize the immediate Distribution of a Portion of the Fund applicable to the Relief of Persons entitled to certain Arrears of Tithe Compositions, under an Act of the last Session of Parliament, to abolish Compositions for Tithes in Ireland, and to substitute Rent-Charges in lieu thereof, and for other Purposes."

1 & 2 Vict.
c. 109.

"Whereas an act was passed in the last session of parliament, intituled, 'An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-charges in lieu thereof,' whereby it was among other things enacted, that exchequer bills to an amount not exceeding two hundred and sixty thousand pounds in the whole should be made out and applied, together with the sums which had arisen or which should arise in her majesty's exchequer on account of certain instalments payable to the crown under the provisions of an act passed in the session of parliament holden in the third and fourth years of the reign of his late majesty, intituled, 'An Act for the Relief of the Owners of Tithes in Ireland, and for the Amendment of an Act passed in the last Session of Parliament, intituled, "An Act to amend three Acts passed respectively in the fourth, fifth, and in the seventh and eighth years of the Reign of His late Majesty King George the Fourth, providing for the Establishment of Compositions for Tithes in Ireland,"' to the indemnification in certain cases of persons who might not have received payment of compositions for tithes in Ireland accrued and remaining due and payable for the four years then last past; and such persons were directed to apply for relief accordingly to the lord lieutenant of Ireland in her majesty's privy council there; and every such application was directed to be made by memorial, with a schedule setting out the particulars of each claim thereunto attached; and the said lord lieutenant in council was authorized to cause all such memorials and schedules to be revised, and the several matters and things stated in or appearing thereby proved upon such evidence as to him and them should seem proper; and it was provided, that the schedule attached to each memorial should distinguish such of the compositions in arrear, if any, as were payable by persons having, when the same accrued due, such like estates or interests in the lands chargeable therewith as would, under the provisions of the said act of the last session of parliament, have made the owners thereof liable to the rent-charge substituted for the said compositions; and the right to all arrears of compositions so due and in arrear from persons having such estates or interests as aforesaid was transferred to and vested in her majesty, and her attorney-general for Ireland was directed to take certain proceedings for the recovery thereof, and the amount received or recovered was directed to be paid over to the respective parties in whose right so transferred to the crown the same had been received or recovered; and upon and after the completion of all such proceedings, the said lord lieutenant was authorized to certify to the commissioners of the Treasury the sum found due to each memorialist who should be declared entitled to relief under the said act, exclusive of any sums recovered by the proceedings aforesaid, and paid to him; and the sums raised by the exchequer bills directed to be made out as hereinbefore mentioned, and the sums which had arisen or which should arise in her majesty's exchequer on account of the instalments

(1) *Income of such benefice*:—Stat. 53 Geo. 3, c. 102, s. 27; Stat. 1 Geo. 4, c. 119, s. 38; and Stat. 7 Geo. 4, c. 57, s. 28, contained similar provisions; but Stat. 37 Geo. 3, c. 112, had not such an extensive operation. *Arbuckle v. Coulton*, 3 B. & P. 321.

before any proceeding shall be taken under any such petition as aforesaid, a notice thereof shall be served upon the person against whom any order may be thereby prayed.

“XLV. And be it enacted, that all monies paid, received, or recovered on account of any tithes or compositions for tithes vested in her majesty by virtue of the hereinbefore contained provision shall, after deducting the costs and charges attendant on the receipt or recovery thereof, be, in such manner as the said commissioners of the Treasury shall direct, paid over to the respective parties in whose right so transferred to the crown the same may have been received or recovered.

“XLVI. And be it enacted, that it shall be lawful for the said commissioners of the Treasury, or any three or more of them, to order and direct that such sum or sums of money as may be necessary to defray the expenses attendant upon the revision of the said memorials and schedules shall be paid to such persons, at such times and in such manner as they shall think fit, from and out of the monies accruing to the credit of the said account to be kept as hereinbefore provided at the said bank of Ireland and Exchequer; and the residue of the monies arising to the credit of the said account shall be applied to the relief of the several memorialists who shall be declared to be entitled to relief under this act as hereinbefore provided; and such residue shall be distributed rateably amongst them in proportion to, but not exceeding, the amount of the several sums found due to them respectively on account of the arrears of composition payable in and for the said years one thousand eight hundred and thirty-four, one thousand eight hundred and thirty-five, one thousand eight hundred and thirty-six, and one thousand eight hundred and thirty-seven, included in the said several schedules, exclusive of any sums received or recovered and paid to such persons under the hereinbefore contained provision; and the said commissioners of the Treasury, or any three or more of them, shall direct payment to be made to each such memorialist accordingly; and the surplus (if any) shall be carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland.

“XLVII. And whereas certain sums of money are now due and accruing due to the ecclesiastical commissioners for Ireland by reason of instalments accrued due in the year one thousand eight hundred and thirty-five, and one thousand eight hundred and thirty-six, and one thousand eight hundred and thirty-seven, and this present year, on account of monies lent and advanced by the trustees and commissioners of first-fruits in Ireland for the purposes of building mansions or glebe houses and making other improvements, or for the purchase of houses for the habitation and residence of incumbents of benefices and their successors, or for the purchase of glebes or demesne lands for the erection of such glebe houses or offices, and which sums were vested in the said ecclesiastical commissioners by the hereinbefore recited act passed in the third and fourth years of his late majesty's reign: and whereas it is expedient to relieve the incumbents who have been unable to pay such instalments for the said years one thousand eight hundred and thirty-five, and one thousand eight hundred and thirty-six, and one thousand eight hundred and thirty-seven, and this present year, from immediate liability thereto, but so nevertheless that such sums shall remain charged upon their respective benefices and promotions, and upon the incumbents having or succeeding to the profits and emoluments thereof, but that the same shall be repaid by instalments computed at a reduced rate; be it therefore enacted, that no suit or proceeding shall be taken by or on behalf of her majesty, or by or in the name of the said ecclesiastical commissioners, or any other person, for the recovery of any such instalment which may have accrued due on the first day of July one thousand eight hundred and thirty-five, or on the first day of July one thousand eight hundred and thirty-six, or on the first day of July one thousand eight hundred and thirty-seven, or on the first day of July in this present year, on account of any monies lent or advanced by the said trustees and commissioners of first-fruits for the purposes aforesaid.

“XLVIII. And be it enacted, that from and after the passing of this act the respective sums which shall at such time be and remain due to the said ecclesiastical

STAT. 1 & 2
VICT. c. 109.
[I.R.]

The money recovered by these proceedings to be paid over to the parties entitled thereto.

The expenses of the revision of memorials and schedules to be first defrayed out of the fund in the Exchequer, and the residue distributed rateably among the memorialists.

Arrears of instalments of certain monies advanced by commissioners of first-fruits, and due 1st July, 1835, 1836, 1837, and 1838, not to be sued for.

Incumbent to pay money

STAT. 2 & 3
VICT. C. 3.
[18.]

In parishes where a composition for tithes has not yet been established, such composition shall be made, and rent-charges substituted, as in cases of parishes previously compounded.

thereunder; and that such applications shall be dealt with in the same manner, and all such and the like proceedings had thereupon, as if such applications had been made within the period by the said act limited; and that the said Elizabeth Gore and Eliza Edwards, if otherwise entitled thereto, shall receive the like relief as other memorialists under the said act.

“III. And whereas an act was passed in the session of parliament holden in the second and third years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to amend three Acts passed respectively in the fourth, fifth, and in the seventh and eighth years of the Reign of His late Majesty King George the Fourth, providing for the establishing of Compositions for Tithes in Ireland, and to make such Compositions permanent,’ whereby, after reciting that it was ‘expedient that a fixed and permanent composition in lieu of tithes should, with a view to the future commutation thereof, be generally established throughout that portion of the United Kingdom called Ireland,’ provision was made authorizing a composition for tithes to be established within three months next after the passing of the said act by a sole commissioner to be for that purpose nominated by the lord lieutenant of Ireland, in every parish or part of a parish wherein a composition should not have been previously made under the provisions of the acts theretofore passed for that purpose: and whereas it has been found that notwithstanding the provisions of the said act there are some parishes and parts of parishes wherein no such composition for tithes has yet been established, and it is necessary, in order to the establishment of rent-charges in such parishes and parts of parishes, pursuant to the intent of the herein before-recited act of the last session of parliament, that a composition for the tithes of such parishes or parts of parishes should be previously made; be it therefore enacted, that it shall and may be lawful for the said lord lieutenant of Ireland, as soon as conveniently may be after the passing of this act, to nominate some proper person to be a commissioner for the purpose of establishing a composition for tithes in each parish or part of a parish in Ireland wherein a composition for the tithes thereof has not been heretofore made; and that all and every the provisions contained in the said act passed in the session of parliament holden in the second and third years of his late majesty’s reign, with respect to any person to be appointed a commissioner for the purposes of such act, shall apply to any person who may be appointed a commissioner hereunder; and that all and every the like proceedings shall be had for the purpose of carrying the said act into execution in any such parish or part of a parish, and for defraying the expenses attendant thereon, as if compositions of tithe had not been abolished by the herein before-recited act of the last session of parliament, so far as may be necessary for the establishment of a composition for the tithes of any such parish or part of a parish, and for the assessment or applotment thereof, and the apportionment of such composition amongst the party or parties entitled to the tithes or any particular share or proportion thereof for which such composition shall be established; and that the like appeal may be made within the like period against any such composition, or against the assessment or applotment thereof, and the like proceedings had upon any such appeal, as were authorized or directed in the case of any composition or assessment or applotment thereof heretofore made under the said act passed in the session of parliament holden in the second and third years of his late majesty’s reign: provided always, that when and so soon as the periods limited for such appeals respectively shall have expired, or the same shall have been decided, and such composition and the assessment or applotment thereof shall have been finally established and settled, all and every the provisions of the said act passed in the last session of parliament shall thereupon be deemed and taken to apply to every such composition so established by virtue of this act; and that an annual sum or rent-charge equal to three fourths of such compositions shall become payable in like manner to all intents and purposes as in the case of compositions established previous to the passing of the said act of the last session of parliament; and every provision in such act contained with respect to the rent-charges established thereby shall apply to the rent-charges to be established by virtue hereof; and every such rent-charge

this act cannot be delivered to the person to whom such notice is directed, it shall be sufficient to leave the same at the last or most usual place of abode of such persons, if such persons shall be in Ireland, or if such person or persons shall be in any other part of the United Kingdom, or beyond the seas, then to publish the same in the Dublin Gazette; and in all cases in which any notice shall be required to be given to or delivered by or on behalf of her majesty, her heirs, or successors, under any of the provisions of this act, it shall be sufficient if such notice be given to or delivered by the commissioners for the time being of her majesty's woods, forests, land revenues, works, and buildings, or any person authorized by them to receive or give such notice on her majesty's behalf.

STAT. 1 & 2
VICT. c. 109.
[1a.]

"LIII. And be it enacted, that if any person who shall make or take any oath, affirmation, affidavit, or deposition, under or in pursuance of this act, shall therein wilfully or knowingly swear, affirm, depose, or answer falsely, every such person, being duly convicted thereof, shall incur and suffer such pains, penalties, and disabilities, as persons convicted of wilful and corrupt perjury are by law liable to.

Persons taking
false oaths,
&c. guilty of
perjury.

"LIV. And be it enacted, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or context of the act shall exclude such construction, be interpreted as follows; (that is to say,) the words 'lord lieutenant of Ireland' shall extend to any lords justices or other chief governor or governors of Ireland; and the word 'land' shall extend to manors, messuages, and other hereditaments, whether corporeal or incorporeal, and whether freehold or copyhold, or of any other tenure; and the words 'persons entitled to compositions for tithes,' or to any 'composition,' shall be construed to extend to and include all ecclesiastical persons, and bodies corporate, sole, or aggregate, lay or ecclesiastical, or collegiate, and all incumbents of parishes, whether rectors, vicars, or curates, and all improPRIATORS, and appropriators, and all persons whomsoever, being the owners of or entitled or interested in any manner whatsoever, at law or in equity, whether in their own right or by virtue of any order or process of any court, as trustees, devisees, personal representatives, lessees, sequestrators, receivers, or otherwise, to any tithes, or portion or portions of tithes, or composition established in lieu of tithes, or portion or portions of such composition, or who would have been so entitled to any such composition if the same had not been suspended by virtue of any lease or agreement; and the word 'person' shall extend to and comprise all and every bodies politic and corporate, sole and aggregate, lay and ecclesiastical, and collegiate; and the words 'compositions for tithes' shall extend and be applied to any portion or portions of a composition, and to any tithes or portion of tithes, and to any part of a yearly payment thereof as well as to a composition; and the word 'county' shall extend and be applied to any riding, county of a city, or county of a town, or city and county, as well as a county at large; and the word 'parish' shall extend and be applied to any part of a parish forming a distinct benefice, and to extra-parochial place or places separately chargeable with any composition for tithes, as well as to a parish; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Interpretation
of words used
in this act.

"LV. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

Act may be
altered this
session.

XXX. STAT. 1 & 2 VICTORIÆ, c. 110. A.D. 1838.

STAT. 1 & 2
VICT. c. 110.

"An Act for Abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases; for extending the Remedies of Creditors against the Property of Debtors; and for amending the Laws for the Relief of Insolvent Debtors in England."

"LV. And be it enacted, that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any such prisoner, being

Assignees'
power not to

STAT. 2 & 3

VICT. CAP. VII.

XXXIII. STAT. 2 & 3 VICTORIÆ, CAP. VII. A.D. 1839.

"An Act for the Sale of the Advowson of the Vicarage of Tisbury, in the County of Gloucester."

STAT. 2 & 3

VICT. C. 9.

XXXIV. STAT. 2 & 3 VICTORIÆ, C. 9. A.D. 1839.

"An Act for repealing part of an Act of the last Session of Parliament, intituled, An Act for suspending, until the first day of August, One thousand eight hundred and thirty-nine, and to the end of the then Session of Parliament, the Appointment to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories."

1 & 2 Vict.

c. 108.

"Whereas by an act passed in the last session of parliament, intituled, 'An Act for suspending until the first day of August, One thousand eight hundred and thirty-nine, and to the end of the then Session of Parliament, the Appointment to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories,' it was, amongst other things, enacted as follows; that is to say, that every bishop to whom any portion of another diocese shall have been transferred by any order in council under the provisions of the last recited act passed in the session held in the sixth and seventh years of the reign of his late majesty, thereby meaning an act intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' shall, during the visitation of such portion of his diocese so transferred, be assisted by his own chancellor or commissary, and attended by his own registrar; and that during any such visitation the chancellor or commissary aforesaid shall, in the name of such bishop, and in conformity with the usages observed in such diocese, inhibit all inferior and concurrent jurisdictions, receive presentments, admit churchwardens to their office, issue marriage licences, grant probates of wills and letters of administration to the effects of intestates, and exercise in every respect the same jurisdiction which the chancellor or commissary of any preceding bishop has exercised in such portion of his diocese so transferred, pending the visitation of the diocesan, and the duration of any inhibition which may have issued in consequence of such visitation, anything in the last recited act to the contrary notwithstanding; and that all acts which have been or shall be done by any chancellor or commissary so assisting such bishop as aforesaid shall be taken to be good and valid in law to all intents and purposes whatsoever: and whereas great inconvenience is likely to arise from the provisions aforesaid, and it is advisable that the same should be repealed, be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act so much of the said recited act as is herein recited shall be and the same is hereby repealed, save and except as to any matter or thing which shall have been done by any bishop, chancellor, commissary, or registrar, under the provisions of the said first-recited act, before the passing of this act."

Certain part of
recited act,
relating to
bishops' visita-
tions, repealed.

STAT. 2 & 3

VICT. CAP. XI.

XXXV. STAT. 2 & 3 VICTORIÆ, CAP. XI. A.D. 1839.

"An Act to enable the Rhymney Iron Company to erect and endow a Church in the Parish of Beddwy, in the County of Monmouth."

STAT. 2 & 3

VICT. C. 14.

XXXVI. STAT. 2 & 3 VICTORIÆ, C. 14. A.D. 1839.

"An Act for removing Doubts as to the Appointment of a Dean of Exeter, or of any other Cathedral Church."

"Whereas by the statutes and customs of the cathedral church of Exeter, and of certain other cathedral churches, it is required that the deans of such churches

respectively shall be appointed or elected out of the number of the prebendaries or canons residentiary thereof: and whereas the deanery of the said cathedral church of Exeter is now vacant, but by reason of the provisions of an act passed in the seventh year of the reign of his late majesty, intituled, 'An Act for suspending for one year Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories,' which act was and is continued by an act passed in the last session of parliament, intituled, 'An Act for suspending until the first day of August, One thousand eight hundred and thirty-nine, and to the end of the then Session of Parliament, the Appointment to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories,' doubts are entertained whether any collation to a prebend or any election to a canonry can be made in the present circumstances of the chapter of the said church: and whereas similar doubts may arise upon the vacancy of the deanery of any of such other churches as aforesaid; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that nothing in either of the said acts contained shall during the vacancy of the deanery of any cathedral church prevent any spiritual person from being collated or elected or appointed to the prebend or to the canonry in such church held by the last dean thereof, for the purpose of qualifying such person to be appointed or elected dean thereof, but that such person shall, upon such collation, election, or appointment, be a prebendary or canon residentiary of such church to all intents and purposes, and entitled to all rights, privileges, and emoluments to such prebend or canonry belonging or appertaining, subject nevertheless to such measures and regulations as may hereafter be enacted respecting the same."

STAT. 2 & 3
VICT. c. 14.

6 & 7 Gul. 4,
c. 67.

1 & 2 Vict.
c. 108.

A prebend or
canonry may
be filled up to
qualify for a
deanery, not-
withstanding
the Cathedral
Appointments
Suspension
Acts.

XXXVII. STAT. 2 & 3 VICTORIÆ, cap. xvii. A.D. 1839.

"An Act to enable the Trustees of the Estates devised by William Hulme, Esquire, to appropriate certain Parts of the accumulated Fund arising from the said Estates towards the endowment of Benefices, the building of Churches, and for other Purposes."

STAT. 2 & 3
VICT. cap. xvii.

XXXVIII. STAT. 2 & 3 VICTORIÆ, c. 18(1). A.D. 1839.

"An Act to enable Archbishops and Bishops to raise Money on Mortgage of their Sees, for the purpose of building and otherwise providing fit Houses for their Residence."

STAT. 2 & 3
VICT. c. 18.

XXXIX. STAT. 2 & 3 VICTORIÆ, c. 19. [IRELAND.] A.D. 1839.

"An Act to amend an Act of the sixth and seventh years of His late Majesty King William the Fourth, for consolidating the Laws relating to the Presentment of Public Money by Grand Juries in Ireland, so as to enable the Grand Jury of the County of Waterford to make Presentments on account of the Fever Hospital of the said County, although situate in the County of the City of Waterford."

STAT. 2 & 3
VICT. c. 19.
[Ire.]

XL. STAT. 2 & 3 VICTORIÆ, cap. xx. A.D. 1839.

"An Act to enable the Mayor and Commonalty and Citizens of the City of London to let and sell Parcels of Ground in Saint George's Fields, near Bethlem Hospital, to the Governors of the said Hospital."

STAT. 2 & 3
VICT. cap. xx.

(1) This statute was repealed by Stat. 5 & 6 Vict. c. 26, s. 3, except as to the then subsisting mortgages.

STAT. 2 & 3
VICT. cap. vii.

XXXIII. STAT. 2 & 3 VICTORIÆ, cap. vii.

*"An Act for the Sale of the Admouison of the Vicary
County of Gloucester."*

STAT. 2 & 3
VICT. C. 9.

XXXIV. STAT. 2. & 3 VICTORIA.

*"An Act for repealing part of an Act of the late
An Act for suspending, until the first day
dred and thirty-nine, and to the end of
Appointment to certain Dignities and
Churches, and to Sinicure Rectories."*

**1 & 2 Vict.
c. 108.**

[illegible]

**6 & 7 Gul. 4,
c. 77.**

passed in the session held in
majesty, thereby meaning
Reports of the Commission
Church in England and
nues, so far as they rel
during the visitation
own chancellor or c
any such visitation

any such visitation, such bishop, and all inferior and dens to their administrati jurisdiction, cised in diocesan of suc

And be it enacted, that the allowance of the duty on paper used in the printing of books in the Latin, Greek, Oriental, or Northern languages, within the universities of Oxford and Cambridge, the universities of Scotland, and the University of Trinity college, Dublin, shall be made and allowed in manner following (that is to say,) the chief manager of the press in the said universities respectively shall, forty-eight hours before any such paper shall be begun to be printed, give to the proper officer of excise a notice in writing of the intention to print such paper, specifying the number of reams of paper and the title of the book intended to be printed, and of how many copies the edition is to consist; and upon the production of the officer of excise all such paper shall be produced to him enclosed in the original wrappers in which the same was charged with duty, with the respective labels thereon, and the several matters hereinbefore prescribed to be marked, written, or printed and stamped on such labels and wrappers remaining thereon; and such chief manager of the press shall provide sufficient scales and weights, and shall permit and assist such officer to use the same, and to ascertain the weight of such paper; and within one month after the whole of such edition shall have been printed off such chief manager shall give to the proper officer of excise forty-eight hours notice in writing, specifying a day and hour when such edition will be ready to be produced to him, and thereupon such officer shall attend and examine and weigh the whole of such edition unbound and in sheets, and thereupon give to such chief manager a certificate of his having so done, specifying the name of the book, the size thereof, the number of copies of which the edition

the paper on which it is printed; but if such weight the paper taken account of by the officer previous to the weight shall be inserted in the certificate, and the

STAT. 2 & 3
VICT. c. 23.

the chief manager of the press in the said university shall subscribe at the foot or on the back of such certificate, the vice-chancellor, principal, or rector or provost of the university, or writing setting forth that the whole of the edition printed for the university for which the same was printed or other person had or hath taken account of in respect of the paper

Declaration to be made by the chief manager of the press.

duty on paper used in the printing of the Trinity college, Dublin and the University of Ireland respectively, Common Prayer

Regulations for obtaining the allowance on paper used in printing Bibles, Testaments, &c. in the universities of Oxford, Cambridge, and Dublin, or by the queen's printers.

the name of the Church of England (as to say,) the queen's printers is begun to be prepared in writing of the intention to print of reams of paper so intended printed for Bibles, Testaments, Psalm

Confession of Faith, or the Larger or Shorter Catechism or impression or edition of such book is to be, the same is to consist; and all the paper intended to be printed by the officer of excise, be produced to him enclosed in a box or boxes in which the same was charged with duty, with the

whereon, and the several matters hereinbefore prescribed to be printed on, or printed and stamped on such labels and wrappers remaining in the hands of such chief managers and queen's printers respectively shall provide sufficient scales and weights, and shall permit and assist the officer of excise to use the same, and to ascertain and take an account of the true quantity and weight of such paper; and such chief managers of the press and such queen's printers respectively shall, within one month after the whole of such impression or edition shall have been printed off and finished, give to the proper officer of excise forty-eight hours notice thereof in writing, specifying a day and hour when such impression or edition will be ready to be produced to him, and thereupon such officer of excise shall attend, and inspect, examine, and weigh the whole of such edition unbound and in sheets, and shall thereupon give and deliver to such chief manager of the press or queen's printer, as the case may be, a certificate in writing of his having so done, specifying therein the name of the book, together with the size thereof, and the number of copies of which such impression or edition consists, and the weight of the paper on which the same is printed, but if such weight shall exceed the weight of the paper actually produced to and taken account of by the officer of excise previous to the printing thereof as aforesaid, then and in such case such last-mentioned weight shall be inserted in such certificate, and the allowance shall be made for no greater weight than the weight specified in such certificate.

"XLVII. And be it enacted, that the chief manager of the press in the said universities respectively shall make and subscribe, at the foot or on the back of such certificate, before the vice-chancellor or provost of the university, a declaration in writing setting forth that no drawback or allowance has been before granted or paid on such paper, and that the whole of the edition of such book so printed is printed for the university for which the same expresses to be printed, and that no bookseller or other person had or hath any share or interest therein, or in the allowance payable in respect of the paper on which the same is printed; and the

Declarations to be made by the chief manager of the universities, and by the queen's printers.

STAT. 2 & 3
VICT. cap. xxi.

XLI. STAT. 2 & 3 VICTORIÆ, cap. xxi. A.D. 1839.

"An Act for enabling the Keepers and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of John Lyon, within the Town of Harrow-on-the-Hill, in the County of Middlesex, to grant Improving Leases of their Estates at Harrow and Barnet, and for other Purposes therein mentioned."

STAT. 2 & 3
VICT. c. 23.

XLII. STAT. 2 & 3 VICTORIÆ, c. 23. A.D. 1839.

"An Act to consolidate and amend the Laws for collecting and securing the Duties of Excise on Paper made in the United Kingdom."

"Whereas the laws for collecting and securing the duties of excise on paper, buttonboard, millboard, pasteboard, and scaleboard, have become numerous and complicated, and it is expedient to consolidate and amend the same; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that there shall be raised, levied, and collected, allowed, granted, and paid, the duties, allowances, and drawbacks of excise following; (that is to say,)

"For all paper made and charged with duty in the United Kingdom which shall be used in the printing of any books in the Latin, Greek, Oriental or Northern languages, within the universities of Oxford and Cambridge, or within the universities of Scotland, or the college of the Holy and Undivided Trinity of Queen Elizabeth, Dublin, by permission of the vice-chancellors, rectors, or principals or provost of the said universities respectively, or which shall be used in the printing of Bibles, Testaments, Psalm Books, Books of Common Prayer of the church of England, the book commonly called or known in Scotland by the name of 'The Confession of Faith,' or the Larger or Shorter Catechism of the Church of Scotland, within the universities of Oxford and Cambridge, and Trinity college, Dublin, by permission of the vice-chancellors or provost of the same, or by the queen's printers in England, Scotland, and Ireland respectively, an allowance of one penny half-penny the pound avoirdupois.

Regulations
for obtaining
the allowance
of duty on
books printed
in the Latin,
Greek, Ori-
ental, or
Northern
languages, in
the universi-
ties.

"XLIV. And be it enacted, that the allowance of the duty on paper used in the printing of books in the Latin, Greek, Oriental, or Northern languages, within the universities of Oxford and Cambridge, the universities of Scotland, and the university of Trinity college, Dublin, shall be made and allowed in manner following; (that is to say,) the chief manager of the press in the said universities respectively shall, forty-eight hours before any such paper shall be begun to be printed, give to the proper officer of excise a notice in writing of the intention to print such paper, specifying the number of reams of paper and the title of the book intended to be printed, and of how many copies the edition is to consist; and upon the attendance of the officer of excise all such paper shall be produced to him enclosed in the original wrappers in which the same was charged with duty, with the respective labels thereon, and the several matters hereinbefore prescribed to be marked, written, or printed and stamped on such labels and wrappers remaining thereon; and such chief manager of the press shall provide sufficient scales and weights, and shall permit and assist such officer to use the same, and to ascertain the weight of such paper; and within one month after the whole of such edition shall have been printed off such chief manager shall give to the proper officer of excise forty-eight hours notice in writing, specifying a day and hour when such edition will be ready to be produced to him, and thereupon such officer shall attend and examine and weigh the whole of such edition unbound and in sheets, and thereupon give to such chief manager a certificate of his having so done, specifying the name of the book, the size thereof, the number of copies of which the edition

consists, and the weight of the paper on which it is printed; but if such weight shall exceed the weight of the paper taken account of by the officer previous to the printing, such last-mentioned weight shall be inserted in the certificate, and the allowance shall be made for no more.

“XLV. And be it enacted, that the chief manager of the press in the said universities respectively shall make and subscribe at the foot or on the back of such certificate as aforesaid, before the vice-chancellor, principal, or rector or provost of the university respectively, a declaration in writing setting forth that the whole of the edition of the book so printed was and is printed for the university for which the same expresses to be printed, and that no bookseller or other person had or hath any share or interest therein, or in the allowance payable in respect of the paper on which the same was or is printed.

“XLVI. And be it enacted, that the allowance of the duty on paper used in the universities of Oxford and Cambridge, and in the university of Trinity college, Dublin, or used by the queen’s printers in England, Scotland, or Ireland respectively, in the printing of Bibles, Testaments, Psalm Books, Books of Common Prayer of the Church of England, the book commonly known in Scotland by the name of ‘The Confession of Faith,’ or the Larger or Shorter Catechism of the Church of Scotland, shall be made and allowed in manner following; (that is to say,) the chief manager of the press of such universities respectively, or such queen’s printers respectively, shall, forty-eight hours before any such paper is begun to be prepared for printing, give to the proper officer of excise a notice in writing of the intention to print such paper, specifying in such notice the number of reams of paper so intended to be printed, and whether the same is to be printed for Bibles, Testaments, Psalm Books, Common Prayer Books, Books of Confession of Faith, or the Larger or Shorter Catechism, of what size the intended impression or edition of such book is to be, and of how many copies the same is to consist; and all the paper intended to be used shall, on the attendance of the officer of excise, be produced to him enclosed in the original wrappers in which the same was charged with duty, with the respective labels thereon, and the several matters hereinbefore prescribed to be marked, written, or printed and stamped on such labels and wrappers remaining thereon; and such chief managers and queen’s printers respectively shall provide good and sufficient scales and weights, and shall permit and assist the officer of excise to use the same, and to ascertain and take an account of the true quantity and weight of such paper; and such chief managers of the press and such queen’s printers respectively shall, within one month after the whole of such impression or edition shall have been printed off and finished, give to the proper officer of excise forty-eight hours notice thereof in writing, specifying a day and hour when such impression or edition will be ready to be produced to him, and thereupon such officer of excise shall attend, and inspect, examine, and weigh the whole of such edition unbound and in sheets, and shall thereupon give and deliver to such chief manager of the press or queen’s printer, as the case may be, a certificate in writing of his having so done, specifying therein the name of the book, together with the size thereof, and the number of copies of which such impression or edition consists, and the weight of the paper on which the same is printed, but if such weight shall exceed the weight of the paper actually produced to and taken account of by the officer of excise previous to the printing thereof as aforesaid, then and in such case such last-mentioned weight shall be inserted in such certificate, and the allowance shall be made for no greater weight than the weight specified in such certificate.

“XLVII. And be it enacted, that the chief manager of the press in the said universities respectively shall make and subscribe, at the foot or on the back of such certificate, before the vice-chancellor or provost of the university, a declaration in writing setting forth that no drawback or allowance has been before granted or paid on such paper, and that the whole of the edition of such book so printed is printed for the university for which the same expresses to be printed, and that no bookseller or other person had or hath any share or interest therein, or in the allowance payable in respect of the paper on which the same is printed; and the

STAT. 2 & 3
VICT. c. 23.

Declaration to be made by the chief manager of the press.

Regulations for obtaining the allowance on paper used in printing Bibles, Testaments, &c. in the universities of Oxford, Cambridge, and Dublin, or by the queen’s printers.

Declarations to be made by the chief manager of the universities, and by the queen’s printers.

STAT. 2 & 3
VICT. cap. xxi.

XLI. STAT. 2 & 3 VICTORIÆ, cap. xxi. A.D. 1839.

"An Act for enabling the Keepers and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of John Lyon, within the Town of Harrow-on-the-Hill, in the County of Middlesex, to grant Improving Leases of their Estates at Harrow and Barnet, and for other Purposes therein mentioned."

STAT. 2 & 3
VICT. c. 23.

XLII. STAT. 2 & 3 VICTORIÆ, c. 23. A.D. 1839.

"An Act to consolidate and amend the Laws for collecting and securing the Duties of Excise on Paper made in the United Kingdom."

"Whereas the laws for collecting and securing the duties of excise on paper, buttonboard, millboard, pasteboard, and scaleboard, have become numerous and complicated, and it is expedient to consolidate and amend the same; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that there shall be raised, levied, and collected, allowed, granted, and paid, the duties, allowances, and drawbacks of excise following; (that is to say,)

"For all paper made and charged with duty in the United Kingdom which shall be used in the printing of any books in the Latin, Greek, Oriental or Northern languages, within the universities of Oxford and Cambridge, or within the universities of Scotland, or the college of the Holy and Undivided Trinity of Queen Elizabeth, Dublin, by permission of the vice-chancellors, rectors, or principals or provost of the said universities respectively, or which shall be used in the printing of Bibles, Testaments, Psalm Books, Books of Common Prayer of the church of England, the book commonly called or known in Scotland by the name of 'The Confession of Faith,' or the Larger or Shorter Catechism of the Church of Scotland, within the universities of Oxford and Cambridge, and Trinity college, Dublin, by permission of the vice-chancellors or provost of the same, or by the queen's printers in England, Scotland, and Ireland respectively, an allowance of one penny half-penny the pound avoirdupois.

Regulations
for obtaining
the allowance
of duty on
books printed
in the Latin,
Greek, Ori-
ental, or
Northern
languages, in
the univer-
sities.

"XLIV. And be it enacted, that the allowance of the duty on paper used in the printing of books in the Latin, Greek, Oriental, or Northern languages, within the universities of Oxford and Cambridge, the universities of Scotland, and the university of Trinity college, Dublin, shall be made and allowed in manner following; (that is to say,) the chief manager of the press in the said universities respectively shall, forty-eight hours before any such paper shall be begun to be printed, give to the proper officer of excise a notice in writing of the intention to print such paper, specifying the number of reams of paper and the title of the book intended to be printed, and of how many copies the edition is to consist; and upon the attendance of the officer of excise all such paper shall be produced to him enclosed in the original wrappers in which the same was charged with duty, with the respective labels thereon, and the several matters hereinbefore prescribed to be marked, written, or printed and stamped on such labels and wrappers remaining thereon; and such chief manager of the press shall provide sufficient scales and weights, and shall permit and assist such officer to use the same, and to ascertain the weight of such paper; and within one month after the whole of such edition shall have been printed off such chief manager shall give to the proper officer of excise forty-eight hours notice in writing, specifying a day and hour when such edition will be ready to be produced to him, and thereupon such officer shall attend and examine and weigh the whole of such edition unbound and in sheets, and thereupon give to such chief manager a certificate of his having so done, specifying the name of the book, the size thereof, the number of copies of which the edition

board, millboard, pasteboard, or scaleboard, or books, with intent unduly to obtain any drawback, or any higher amount of drawback than he would otherwise be entitled to, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of excise, and all such paper, buttonboard, millboard, pasteboard, and scaleboard, or books, or other articles, matters, or goods, shall be forfeited, and may be seized by any officer of excise or customs."

STAT. 2 & 3
VICT. c. 23.

XLIII. STAT. 2 & 3 VICTORIÆ, c. 30. A.D. 1839.

"An Act for apportioning the Spiritual Services of Parishes in which two or more Spiritual Persons have Cure of Souls generally throughout the Parish."

STAT. 2 & 3
VICT. c. 30.

"Whereas there are several benefices, in every of which more than one spiritual person is instituted or otherwise admitted to the cure of souls generally within the same: and whereas it would conduce to the spiritual good of the inhabitants if the cure of souls were apportioned between or among the said spiritual persons: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall be lawful for the bishop of the diocese in which any such benefice having more than one spiritual person instituted or otherwise admitted or licensed to the cure of souls generally within the same is locally situated, from time to time to direct a decree, with intimation, to issue from the registry of the diocese, calling upon the spiritual persons instituted or otherwise admitted to the cure of souls, and upon the churchwardens or chapelwardens and other inhabitants of any such benefice, or any of them, to shew cause before the bishop in person, at a time and place specified in such decree, such time not being within one month from the service of such decree, and such place being within the diocese, why the spiritual duties of such benefice should not be apportioned between or among such spiritual persons in the manner and in the proportions specified in such decree; and if at the time and place appointed cause to the contrary be not shown to the satisfaction of the said bishop, it shall be lawful for him to issue an order in pursuance of and in conformity with such decree, or, if cause be shown, to withhold, amend, or vary such order, as to him may seem just and proper; and every such order shall issue under the hand and episcopal seal of the bishop, and shall, on its being issued, be registered in the registry of the diocese; and every such decree and order shall be served on every such spiritual person thereby affected, and on one of the churchwardens or chapelwardens of the benefice, by delivering to them a copy thereof, or leaving a copy at the house or legal residence of such spiritual person, churchwardens or chapelwardens, and on the inhabitants of the benefice, by affixing and leaving affixed a copy thereof on the doors of the several churches or chapels of such benefice; and a copy of such order shall be deposited and preserved by the churchwardens of the parish or parishes within such benefice, or one of them, in the parish chest of every such parish, and be shown without fee to any parishioner requiring to see the same, at reasonable times; and in case any such spiritual person shall refuse or neglect to comply with such order for the space of one month after such service, or if any such spiritual person shall at any time after such service refuse or neglect to perform the spiritual duties of the benefice in the manner and proportions in and by such order directed, then and in any or either of such cases it shall be lawful for the said bishop to proceed against such spiritual person so neglecting or refusing to comply with such order in the same manner as the bishop is empowered to proceed in the case of a spiritual person by reason of whose negligence the ecclesiastical duties of his benefice are inadequately performed: provided always, that any such spiritual person, or churchwarden, chapelwarden, or inhabitant, who shall have appeared to show cause against and who shall think himself aggrieved by any order made by any bishop in pursuance of the powers given to the bishop by this act may, within

In benefices where there are more than one spiritual person instituted to the cure of souls, the bishop may order an apportionment of spiritual duties, if no cause is shown to the contrary.

Proceedings in case of neglect to comply with the order.

Appeal.

STAT. 2 & 3
VICT. c. 23.

queen's printers in England, Scotland, and Ireland respectively, or the acting patentee in such office, shall make and subscribe, at the foot or on the back of such certificate, before the commissioners of excise, or such person as the commissioners of excise shall direct and appoint to receive the same, a declaration in writing setting forth that no drawback or allowance has been before claimed or paid for or in respect of the paper mentioned in such certificate, or any part thereof, and that the whole of such impression or edition of such Bible, Testament, Psalm Book, Book of Common Prayer, Confession of Faith, or Larger or Shorter Catechism, has been printed by him or them at his or their usual and ordinary printing house, on his or their own account, under and by virtue of the exclusive patent or privilege belonging to him or them as such queen's printer, and for his or their sole and entire benefit, profit, emolument, and advantage.

On production of the certificate, with declaration subscribed, to the commissioners of excise, they are to direct payment to be made.

"XLVIII. And be it enacted, that on the said certificates respectively, with such declaration as aforesaid made and subscribed thereon, being produced to the commissioners of excise, the said commissioners shall and they are hereby required, on being satisfied of the correctness thereof, to cause payment of the amount of the allowance appearing by such certificate to be due to be made to the chief manager of the press of the said universities respectively, or to such person as the vice-chancellor, principal, or rector or provost of the said universities respectively shall appoint to receive the same, or to such queen's printer by whom or on whose behalf such certificate shall be produced, as the case may be.

As to the allowances to be granted on books printed in Latin, Greek, Oriental, or Northern languages.

"XLIX. And be it enacted, that no such allowance shall be granted or paid on any book in the Latin, Greek, or Oriental or Northern languages, unless such book shall be wholly printed in the Latin, Greek, Oriental, or Northern languages, as the case may be; provided always, that it shall be lawful for the commissioners of her majesty's Treasury, if they shall see fit, to direct such allowance to be made and granted on any book partly in the Latin, Greek, or Oriental or Northern languages, and partly in the English or any other language.

Any house or place approved by the lords of the Treasury, and used by the queen's printer, to be deemed his ordinary printing house.

"L. And be it enacted, that every house, office, or place heretofore approved of or which may hereafter be approved of by the commissioners of her majesty's Treasury, in which the queen's printers in England, Scotland, and Ireland respectively shall have printed or may hereafter print, by themselves or their own *and* *fide* agents, and not by others, and for their own sole and undivided interest, the whole of any impression or edition of any Bible, Testament, Psalm Book, Book of Common Prayer, Confession of Faith, or Larger or Shorter Catechism, shall be deemed and taken to be an ordinary and usual printing house of such queen's printer within the meaning of this act for entitling such queen's printer to the allowances aforesaid.

Drawback not to be allowed on books in the Latin, &c. languages, nor on Bibles, &c. nor other books exported by persons not being printers, &c.

"LIX. And be it enacted, that no drawback shall be allowed for or in respect of the paper of any books in the Latin, Greek, Oriental, or Northern languages, printed within the universities of Oxford and Cambridge, or the universities of Scotland, or Trinity college, Dublin, by permission of the vice-chancellors or principals or provost of the same respectively, nor for or in respect of any Bibles, Testaments, Psalm Books, or Books of Common Prayer, Confession of Faith, or Larger or Shorter Catechism, printed in the universities of Oxford or Cambridge, or Trinity college, Dublin, or by the queen's printers in England, Scotland, or Ireland respectively, nor for or in respect of any other printed books exported by any person not being a printer or bookseller or stationer, or which have ever been before sold to any person not using or exercising the trade or business of a printer or bookseller or stationer.

Penalty on fraudulently obtaining or endeavouring to obtain drawbacks.

"LXII. And be it enacted, that every person who shall produce to any officer of excise or customs to be packed or shipped for exportation on drawback any paper, buttonboard, millboard, pasteboard, or scaleboard, or any books, not entitled to drawback under the provisions of this act, or who shall pack or ship for exportation on drawback any such paper, buttonboard, millboard, pasteboard, or scaleboard, or books, or any articles, matters, or goods, other than the paper, buttonboard, millboard, pasteboard, or scaleboard, or books, produced to the officer of excise to be packed, or who shall fraudulently remove, deposit, or conceal any paper, button-

as the commissioners of police shall direct; and every breach of any such order shall be deemed a separate offence.

“LXXIII. And be it enacted, that for every misdemeanor or other offence against this act for which no special penalty is hereinbefore appointed, the offender shall, at the discretion of the magistrate before whom the conviction shall take place, either be liable to a penalty not more than five pounds, or be imprisoned for any time not more than one calendar month in any gaol or house of correction within the jurisdiction of such magistrate.”

STAT. 2 & 3
VICT. c. 47.

Penalty for
offences for
which no
penalty is
appointed.

XLVI. STAT. 2 & 3 VICTORIÆ, c. 49 (1). A.D. 1839.

STAT. 2 & 3
VICT. c. 49.

“An Act to make better Provision for the Assignment of Ecclesiastical Districts to Churches or Chapels augmented (2) by the Governors of the Bounty of Queen Anne, and for other Purposes.”

“Whereas an act was passed in the fifty-eighth year of the reign of his majesty King George the Third, intituled, ‘An Act for building and promoting the building of additional Churches in populous Parishes:’ and whereas another act was passed

58 Geo.3, c.45.

(1) *Vide* Stat. 3 & 4 Vict. c. 20; and Stat. 3 & 4 Vict. c. 60.

(2) *Churches or Chapels augmented:—*

Augmentations, extending Stat. 29 Car. 2, c. 8, for confirming and perpetuating augmentations made by ecclesiastical persons to small vicarages and curacies, and for other purposes	1 & 2 Gul. 4, c. 45.	E.
Bounty (Queen Anne's), making more effectual and enlarging the powers of the governors of	43 Geo. 3, c. 107.	} E.
.....consolidating the offices of first-fruits, tenths, and Queen Anne's bounty	45 Geo. 3, c. 84.	
Briefs abolished, and better provision made for the collection and application of voluntary contributions for enlarging and building churches and chapels	1 & 2 Vict. c. 20.	E.
Building, repairing, or otherwise providing of churches and chapels, and of houses for the ministers, and the providing of churchyards and glebes, for promoting	9 Geo. 4, c. 42.	E.
.....	43 Geo. 3, c. 108.	} E. & I.
Amended by	51 Geo. 3, c. 115.	
.....for building and promoting the building of additional churches in populous parishes	52 Geo. 3, c. 161, s. 27.	} E.
.....	58 Geo. 3, c. 45.	
Amended by	59 Geo. 3, c. 134.	} E.
.....	3 Geo. 4, c. 72.	
.....	5 Geo. 4, c. 103.	} E.
.....	7 & 8 Geo. 4, c. 72.	
.....	1 & 2 Gul. 4, c. 38.	} E.
.....	2 & 3 Gul. 4, c. 61.	
.....	1 & 2 Vict. c. 107.	} U.K.
.....	2 & 3 Vict. c. 49.	
.....	3 & 4 Vict. c. 60.	} I.
Repealed, as to franking, by	7 Gul. 4 & 1 Vict. c. 32.	
And other provisions made by	7 Gul. 4 & 1 Vict. c. 35.	} I.
Building of chapels of ease in Ireland, making further provision for the augmentation of perpetual cures	2 & 3 Vict. c. 52.	
Amended by	7 & 8 Geo. 4, c. 43.	} E.
Building commission prolonged for ten years	6 & 7 Gul. 4, c. 31.	
Amended by	2 & 3 Gul. 4, c. 67.	} E.
.....	7 Gul. 4 & 1 Vict. c. 75.	
.....	1 & 2 Vict. c. 107.	} E.
.....	2 & 3 Vict. c. 49.	
Corporations, enabling his majesty to grant new leases on former rents for the augmentation of ecclesiastical	46 Geo. 3, c. 151.	E.
.....to authorize the identifying of lands and other possessions of certain ecclesiastical and collegiate corporations	2 & 3 Gul. 4, c. 80.	E.
Districts to churches or chapels augmented by the governors of Queen Anne's bounty, providing better for the assignment of	2 & 3 Vict. c. 49.	} E.
Additional provisions made by	3 & 4 Vict. cc. 20 & 60.	

STAT. 2 & 3
VICT. c. 30.

thirty days from the service of such order, appeal against the
of the province, and the archbishop shall *hear and determine*
confirm, revoke, or vary such order, as to him may
if he shall revoke or vary the same, such revocation
in the registry of the diocese, and be served, pro
hereinbefore directed with regard to the origin
the archbishop, if he shall think fit, to order
appeal: provided also, that in any case in w
any spiritual person, notice thereof shall fo
bishop by whom the order appealed from
dens of the parish and to the spiritual
parish; and all persons interested in
the archbishop to oppose the revoca
original appellant from such order

Notice of
appeal.

STAT. 2 & 3
VICT. cap.
xxxiii.

XLIV. STAT. 2
"An Act for altering and
Mark, Saint Luke,

STAT. 2 & 3
VICT. c. 47.

XLV.
"An Act for fu

Public houses
to be shut on
the mornings
of Sundays,
&c.

"XLII. And
open his house
beer, or other
Friday, befo
vellers.

Empowering
the commis-
sioners of
police to regu-
late the route
and conduct of
persons driving
stage car-
riages, cattle,
&c. during the
hours of divi
service.

"LI.
dens of
litan p
comr
sha'
ar
whereas it is expedient to explain and amend some of the provisions of the said
several recited acts: be it therefore enacted by the queen's most excellent majesty,
by and with the advice and consent of the lords spiritual and temporal, and com-
mons, in this present parliament assembled, and by the authority of the same, that
so much of the said recited act passed in the fifty-ninth year of the reign of his
said majesty King George the Third as provides that no district chapelry assigned
to any chapel of ease or parochial chapel then already existing, or to any chapel
built or which might thereafter be built or acquired under the powers of the said
recited act passed in the fifty-ninth year of the reign of his said majesty King
George the Third, or the herein before-recited act passed in the fifty-eighth year of
the reign of his said majesty King George the Third, should become a benefice by
reason of any augmentation of the maintenance of the curate by any grant or
bounty under the provisions of any act or acts of parliament, or law or laws for
augmenting small livings, shall be and the same is hereby repealed; and that so

By order of the
House of Commons
in the year of the
reign of the said
queen Anne, the
said act should
not become
law by reason of
any augmentation
of the maintenance
of the curate by
any grant or bounty
under the provisions
of any act or acts
of parliament, or
law or laws for
augmenting small
livings; and

Endowment of Portland chapel, Oxford chapel, and Welbeck chapel, in the parish of St. Mary-le-bone, Middlesex, Newborough church, Northamptonshire, and also of a chapel on Sunk Island, in the Humber	11 Geo. 4 & 1 Gul. 4, c. 59. E.
Rates, exempting from poor and church, all churches, chapels, and other places of religious worship	3 & 4 Gul. 4, c. 30. E.
Society for building new churches incorporated	9 Geo. 4, c. 42. E.
Repealed, as to franking, by	7 Gul. 4 & 1 Vict. c. 32. E.
And other provisions made by	7 Gul. 4 & 1 Vict. c. 33. U.K. 2 & 3 Vict. c. 52.

ACTA VICTORIÆ. A.D. 1837—1844.
shall direct; and every breach of any such order Stat. 2 & 3
for every misdemeanor or other offence whereby for
is hereinbefore appointed, the offender shall take which is
pounds, or be imprisoned for
or house of correction

passed in the first year of the reign of his majesty
that no rector or vicar of any mother church, or
persons having cure of souls within the parish or
acted by the governors of the bounty of
maintenance of the poor clergy shall be
of that act be divested or dis-
with all other parochial rights
augmented church or chapel
remain in the same state,
shall be and the same is
which have been
chapelries may
visions of the herein
on of his said majesty
until such district chapelry
be and effect as if this act had

STAT. 2 & 3
VICT. C. 49.
of so much of
1 Geo. 1, c. 10,
as provides
that no incum-
bent of the
mother church
of a parish in
which an aug-
mented church
or chapel shall
be situate
shall be di-
vested of cure
of souls, ex-
cept, &c.

Stat. 2 & 3
Vict. C. 49.
Stat. 2 & 3
Vict. C. 49.

case of any church or chapel which
augmented by the said governors of the
which any district chapelry has already been
er before or after such augmentation under the
or some of them, such church or chapel from and
the assignment of such district chapelry, shall be and
a perpetual curacy and benefice, and the minister duly
used thereto, and his successors, shall not be a stipendiary
be and esteemed in law to be a perpetual curate, and a body
porate, with perpetual succession, and may receive and take to him-
successors all such lands, tenements, tithes, rent-charges, and heredita-
as shall be granted unto or purchased for him or them by the said governors
the bounty of Queen Anne, or otherwise; and such perpetual curate shall
thenceforth have within the district chapelry so assigned as aforesaid sole and
exclusive cure of souls, and shall not be in anywise subject to the control or inter-
ference of the rector, vicar, or minister of the parish or place from which such
district chapelry shall have been taken, any law or statute to the contrary notwith-
standing.

Any augmented
church or
chapel having
a district to be
a perpetual
curacy, and
the minister to
be an incum-
bent, with
perpetual suc-
cession, &c.
and to have
exclusive cure
of souls within
the district.

"III. And be it further declared and enacted, that it shall be lawful for the
said commissioners for building new churches to assign a district chapelry to any
church or chapel, with such consent as is required by the acts of the fifty-eighth
and fifty-ninth years of his said majesty King George the Third respectively here-
inbefore recited, or one of them, in the manner specified and directed in and by
such several acts; and it shall be lawful for the said governors of the bounty of
Queen Anne to augment such church or chapel, either before or after such district
chapelry has been formed or assigned, on the same terms, conditions, and regulations
as are or may be in force concerning such augmentation.

Commissioners
may assign
districts in the
manner speci-
fied by the
acts of 58 &
59 Geo. 3, and
governors of
Queen Anne's
bounty may
augment the
churches or
chapels.

"IV. And be it further enacted, that every such church or chapel so augmented
to which a district chapelry shall have been assigned as aforesaid, shall be subject to
the provisions and regulations contained in the herein before-recited act of the
fifty-ninth year of the reign of his said majesty King George the Third, touching
the assignment of district chapelries, except so far as is by this act otherwise
provided.

Such aug-
mentations to
be subject to
the provisions
of 59 Geo. 3,
c. 134, touch-
ing the assign-
ment of dis-
tricts.

"V. Provided always, and be it further enacted, that nothing herein contained
shall alter or affect the provisions of the herein before-recited act passed in the first
year of the reign of his majesty King George the First, which enact that all
churches, curacies, or chapels which should at any time thereafter be augmented
by the said governors of the bounty of Queen Anne should be perpetual cures and
benefices, and that the ministers duly nominated and licensed thereto, and their
successors respectively, should be bodies politic and corporate, with perpetual
succession and other privileges and capacities in the said act mentioned, but

Provisions of
1 Geo. 1, c. 10,
which enact
that all aug-
mented
churches, &c.
shall be per-
petual curacies,
and the mini-
sters, bodies
politic, &c.
not affected.

STAT. 2 & 3 VICT. c. 49.	in the fifty-ninth year of the reign of his said majesty King George the Third, intituled, 'An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the third year of the reign of his majesty King George the Fourth, intituled, 'An Act to amend and render more effectual two Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the fifth year of the reign of his said majesty King George the Fourth, intituled, 'An Act to make further Provision, and to amend and render more effectual three Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty, and in the third year of the Reign of His present Majesty, for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the seventh and eighth years of the reign of his said majesty King George the Fourth, intituled, 'An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the first and second years of the reign of his late majesty King William the Fourth, intituled, 'An Act to amend and render more effectual an Act passed in the seventh and eighth years of the Reign of His late Majesty, intituled, "An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes:"' and whereas another act was passed in the second and third years of the reign of his said late majesty, to render more effectual the aforesaid act passed in the fifty-ninth year of the reign of his majesty King George the Third: and whereas another act was passed in the first year of the reign of her present majesty Queen Victoria, intituled, 'An Act to prolong for ten years Her Majesty's Commission for building new Churches:' and whereas another act was passed in the first and second years of the reign of her said majesty Queen Victoria, intituled, 'An Act to amend and render more effectual the Church Building Acts:' and whereas another act was passed in the first year of the reign of his majesty King George the First, intituled, 'An Act for making more effectual Her late Majesty's gracious Intention for augmenting the Maintenance of the poor Clergy:' and whereas another act was passed in the first and second years of the reign of her said majesty Queen Victoria, intituled, 'An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy:' and whereas it is expedient to explain and amend some of the provisions of the said several recited acts: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the said recited act passed in the fifty-ninth year of the reign of his said majesty King George the Third as provides that no district chapelry assigned to any chapel of ease or parochial chapel then already existing, or to any chapel built or which might thereafter be built or acquired under the powers of the said recited act passed in the fifty-ninth year of the reign of his said majesty King George the Third, or the herein before-recited act passed in the fifty-eighth year of the reign of his said majesty King George the Third, should become a benefice by reason of any augmentation of the maintenance of the curate by any grant or bounty under the provisions of any act or acts of parliament, or law or laws for augmenting small livings, shall be and the same is hereby repealed; and that so
59 Geo. 3, c. 134.	
3 Geo. 4, c. 72.	
5 Geo. 4, c. 103.	
7 & 8 Geo. 4, c. 72.	
1 & 2 Gul. 4, c. 38.	
2 & 3 Gul. 4, c. 61.	
7 Gul. 4 & 1 Vict. c. 75.	
1 & 2 Vict. c. 107.	
1 Geo. 1, c. 10.	
1 & 2 Vict. c. 106.	
Repeal of so much of 59 Geo. 3, c. 134, as provides that certain district cha- pelries should not become benefices by reason of aug- mentation by Queen Anne's bounty; and	

Endowment of Portland chapel, Oxford chapel, and Welbeck chapel, in the parish of St. Mary-le-bone, Middlesex, Newborough church, Northamptonshire, and also of a chapel on Sunk Island, in the Humber	11 Geo. 4 & 1 Gul. 4, c. 59. E.
Rates, exempting from poor and church, all churches, chapels, and other places of religious worship	3 & 4 Gul. 4, c. 30. E.
Society for building new churches incorporated	9 Geo. 4, c. 42. E.
Repealed, as to franking, by	7 Gul. 4 & 1 Vict. c. 32. E.
And other provisions made by	7 Gul. 4 & 1 Vict. c. 33. U.K. 2 & 3 Vict. c. 52. }

much of the said recited act passed in the first year of the reign of his majesty King George the First as provides that no rector or vicar of any mother church, or any other ecclesiastical person or persons having cure of souls within the parish or place where a church or chapel augmented by the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy shall be situate, or his or their successors, should by virtue of that act be divested or discharged from the same, but that the cure of souls, with all other parochial rights and duties, (such augmentation and allowance to the augmented church or chapel as aforesaid only excepted,) should thereafter be and remain in the same state, plight, and manner as before the making of that act, shall be and the same is hereby repealed, with respect only to those churches or chapels which have been already or hereafter may be augmented, and for or to which district chapelries may have already been or may hereafter be assigned, under the provisions of the herein before-recited act passed in the fifty-ninth year of the reign of his said majesty George the Third: provided always, that unless and until such district chapelry be assigned the said provision shall remain in full force and effect as if this act had not been passed.

“II. And be it further enacted, that in the case of any church or chapel which has already been or hereafter may be augmented by the said governors of the bounty of Queen Anne, and for or to which any district chapelry has already been or hereafter may be assigned, whether before or after such augmentation under the provisions of the said recited acts or some of them, such church or chapel from and after such augmentation, and the assignment of such district chapelry, shall be and is hereby declared to be a perpetual curacy and benefice, and the minister duly nominated and licensed thereto, and his successors, shall not be a stipendiary curate, but shall be and esteemed in law to be a perpetual curate, and a body politic and corporate, with perpetual succession, and may receive and take to himself and his successors all such lands, tenements, tithes, rent-charges, and hereditaments as shall be granted unto or purchased for him or them by the said governors of the bounty of Queen Anne, or otherwise; and such perpetual curate shall thenceforth have within the district chapelry so assigned as aforesaid sole and exclusive cure of souls, and shall not be in anywise subject to the control or interference of the rector, vicar, or minister of the parish or place from which such district chapelry shall have been taken, any law or statute to the contrary notwithstanding.

“III. And be it further declared and enacted, that it shall be lawful for the said commissioners for building new churches to assign a district chapelry to any church or chapel, with such consent as is required by the acts of the fifty-eighth and fifty-ninth years of his said majesty King George the Third respectively hereinbefore recited, or one of them, in the manner specified and directed in and by such several acts; and it shall be lawful for the said governors of the bounty of Queen Anne to augment such church or chapel, either before or after such district chapelry has been formed or assigned, on the same terms, conditions, and regulations as are or may be in force concerning such augmentation.

“IV. And be it further enacted, that every such church or chapel so augmented to which a district chapelry shall have been assigned as aforesaid, shall be subject to the provisions and regulations contained in the herein before-recited act of the fifty-ninth year of the reign of his said majesty King George the Third, touching the assignment of district chapelries, except so far as is by this act otherwise provided.

“V. Provided always, and be it further enacted, that nothing herein contained shall alter or affect the provisions of the herein before-recited act passed in the first year of the reign of his majesty King George the First, which enact that all churches, curacies, or chapels which should at any time thereafter be augmented by the said governors of the bounty of Queen Anne should be perpetual cures and benefices, and that the ministers duly nominated and licensed thereto, and their successors respectively, should be bodies politic and corporate, with perpetual succession and other privileges and capacities in the said act mentioned, but

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VICT. c. 49.

of so much of 1 Geo. 1, c. 10, as provides that no incumbent of the mother church of a parish in which an augmented church or chapel shall be situate shall be divested of cure of souls, except, &c.

Any augmented church or chapel having a district to be a perpetual curacy, and the minister to be an incumbent, with perpetual succession, &c. and to have exclusive cure of souls within the district.

Commissioners may assign districts in the manner specified by the acts of 58 & 59 Geo. 3, and governors of Queen Anne's bounty may augment the churches or chapels.

Such augmentations to be subject to the provisions of 59 Geo. 3, c. 134, touching the assignment of districts.

Provisions of 1 Geo. 1, c. 10, which enact that all augmented churches, &c. shall be perpetual curacies, and the ministers, bodies politic, &c. not affected.

STAT. 2 & 3
VICT. c. 49.

For extending
the provisions
in 1 & 2 Vict.
c. 106, for
annexing
isolated places
to the conti-
guous parishes,
or making
them separate
benefices.

that the same shall remain in full force and effect as if this act had not been passed.

“VI. And whereas by virtue of the said act passed in the first and second years of the reign of her present majesty, intituled, ‘An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy,’ it is amongst other things enacted, that when with respect to his own diocese it should appear to the archbishop of the province, or when the bishop of any diocese should represent to the said archbishop, that any tithing, hamlet, chapelry, place, or district within the diocese of such archbishop, or the diocese of such bishop, (as the case may be,) might be advantageously separated from any parish or mother church, and either be constituted a separate benefice by itself, or be united to any other parish to which it might be more conveniently annexed, or to any other adjoining tithing, hamlet, chapelry, place, or district, parochial or extra-parochial, so as to form a separate parish or benefice, or that any extra-parochial place might with advantage be annexed to any parish to which it is contiguous, or be constituted a separate parish for ecclesiastical purposes; and the said archbishop or bishop should draw up a scheme in writing, (the scheme of such bishop to be transmitted to the said archbishop for his consideration,) describing the mode in which it appeared to him that the alteration might best be effected, and how the changes consequent on such alteration in respect to ecclesiastical jurisdiction, glebe lands, tithes, rent-charges, and other ecclesiastical dues, rates, and payments, and in respect to patronage and rights to pews, might be made, with justice to all parties interested; and if the patron or patrons of the benefice or benefices to be affected by such alteration should consent, in writing under his or their hands, to such scheme, or to such modification thereof as the said archbishop might approve, and the said archbishop should, on full consideration and inquiry, be satisfied with any such scheme or modification thereof, and should certify the same and such consent as aforesaid by his report to her majesty in council, it should be lawful for her majesty in council to make an order for carrying such scheme, or modification thereof, as the case might be, into effect; and such order, being registered in the registry of the diocese, which the registrar was thereby required to do, should be forthwith binding on all persons whatsoever, including the incumbent or incumbents of the benefice or benefices to be affected thereby, if he or they should have consented thereto in writing under his or their hands; but if such incumbent or incumbents should not have so consented thereto, the order should not come into operation until the next avoidance of the benefice by the incumbent objecting to the alteration, or by the surviving incumbent objecting, if more than one should object thereto, and in such case the order should forthwith after such avoidance become binding on all persons whatsoever: and whereas it is expedient that the said provisions should be extended to cases notwithstanding the vacancy or vacancies of the benefice or benefices thereby to be affected; and also that when by such order a separate parish for ecclesiastical purposes is constituted, the same should become a perpetual curacy and benefice, with cure of souls; be it therefore enacted, that any such scheme or modification may be drawn up according to the regulations and directions in such act contained, subject to the consent in writing of the patron or patrons of the benefice or benefices to be affected thereby, under his or their hands, notwithstanding the vacancy of such benefice or benefices; and it shall be lawful for her majesty in council thereupon to make an order for carrying such scheme, or modification thereof, as the case may be, into effect; and such order, being registered in the registry of the diocese as directed by the said act, shall come into operation and shall be forthwith binding on all persons whatsoever, notwithstanding such vacancy or vacancies.

The scheme or
modification
may be made
according to
the regulation
of the recited
act, subject to
the consent of
the patron,
notwithstand-
ing vacancy of
benefice.

Who are to
be considered
patrons for
such purpose.

“VII. And be it further enacted, that the provisions contained in the said last-recited act touching the party or parties who shall be considered patron or patrons, and the manner in which the consent of the patrons shall in certain cases be given, for the purposes of such act, shall apply to the consent of the patron or patrons hereinbefore last required to be given.

Where a sepa-

“VIII. And be it further enacted, that when by any order of her majesty in

council as aforesaid a separate parish for ecclesiastical purposes is constituted, the same shall, on registration thereof, and with the consent in writing of the incumbent or incumbents of the benefice or benefices to be thereby affected, become a perpetual curacy and benefice, and the minister thereof, duly nominated and licensed thereto, and his successors, shall be a body politic and corporate, with perpetual succession, and may receive and take to himself and his successors all such lands, tenements, tithes, rent-charges, and hereditaments as shall be granted unto him or them, and such perpetual curate shall thenceforth have, within the limits of the district parish formed under the Church Building Acts for the church of such perpetual curacy, sole and exclusive cure of souls, and shall not in anywise be subject to the control or interference of the incumbent or incumbents of the benefice or benefices to be affected by such order, if he or they shall have consented to such order as aforesaid; but if such incumbent or incumbents shall not have so consented thereto, this last-mentioned provision shall not come into operation until the next avoidance of the benefice by the incumbent objecting thereto, or by the surviving incumbent objecting, if more than one shall object thereto, and in such case the last-mentioned provision shall forthwith after such avoidance come into operation, and shall be binding on all persons whatsoever.

“IX. And be it further enacted, that the powers granted by the hereinbefore recited act passed in the first and second years of the reign of her present majesty (chapter one hundred and seven) to her majesty’s commissioners for building new churches, of making, with certain consents, any church or chapel the parish church of the parish within which the same is situate, instead of the ancient parish church, and of making such ancient parish church a district church or chapel, with or without a district, as the said commissioners shall in such case direct, shall not extend or be construed to extend to making any church or chapel now or hereafter to be built and endowed under the powers of the last-mentioned act, or the hereinbefore recited act passed in the first and second years of the reign of his late majesty King William the Fourth, the parish church, nor to the making any church or chapel the parish church as aforesaid, the advowson, right of presentation, or nomination of or to which shall belong to any other person or persons than to the patron of such ancient parish church, without the consent in writing under the hands of the patron or patrons and of the incumbent or minister of any such church or chapel herein mentioned.

“X. And be it further enacted, that where a church or chapel has been built or purchased and endowed, and the patronage thereof granted under the provisions of the hereinbefore recited acts of the first and second years of the reign of his said majesty King William the Fourth, and of the first and second years of the reign of her present majesty, chapter one hundred and seven, or either of them, and where a particular district has been assigned to such church or chapel under the provisions of such first-named act, the minister or perpetual curate of such church or chapel shall have exclusive cure of souls within such district, and shall not be in anywise subject to the control or interference of the rector, vicar, or minister of the mother church of the parish or place out of which such district shall have been taken, any statute or law to the contrary thereof notwithstanding.

“XI. And whereas it is by the said recited act passed in the first and second years of the reign of her present majesty, chapter one hundred and seven, enacted, that in all district churches and district chapelries the licence of the stipendiary curate appointed to serve the chapel of such chapelry shall not be rendered void by the avoidance of the church of the parish or district parish in which such chapel is situate, unless the same shall be revoked by the bishop of the diocese under his hand and seal: and whereas doubts exist as to the extent and meaning of such provision; be it therefore enacted and declared, that the same shall apply to the licence of the stipendiary curate of a district chapelry and to the licence of the stipendiary curate of a district parish church.

“XII. And whereas it is expedient to make provision for the more permanent security of the endowments and emoluments which shall have been or may hereafter be provided for the use or benefit of any church or chapel, whether built,

STAT. 2 & 3
VICT. c. 49.

rate parish for ecclesiastical purposes is constituted by order in council, the same shall be a perpetual curacy with cure of souls within the district assigned to it by such order.

Limiting the provisions in 1 & 2 Vict. c. 107, enabling the commissioners for building new churches with certain consents, to make any church or chapel the parish church of any parish, and the parish church a district church or chapel.

Minister of a district church or chapel to have exclusive cure of souls within such district.

For removing doubts as to the extent and meaning of 1 & 2 Vict. c. 107, s. 13.

Governors of Queen Anne’s bounty may

STAT. 2 & 3
VICT. c. 49.

accept endow-
ments for
churches and
chapels built
under powers
of the Church
Building Acts;

and trustees of
such endow-
ments may
assign them to
the said gov-
ernors;
subject to
consent.

Money pro-
vided for such
endowments to
be paid to the
treasurer of the
said governors,
and his receipt
to be a good
discharge.

Governors of
Queen Anne's
bounty may
lay out at in-
terest any pur-
chase monies
paid to them
under the Act
1 & 2 Vict.
c. 23, and
appropriate
any surplus of
such purchase
monies to the
benefice on
account of
which the
monies shall
have been re-
ceived.

acquired, or appropriated, or to be built, acquired, or appropriated under the authority of the said recited acts or of any of them, or under any other authority, or for the use or benefit of the incumbent of any such church or chapel, or of the spiritual person serving the same; be it therefore enacted, that it shall and may be lawful for the said governors of the bounty of Queen Anne to accept, take, and hold any such endowments and emoluments upon the trusts and for the intents and purposes for which the same shall have been or may hereafter be given or granted by the person or persons providing the same, in like manner as any such endowments or emoluments may now be taken or held by any private trustees or trustee; and it shall and may be lawful for any trustees or trustee of any such endowments or emoluments to assign and transfer the same to the said governors of the bounty of Queen Anne, to be held and applied by them upon the same trusts and for the same intents and purposes as the same previously to such assignment and transfer were held by such trustees or trustee; provided always, that no such gift, grant, assignment, or transfer shall be made to the said governors of the bounty of Queen Anne until by an instrument in writing under their common seal they shall have signified their consent to accept the same.

“XIII. And be it further enacted, that in all cases in which such consent of the said governors of the bounty of Queen Anne shall have been so given, the money provided for such endowments shall be paid to the treasurer for the time being of the said governors: and the receipt or receipts of such treasurer shall be effectual discharges or an effectual discharge for so much money as in such receipts or receipt shall be expressed, to the person or persons paying the same, and after obtaining such receipts or receipt the person or persons paying such money shall be absolutely discharged from all liability touching such money, and from all trusts relating thereto.

“XIV. And whereas by an act passed in the first year of the reign of her present majesty, (chapter twenty-three,) intituled, ‘An Act to amend the Law for providing fit Houses for the Beneficed Clergy,’ (an omission in which was supplied by another act passed in the same session of parliament, chapter twenty-nine,) it was enacted that the monies to arise from the sale or sales of the residence house, gardens, orchards, and appurtenances, and lands, belonging to any benefice by the said act under certain circumstances authorized to be sold, should be paid to the said governors of the bounty of Queen Anne, to be by them, with the consent of the ordinary and patron, applied and disposed of in or towards the erection or purchase of some other house and offices, or the purchase of an orchard, garden, and appurtenances, or land for the site of a house, any or either of them, together with land contiguous thereto, and not exceeding twelve acres, suitable for the residence and occupation of the incumbent of such benefice: and whereas the said act makes no provision for authorizing the said governors to lay out at interest the purchase monies which in any case shall be paid to them under the authority thereof, in the meantime and until such monies shall be applied and disposed of according to the directions of the said act, nor for the application of the surplus of such monies in case the same monies shall not be wholly applied and disposed of to the purposes contemplated by the said act; be it therefore enacted, that it shall be lawful for the said governors and they are hereby required to lay out and invest the said purchase monies which shall from time to time come into their hands under and by virtue of the said act in the purchase of such stocks, funds, and securities, and at such rate of interest, as they shall think proper, and shall from time to time receive the dividends and interest which shall become payable in respect thereof, and add the same by way of accumulation to the principal, and so from time to time so long as the same shall remain in their hands, or until the same, or so much thereof as shall be required, shall have been applied and disposed of by the said governors in the manner and for the purposes in the said act mentioned; and further, that in case, after the complete execution of the duty or trust imposed on the said governors by the said act of parliament, or of so much thereof as shall be in their power, any sum of money shall remain in their hands undisposed of, such surplus shall be appropriated by the said governors to the particular benefice on

account of which the same shall have been received, and shall be applicable and disposable by them for the benefit of such benefice, in such and the same manner, and with such and the same powers of investment, and other powers and authorities in all respects, according to the rules and regulations of the said governors for the time being, as if the said monies, or the stocks or funds which might be purchased therewith, had been appropriated by the said governors to such benefice out of the general funds and profits of the said governors, or otherwise, for the benefit and augmentation thereof.

STAT. 2 & 3
VICT. C. 49.

“XV. And whereas some of the lands and hereditaments which were formerly purchased by the governors of the said bounty, or were otherwise appropriated or annexed, by or with the consent or concurrence of the said governors, to particular benefices, for the augmentation thereof, are situate at an inconvenient distance from the benefices to which they respectively belong, and in such and some other special cases a sale of the lands and hereditaments which have been or may hereafter be so appropriated or annexed may be deemed advantageous; be it therefore enacted, that in every case where any lands or hereditaments which, in consequence of any purchase, allotment, benefaction, donation, or exchange, or otherwise howsoever, shall have been appropriated or annexed to any benefice for the augmentation thereof, by or with the concurrence of the said governors of the bounty of Queen Anne, are situate elsewhere than within the parish or parishes of such benefice, or some adjoining parish or parishes, it shall be lawful for the incumbent of such benefice, (with the consent of the said governors of the bounty of Queen Anne, and of the ordinary and patron of such benefice, to be testified as hereinafter mentioned,) absolutely to sell and dispose of the said lands or hereditaments, or any part thereof, to any person or persons whomsoever, either together or in parcels, and either by public sale or by private contract, for such sum or sums of money as to the said governors, ordinary, and patron shall seem fair and reasonable; and upon payment of the purchase money for the same, as hereinafter directed, by deed indented, or in the case of any lands or hereditaments of copyhold or customary tenure by surrender or other customary mode of assurance, to convey and assure the lands or hereditaments comprised in such sale unto and to the use of the purchaser or purchasers thereof, his, her, or their heirs, executors, administrators, or assigns respectively, or as he, she, or they shall direct or appoint; provided always, that the consent of the said governors, patron, and ordinary to every such sale shall be testified by their respectively executing the deed or other assurance by which the lands or hereditaments comprised in such sale shall be conveyed or assured; except that in the case of any lands or hereditaments of copyhold or customary tenure which shall be conveyed or assured by surrender such consent may be testified by any writing under the corporate seal, or the hand and seal, (as the case may be,) of each of the consenting parties, which writing shall be produced to the lord or steward of the manor of which the said premises shall be holden, and shall be a sufficient authority to him for accepting from the incumbent and other necessary parties a surrender of the same premises, and such writing shall be entered with the surrender upon the court rolls of the said manor.

Power in certain cases and with certain consents to sell lands purchased for or annexed to benefices for the augmentation thereof by the governors of the bounty of Queen Anne.

How consents to be testified.

“XVI. And be it further enacted, that in every case where any lands or hereditaments which shall have been so appropriated or annexed to any benefice as aforesaid shall be situate within the parish or parishes of such benefice, or some adjoining parish or parishes, but on account of any special circumstance or circumstances a sale of the said lands or hereditaments, or any part thereof, shall be deemed advantageous, it shall be lawful for the incumbent of such benefice, with the consent of the said governors of the bounty of Queen Anne, and of the ordinary and patron of such benefice, to be testified as aforesaid, and with the further consent of the archbishop for the time being of the province in which such benefice is situated, to be testified in like manner, to sell and dispose of and convey and assure the said lands or hereditaments, or any part thereof, in such manner as is hereinbefore directed or authorized with respect to any such lands or hereditaments where the same shall not be situate within any such parish or parishes as aforesaid.

Power in certain special cases to sell lands so purchased or annexed.

STAT. 2 & 3
VICT. c. 49.

Power of sale
given by 1 & 2
Vict. c. 23,
extended.

“XVII. And whereas it is expedient that the power which by the said act of the first and second years of the reign of her present majesty is given to the incumbent of a benefice, with the consent and approbation of the ordinary and patron thereof and of the archbishop of the province, to sell the residence house, garden, orchard, and appurtenances belonging to his benefice, with land contiguous thereto, not exceeding twelve acres, should be extended and made applicable to other houses and buildings belonging to any benefice under the circumstances hereinafter mentioned; be it therefore enacted, that in any case in which any dwelling house, shop, warehouse, or other erection or building (other than the house of residence, belonging to any benefice shall be so old and ruinous as that it would be useless or inexpedient to expend money in repairing and maintaining the same, or for other good and sufficient reasons it shall be thought advisable to sell and dispose of the same, it shall and may be lawful for the incumbent of such benefice and he is hereby authorized and empowered, with the consent and approbation of the ordinary and patron thereof and of the archbishop of the province, to be signified in the manner prescribed by the last-mentioned act, absolutely to sell and dispose of such dwelling house, shop, warehouse, or other erection or building, with the yards, gardens, orchard, croft, and appurtenances thereto belonging, or any of them, to any person or persons whomsoever, either altogether, or in parcels, and for such sum or sums of money as to such ordinary, patron, and archbishop shall appear fair and reasonable, and upon payment of the purchase money for the same as hereinafter mentioned, by deed indented, or in the case of copyhold or customary hereditaments by surrender or other customary mode of assurance, to convey and assure the hereditaments which shall be so sold unto and to the use of the purchaser or purchasers thereof, his or their heirs or assigns, or as he or they shall direct or appoint.

Purchase monies to be paid to the governors of the bounty of Queen Anne;

“XVIII. And be it further enacted, that the monies to arise from any sale or sales which shall be made under any of the provisions of this act shall be paid to the said governors of the bounty of Queen Anne, and that the receipts of the treasurer for the time being of the said governors shall be sufficient discharges for the said monies, or for so much thereof as in such receipts respectively shall be expressed to be received, and shall effectually release and exonerate the person or persons paying the same from all responsibility in respect of the application thereof; and further, that no purchaser or purchasers shall be in anywise bound or concerned to ascertain or inquire whether any special circumstance or circumstances or reason or reasons shall exist on account of which any such sale or sales as aforesaid may be deemed advantageous or advisable, or whether such circumstance or circumstances or reason or reasons shall be sufficient to authorize such sale or sales.

and to be by them appropriated to the particular benefice on account of which the same shall have been received, and to be subject, in regard to the application thereof, to all the powers, regulations, &c. of the said governors.

“XIX. And be it enacted, that all the monies to arise from any such sale or sales as aforesaid, (subject nevertheless, in the case of any lands or hereditaments which shall have been appropriated or annexed to any benefice by or with the concurrence of the said governors of the bounty of Queen Anne, to any stipulation or agreement which the said governors in their discretion may think proper to make for payment thereof of the costs and expenses of such sale or sales or any part thereof,) shall be appropriated by the said governors to the particular benefice to which the hereditaments comprised in such sale shall have previously belonged, and shall be applicable and disposable by them for the benefit and augmentation of such benefice in such and the same manner, and with such and the same powers of investment, and other powers and authorities, in all respects, according to the rules and regulations of the said governors for the time being, as if the said monies or the stocks or funds which might be purchased therewith, were then originally appropriated by the said governors to such benefice out of the general funds and profits of the said governors, or otherwise, for the benefit and augmentation thereof.

Who are to consent as patrons.

“XX. And be it enacted, that in any case in which upon the sale of any such lands or hereditaments as aforesaid the patronage of the benefice to which the same shall belong shall be in the crown, or the advowson and right of patronage of such benefice shall be part of the possessions of the duchy of Cornwall, or the patron of

such benefice shall be a minor, idiot, lunatic, or feme covert, then and in every such case the consent required by this act on the part of the patron of such benefice shall and may be testified by the execution of such deed or assurance or other writing as aforesaid by such and the same persons as by the said act of the first and second years of the reign of her present majesty, chapter twenty-three, are in like cases directed or authorized to testify the consent of the patron to the exercise of the several powers given by the said act, or by certain other acts therein mentioned or referred to; and that in all other cases the consent required by this act on the part of the patron of any benefice shall be given by the person or persons who would be entitled to present or nominate or to collate to such benefice in case the same were actually vacant at the time of giving such consent.

STAT. 2 & 3
VICT. c. 49.

“XXI. And be it further enacted, that in the construction of so much of the act as relates to the sales of land and other hereditaments, and the application of the monies to arise therefrom, the word ‘benefice’ shall be taken to extend to and comprise all rectories with cure of souls, vicarages, perpetual curacies, and chapelries the incumbents of which respectively shall, in right thereof, be corporations sole.

Definition of
the term “be-
nefice.”

“XXII. And be it further enacted, that in any case under the hereinbefore recited acts, (except the act passed in the first and second years of her present majesty’s reign, chapter one hundred and six,) or of this act, where the patronage of any rectory, vicarage, perpetual curacy, district parish chapelry, district chapelry, or place shall be in the crown, or the advowson and right of patronage thereof shall be part of the possessions of the duchy of Cornwall, or where the patron thereof shall be a minor, idiot, lunatic, or feme covert, then and in every such case the consent required by such acts on the part of the patron of any such rectory, vicarage, perpetual curacy, district parish chapelry, district chapelry, or place shall and may be testified in writing under the hands of such and the same persons as by the said act passed in the first and second years of the reign of her present majesty, chapter twenty-three, are in like cases directed or authorized to testify the consent of the patron to the exercise of the several powers given by the said act, or by certain other acts therein mentioned or referred to; and that in all other cases the consent required by the said recited acts (except as aforesaid) and this act on the part of the patron of any rectory, vicarage, perpetual curacy, district parish chapelry, district chapelry, or place shall be given by the person or persons who would be entitled to present or nominate or to collate thereto in case the same were actually vacant at the time of giving such consent, except so far as it is by any of such recited acts or this act otherwise expressly provided for.

How consent
of patron is in
certain cases
to be given
under the
recited act.

“XXIII. And be it further enacted, that this act shall extend only to that part of the United Kingdom called England and Wales, and to the isle of Man, and to the islands of Guernsey, Jersey, Alderney, and Sark.”

To what places
the act is to
extend.

XLVII. STAT. 2 & 3 VICTORIÆ, c. 53 (1). A.D. 1839.

STAT. 2 & 3
VICT. c. 53.

“An Act to amend an Act of the last Session of Parliament for making temporary Provision for the Government of Lower Canada.”

“IV. And be it enacted, that from and after the passing of this act so much of the said recited act passed in the last session of parliament as provides that it shall not be lawful for any such law or ordinance as therein mentioned to repeal, suspend, or alter any provision of any act of the parliament of Great Britain, or of the parliament of the United Kingdom, or of any act of the legislature of Lower Canada, as then constituted, repealing or altering any such act of parliament, shall be and the same is hereby repealed: provided always, that it shall not be lawful for the said governor, with such advice and consent as aforesaid, to make any law or ordinance altering or affecting the temporal or spiritual rights of the clergy of the united church of England and Ireland, or of the ministers of any other religious communion, or altering or affecting the tenure of land within the said province of Lower Canada, or any part thereof, save so far as the tenure of land may be altered or affected by any law or ordinance which may be made by the said

Repeal of the
provision of
1 & 2 Vict.
c. 9, prohibit-
ing the altera-
tion of acts of
parliament;
but no law to
be made af-
fecting the
temporal or
spiritual rights
of ecclesiastics,
or the law of
tenure.

STAT. 2 & 3
VICT. c. 53.

governor, with such advice and consent as aforesaid, to provide for the extinction of any seigniorial rights and dues now vested in or claimed by the ecclesiastics of the seminary of Saint Sulpice of Montreal within the said province, or to provide for the extinction of any seigniorial rights and dues vested in or claimed by any other person or persons or body or bodies corporate or politic, within the island of Montreal, or the island called Ile Jesus, within the said province."

STAT. 2 & 3
VICT. c. 55.

XLVIII. STAT. 2 & 3 VICTORIÆ, c. 55 (1). A.D. 1839.

"An Act to suspend, until the first day of August, One thousand eight hundred and forty, certain Cathedral and other Ecclesiastical Preferments, and the Operation of the new Arrangement of Dioceses (2) upon the existing Ecclesiastical Courts."

5 & 6 Gul. 4,
c. 30.

"Whereas an act was passed in the session held in the fifth and sixth years of the reign of King William the Fourth, intituled, 'An Act for protecting the Revenues of vacant Ecclesiastical Dignities, Prebends, Canonries, and Benefices without Cure of Souls, and for preventing the Lapse thereof, during the pending Inquiries respecting the State of the Established Church in England and Wales,'

6 & 7 Gul. 4,
c. 67.

and whereas another act was passed in the following session, intituled, 'An Act for suspending for one year Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories:' and whereas another act was

6 & 7 Gul. 4,
c. 77.

passed in the same session, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in

(1) Partially repealed by Stat. 3 & 4 Vict. c. 113, s. 60. *Vide etiam* Stat. 4 & 5 Vict. c. 39, s. 28.

(2) *Ecclesiastical Preferments, and Arrangement of Dioceses:—*

Appointments to certain dignities and offices in cathedral and collegiate churches, and to sinecure rectories, suspending for one year	6 & 7 Gul. 4, c. 67.	}	R
Continued by.....	7 Gul. 4 & 1 Vict. c. 71.		
	1 & 2 Vict. c. 106.		
	2 & 3 Vict. cc. 9 & 55.		
	3 & 4 Vict. c. 113, s. 60.		
	4 & 5 Vict. c. 39, s. 28.		
	5 & 6 Vict. cc. 58 & 112.		
Commissioners' inquiries, for protecting the revenues of vacant dignities, prebends, canonries, and benefices with cure of souls, and for preventing the lapse thereof during	5 & 6 Gul. 4, c. 30.	}	R
Continued by.....	6 & 7 Gul. 4, c. 67.		
	7 Gul. 4 & 1 Vict. c. 71.		
	1 & 2 Vict. c. 106.		
	2 & 3 Vict. c. 55.		
	3 & 4 Vict. c. 113, s. 60.		
	4 & 5 Vict. c. 39, s. 28.		
	5 & 6 Vict. c. 112.		
Commissioners' reports on the state of the established church, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues, and patronage, for carrying into effect	6 & 7 Gul. 4, c. 77.	}	R
Certain expiring provisions continued by and repealed in part by	7 Gul. 4 & 1 Vict. c. 71.		
	1 & 2 Vict. c. 106.		
	2 & 3 Vict. c. 55.		
	1 & 2 Vict. c. 106.		
	3 & 4 Vict. c. 113.		
	4 & 5 Vict. c. 39.		
	5 & 6 Vict. cc. 26, 58, 112.		
	6 & 7 Vict. c. 60.		
Dean of Exeter, or of any other cathedral church, for removing doubts as to the appointment of	2 & 3 Vict. c. 14.	}	R
Preferments, relieving from penalties certain spiritual persons and patrons of	7 & 8 Geo. 4, c. 26.		
..... rendering valid bonds, covenants, and other assurances for the resignation of preferments in certain cases	7 & 8 Geo. 4, c. 26.	}	R
..... suspending certain cathedral and ecclesiastical....	9 Geo. 4, c. 94.		
	2 & 3 Vict. c. 55.	}	R

England and Wales with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage, in which latter act are contained certain provisions which were to continue in force for one year after the passing thereof, or, if parliament should be then sitting, until the end of the session of parliament: and whereas the said secondly-recited act, and the temporary provisions of the said last-recited act, have been continued by two acts passed for that purpose in the two last sessions of parliament, until the first day of August in the present year, and, if parliament shall be then sitting, until the end of the session of parliament: and whereas the commission in the said first-recited act mentioned expired in consequence of the demise of the crown, but the inquiries thereby directed, and the measures consequent thereon, have not yet been brought to a termination, and it is therefore expedient to continue the said secondly-recited act, and the temporary provisions of the said thirdly-recited act, for a limited time, and with the exceptions hereinafter mentioned; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said secondly-recited act, and the said temporary provisions of the said thirdly-recited act, shall continue and be in force until the first day of August one thousand eight hundred and forty, and, if parliament shall be then sitting, until the end of the then session of parliament: provided always, notwithstanding anything in this act or in the said recited act contained, that upon the vacancy of any three prebends in the cathedral church of Canterbury in the patronage of the crown it shall be lawful for her majesty to appoint a successor to the third of such vacant prebends, and upon the vacancy of any two prebends in the same church in the patronage of the Lord Archbishop of Canterbury, it shall be lawful for the said archbishop to appoint a successor to the second of such vacant prebends; and that upon the vacancy of any two canonries or prebends residentiary in either of the cathedral churches of Bristol, Chester, Ripon, Salisbury, or Wells, it shall be lawful to appoint or elect a successor to the second of such vacant canonries or prebends residentiary in such churches respectively; and that upon the vacancy of two prebends in either of the cathedral churches of Gloucester, Norwich, or Rochester, besides the prebends which are respectively annexed to the masterhips of Pembroke College in Oxford, and of Catherine Hall in Cambridge, the provostship of Oriel College in Oxford, and the archdeaconry of Rochester, respectively, it shall be lawful to appoint a successor to the second of such vacant prebends in such churches respectively; and that upon the vacancy of any three canonries or prebends residentiary in either of the cathedral churches of Ely, Exeter, Winchester, or Worcester, or in the collegiate church of Saint Peter, Westminster, or in her majesty's royal free chapel of Saint George in Windsor, besides the prebend in the said church of Worcester which is annexed to the Lady Margaret's professorship of divinity in the university of Oxford, it shall be lawful to appoint a successor to the third of such vacant canonries or prebends residentiary in such churches respectively; and that nothing in the said recited acts or in this act contained shall prevent the appointment of the Reverend Henry Jenkyns, professor of Greek in the university of Durham, to the prebend in the cathedral church of Durham designed for him by the late William bishop of Durham, and now held by Richard Prosser, doctor of divinity, if the same shall become vacant; and that upon the vacancy of any other three prebends in the same cathedral church, besides the fourth prebend, which is by an act passed in the second year of his late majesty's reign to be annexed to the archdeaconry of Durham, it shall be lawful to appoint a successor to the third of such vacant prebends; and that in the same cathedral church, and in the said collegiate church of Saint Peter, Westminster, it shall be lawful to fill up any vacancy whereby the number of prebendaries in such two last-mentioned churches respectively shall be reduced below the number of six; and that when the canonry and prebend in the cathedral church of Hereford now held by Henry Charles Hobart shall become vacant, it shall be lawful to appoint a successor thereto.

STAT. 2 & 3
VICT. c. 58.

7 Gul. 4 & 1
VICT. c. 71.
1 & 2 VICT.
c. 108.

Former sus-
pension acts
continued for
a year.
Exceptions.

"II. And be it enacted, that during the vacancy of any dignity, prebend, Patron of

STAT. 2 & 3
VICT. c. 55.
vacant sine-
cure to be
patron of any
appendant
benefice.

First-recited
act to apply
to present and
future vacan-
cies.

Proviso for
visitations, &c.
within new
limits of dio-
ceses.

Not to prevent
appointments
to qualify for
holding a
deanery or
canonry resi-
dentary.

canonry, or benefice without cure of souls, which is now vacant under the provisions of the said recited acts, or which shall hereafter become vacant during the continuance of this act, the holder or incumbent of which respectively, if a successor had been duly admitted thereto, would have been in right thereof the patron of any benefice with cure of souls, the patron of such dignity, prebend, canonry, or benefice without cure of souls shall be considered for all legal purposes to be the patron for the time being of any such benefice with cure of souls.

“III. And be it declared and enacted, that all the powers and provisions of the said first-recited act (except only so far as the same are varied by the said secondly-recited act) shall extend and apply to all dignities, prebends, canonries, and benefices without cure of souls which have become vacant since the fourth day of February in the first-recited act mentioned, or which shall become vacant during the continuance of this act, except only as to so much of the profits and emoluments of any prebend or canonry to which a successor has been or may be appointed under the said recited acts or one of them, or this act, as may have accrued or may accrue since or after the appointment of such successor.

“IV. Provided always, and be it enacted, that, notwithstanding anything in this act or in the said recited acts contained, any bishop or archdeacon may hold visitations of the clergy within the limits of his diocese or archdeaconry, and at such visitations may admit churchwardens, receive presentments, and do all other acts, matters, and things by custom appertaining to the visitation of bishops and archdeacons in the places assigned to his jurisdiction and authority, under or by virtue of the enactments of the thirdly-recited act, and any bishop may consecrate a new church or chapel or a new burial ground within his diocese, as assigned under the provisions of the last-mentioned act.

“V. And be it enacted, that, in order to prevent any difficulty which by reason of the restrictions contained in the said secondly-recited act might occur in any cathedral church in the filling up of the deanery thereof, or of a canonry residentiary therein, in consequence of the provisions of any statute, or of any usage or custom of such church, nothing in the said secondly-recited act or in this act contained shall, during the vacancy of the deanery of any cathedral church, prevent the appointment or collation of any spiritual person to any canonry, prebend, or dignity, or his appointment to any canonry residentiary in such church, to the intent and purpose that such spiritual person may be appointed, elected, or otherwise admitted to the deanery of the same church, nor the appointment of any spiritual person already holding a canonry, prebend, or dignity in such cathedral church to any canonry residentiary therein, to the same intent and purpose, nor during the vacancy of any canonry residentiary in any cathedral church, which, notwithstanding the restrictions aforesaid, may, according to the provisions of the said secondly-recited act or of this act, be filled up, shall prevent the appointment or collation of any spiritual person to any canonry, prebend, or dignity in the same church, to the intent and purpose that such spiritual person may be appointed to such canonry residentiary, but that every spiritual person who by virtue of this provision shall be admitted to any canonry, prebend, or dignity, or to any canonry residentiary, to either of the intents and purposes aforesaid, shall hold and enjoy the same respectively, with all the rights, privileges, and emoluments to the same respectively belonging or appertaining, subject nevertheless to such measures and regulations as may hereafter be enacted respecting the same: provided always, that if after the appointment or collation to any canonry, prebend, or dignity, or the appointment to any canonry residentiary, in any cathedral church, by virtue of this provision, of any spiritual person, to the intent and purpose of his being appointed, elected, or otherwise admitted to the deanery thereof, or to a vacant canonry residentiary therein, any other than such spiritual person shall be appointed, elected, or otherwise admitted to such deanery or last mentioned canonry residentiary, as the case may be, the canonry, prebend, or dignity, or the canonry residentiary, to which such spiritual person shall have been appointed or collated, shall be and be held to be *ipso facto* vacant, and the appointment, collation, election, or other admission thereto absolutely void and of no effect.”

XLIX. STAT. 2 & 3 VICTORIÆ, c. 56. A.D. 1839.

STAT. 2 & 3
VICT. c. 56.

"An Act for the better ordering of Prisons."

"XV. And be it enacted, that in every borough gaol and house of correction a clergyman of the church of England shall be appointed to be chaplain thereof, by the same authority by which the keeper is appointed, but no such chaplain shall officiate in any prison until he shall have obtained a licence from the bishop of the diocese, or for any longer time than while such licence shall continue in force; and notice of every such appointment shall, within one month after it shall take place, be transmitted to the bishop by the town clerk.

Chaplains of
gaols to be
appointed.

"XVI. And be it enacted, that no person who shall be appointed after the commencement of this act to the office of chaplain of any prison in which the average number of prisoners confined at one time during the three years next before his appointment shall not have been less than one hundred shall hold any benefice with cure of souls, or any curacy, whilst holding the office of chaplain of such prison; and that in every prison in which the average number of prisoners confined at one time during the three years next before his appointment shall not have been less than two hundred and fifty, it shall be lawful for the justices or other persons having the *appointment of the chaplain* (1) to appoint, if they shall see fit, an assistant chaplain or assistant chaplains, and for the persons having the control of the funds applicable to the expenses of such prison to fix the salary to be paid to such assistant chaplain or assistant chaplains, and to make orders for the payment thereof out of the fund applicable to those expenses: provided always, that every such chaplain and assistant chaplain shall reside within a distance not exceeding one mile from the prison in which they hold their chaplaincies: provided also, that nothing herein contained shall be construed to affect the appointment or the salary of the chaplain of the royal hospital of Bridewell."

Chaplains of
certain gaols
to hold no other
benefice.

Assistant chap-
lains may be
appointed.

L. STAT. 2 & 3 VICTORIÆ, c. 62 (2). A.D. 1839.

STAT. 2 & 3
VICT. c. 62.

"An Act to explain and amend the Acts for the Commutation of Tithes in England and Wales."

"(3) Whereas an act was passed in the seventh year of the reign of his late majesty King William the Fourth, intituled, 'An Act for the Commutation of Tithes in England and Wales:' and whereas an act was passed in the first year of the reign of her present majesty to amend the recited act: and whereas an act was passed in the second year of the reign of her present majesty, intituled, 'An Act to facilitate the Merger of Tithes in Land:' and whereas it is expedient to explain and amend the said acts in certain respects: be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in every case where any tithes or rent-charge shall have been or shall hereafter be released, assigned, or otherwise conveyed or disposed of under the provisions of the said acts, or any of them, or of this act, for

On merger of
tithes or rent-
charge, the

(1) *Appointment of the chaplain*:—Prior to Stat. 5 & 6 Gul. 4, c. 76, the city of Bath was incorporated by the name of the mayor, aldermen, and citizens of the city of Bath. The charter contained the grant of a gaol, and a limited criminal jurisdiction, to be exercised by the recorder and the corporate justices, but not extending to felonies. It also authorized the mayor, aldermen, and citizens annually to elect two of themselves to be bailiffs of the said city, and directed that the bailiffs for the time being should be keepers of the gaol of the city. After the passing of the Municipal Corporation Act, the new corporation received the grant of a separate court of quarter sessions, with power to try felonies, and certain persons were appointed justices for the city by com-

mission; but the corporation still continued to elect one bailiff, who continued to be the keeper of the gaol, and appointed the gaoler. In 1842, a new gaol and house of correction was built under the provisions of Stat. 7 Gul. 4 & 1 Vict. c. 71, to which the town council had appointed a chaplain: it was held, that the right to appoint the chaplain of the new gaol and house of correction, under Stat. 2 & 3 Vict. c. 56, s. 15, was in the town council, by virtue of their authority to appoint the keeper of the prison, and not in the borough justices. *Regina v. Bath and Wells (The Bishop of)*, 1 D. & M. 173.

(2) *Vide* Stat. 3 & 4 Vict. c. 15.

(3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 71; Stat. 7 Gul. 4 & 1 Vict. c. 69; and Stat. 1 & 2 Vict. c. 64.

STAT. 2 & 3
VICT. c. 62.
charges thereon
to be charges
on lands.

Power for special apportionment of such charge on lands being of three times the value of the charge.

Name of each occupier, and sum charged on him, to be specified by assessor, on notice from owner.

Power of special apportionment on tithes or rent-charge.

Expenses of special apportionment to be borne by parties applying for same.

Tithes and rent-charge of

merging or extinguishing the same, the lands in which such merger or extinguishment shall take effect shall be subject to any charge, incumbrance, or liability which lawfully existed on such tithes or rent-charge previous to such merger to the extent of the value of such tithes or rent-charge; and any such charge, incumbrance, or liability shall have priority over any charge or incumbrance existing on such lands at the time of such merger taking effect; and such lands, and the owners thereof for the time being, shall be liable to the same remedies for the recovery of any payment and the performance of any duty in respect of such charge, incumbrance, or liability, or of any penalty or damages for nonpayment or nonperformance thereof respectively, as the said tithes or rent-charge, or the owner thereof for the time being, were or was liable to previous to such merger.

"II. And be it enacted, that every person entitled to exercise the powers for merger of tithes or rent-charge in land under the said acts or any of them, or of this act, may, with the consent of the tithe commissioners for the time being under their hands and seal of office, and of the person to whom the lands in which such merger or extinguishment shall take effect shall belong, either by the deed or other instrument or declaration by which such merger shall be effected, or by any separate deed, instrument, or declaration, to be made in such form as the commissioners shall approve, specially apportion the whole or any part of any such charge, incumbrance, or liability affecting the said tithes or rent-charge so merged or extinguished, or proposed to be merged or extinguished in such lands, upon the same or any part thereof, or upon any other lands of such person held under the same title and for the same estate in the same parish, or upon the several closes or portions of such lands, or according to an acreable rate or rates upon lands of different quality, in such manner and proportion, and to the exclusion of such of them, as the person intending to merge the same, with such consent as aforesaid, may by any such deed, instrument, or declaration direct: provided always, that no land shall be so exclusively charged unless the value thereof shall in the opinion of the said commissioners be at least three times the value of the amount of the charge, incumbrance, or liability charged or intended to be charged thereon, over and above all other charges and incumbrances, if any, affecting the same.

"III. And be it enacted, that the assessor or collector of any rate or tax shall, within forty days after the receipt of a notice in writing signed by any landowner or titheowner interested therein, specify in his assessment made for the purpose of collecting and levying such rate or tax the names of the several occupiers of tithes, lands, and tenements subject to such rate or tax, as well as the sum assessed on the tithes, lands, or tenements held by each such occupier.

"IV. And be it enacted, that where the whole of the great tithes or the whole of the small tithes, or the respective rent-charges in lieu thereof, shall be lawfully subject to any such charge, incumbrance, or liability, and the person entitled to such tithes or rent-charge respectively shall be desirous of apportioning such charge, incumbrance, or liability respectively exclusively upon any part of such tithes or rent-charge, although such person has not the power or does not intend to merge the same under the said acts or this act, such person may, with the like consent of the said commissioners, and in such manner as they shall see fit and prescribe, and also with the consent of the bishop of the diocese, specially apportion such charge, incumbrance, or liability respectively upon any part or portion of the tithes or rent-charge respectively subject thereto, not being in the opinion of the said commissioners less than three times the value of the said charge, incumbrance, or liability, or of such part thereof as shall be so apportioned thereon, or intended so to be.

"V. And be it enacted, that in every such case of special apportionment the costs and expenses of or incident thereto shall be borne by the party at whose instance the same shall have been made, and shall be recoverable as other costs of apportionments are recoverable under the provisions of the said recited acts or either of them, or of this act.

"VI. And be it declared and enacted, that the provisions of the said acts and this act for merger or extinguishment of tithes or rent-charge instead of tithes"

the lands out of which such tithes shall have been issuing, or whereon such rent-charge shall be fixed, do and shall extend to glebe or other land, in all cases where the same and the tithes or rent-charge thereof shall belong to the same person in virtue of his benefice, or of any dignity, office, or appointment held by him.

“VII. And be it enacted, that in every case of merger of tithes or rent-charge issuing out of land of copyhold tenure, and subject to arbitrary fine, it shall be lawful for the said commissioners, on the application of the owner of such land, to ascertain, by such ways and means as they shall think fit, the annual value of the tithes or rent-charge so merged or intended to be merged; and the said commissioners shall in such case cause to be endorsed on the deed, declaration, or other instrument effecting such merger a certificate under their hands and seal, setting forth such annual value so ascertained; and in every case of future assessment of fine on the lands which before such merger were subject to such tithes or rent-charge, the parties entitled to such fine shall assess the same as if such lands were subject to the tithes or rent-charge of which the annual value shall be so endorsed; and the production of such deed, declaration, or instrument of merger, or of a duplicate thereof, with such certificate endorsed, or of an office copy of such deed, declaration, or instrument and certificate endorsed thereon, shall be sufficient evidence of the annual value of such tithes or rent-charge.

“VIII. And be it enacted, that, notwithstanding anything in the said acts or any of them contained, in any case where a parochial agreement for rent-charge or for giving land instead of tithes, or any compulsory award, has been duly confirmed by the said commissioners, and it shall appear to them, at any period before the confirmation of the apportionment of such rent-charge, that by reason of fraud, or by the omission or insertion through error of the tithes or lands of any party thereto, or of the name of any person, whether as titheowner or landowner, who ought, or, as the case may be, who ought not, to have been party thereto, or any other manifest error, that such agreement or award would be unjust, and that if such fraud, omission, insertion, or other manifest error had not occurred the said commissioners would have come to a different conclusion in respect of such agreement or award, and would have declined to confirm or would have varied the same previous to such confirmation, it shall be lawful for the said commissioners, if they shall see fit, and in their sole discretion, but not otherwise, by a separate award to rectify such agreement or award in any of the matters aforesaid, in such manner as to them shall seem just; and all the provisions and powers of the recited acts relating to compulsory awards shall be applied in every such case, in respect of the matter so dealt with, in as full a manner as if no such agreement or award had been made, or as if the same were made in respect of a separate district; provided always, that in every such separate award the matter so dealt with, and the grounds on which the commissioners shall have seen fit to make the same, shall be recited or otherwise set forth in the draft thereof, in addition to the other particulars required by the said acts, or any of them, to be set forth in compulsory awards; and every such award shall, in the notice of meeting for hearing objections thereto, be called a separate award by way of supplement to the parochial agreement or award in the parish to which such separate award relates.

“IX. And be it enacted, that it shall be lawful at any time before the confirmation of any apportionment after a compulsory award in any parish, for the landowners and titheowners, having such interest in the lands and tithes of such parish as is required for the making a parochial agreement to enter into a parochial agreement for the commutation of Easter offerings, mortuaries, or surplice fees, or of the tithes of fish or fishing, or mineral tithes; and all the provisions, conditions, limitations, and powers of the said recited acts or any of them, relating to parochial agreements, so far as the same shall in the judgment of the commissioners be applicable to the subject of the proposed commutation, shall be observed and applied in every such case as if no previous award had been made; and every such agreement may fix the period at which the rent-charge to be paid under such agreement shall commence, but so nevertheless that the same and the subsequent payments thereof shall be made on some day fixed for the payment of the rent-

STAT. 2 & 3
VICT. c. 62.
glebe may be
merged.

Provision for
deducting value
of tithes and
rent-charge
from arbitrary
fines in cases
of merger in
copyholds.
1 & 2 Vict.
c. 64, s. 4.

Power to make
award by way
of supplement
to parochial
agreement in
cases of fraud,
&c.

Power after
award to make
parochial
agreement for
Easter offer-
ings, &c.
6 & 7 Gul. 4,
c. 71, s. 90.

STAT. 2 & 3
VICT. c. 62.

Power to fix
commence-
ment of rent-
charge.

charge awarded in such parish, and shall be recoverable from time to time by the means provided in the said acts or either of them for the recovery of the rent-charges in the said parish.

“X.(1) And be it enacted, that it shall be lawful for the commissioners in any compulsory award, or by any supplementary award, in cases where the parties shall not have fixed the same by parochial agreement, as under the said secondly-recited act is provided, to fix, or where the commissioners shall not have so fixed for the landowners and titheowners having such an interest in the land and tithes of any parish as is required for making a parochial agreement to enter into a supplementary agreement for fixing, such sum as to them respectively shall seem fit to be paid in consideration of the time (if any) which may intervene between the termination of any previous agreement or composition for the payment of tithe and the time at which the rent-charge shall commence, either under such compulsory award or parochial agreement where the same shall have been previously made, and also for the said commissioners by their said award to fix, or for the landowners and titheowners having such interest in the lands and tithes of any parish as is required for the making a parochial agreement, at any time after such award, and before the confirmation of the apportionment, to enter into a supplementary agreement for fixing the period at which the rent-charge to be paid under such award shall commence, in like manner and subject in both cases to the like conditions as are provided in the secondly-recited act, enabling parties to agree to pay any such sum, or to fix the period at which any rent-charge shall commence.

Fixed rent-
charge may be
substituted for
contingent
rent-charge on
lands partially
exempt.
6 & 7 Gul. 4,
c. 71, s. 71.

“XI.(2) And be it enacted, that where lands are exempted from the payment of tithes, or of rent-charge instead of tithes, whilst in the occupation of the owner of such lands, by reason of having been parcel of the possessions of any privileged order, it shall be lawful for the respective owners of the said lands and tithes or rent-charge, by the parochial agreement for the rent-charge, or by a supplemental agreement in cases where the parochial agreements or any award shall have been confirmed by the said commissioners, to be made in such form as the commissioners shall direct or approve, to agree to the payment, or for the commissioners in the case of a compulsory award, with the consent of the respective owners of the said lands and tithes, to award the payment of a fixed and continuing rent-charge, without regard to the change of occupation or manurance of such lands, equivalent in value, according to the judgment of the commissioners, to such contingent rent-charge; and such lands shall, from the date of the confirmation by the commissioners of such parochial agreement or supplemental agreement or award, as the case may be, or from such date as shall be fixed by the parties, with the approval of the said commissioners, in any such agreement or supplemental agreement, be subject to such fixed rent-charge instead of the contingent tithes or rent-charge to which such lands were subject previous to such agreement or supplemental agreement or award being made; and every such fixed rent-charge shall from such period respectively be paid and recoverable by the means provided in the said acts, in like manner as if the same had been the rent-charge originally fixed in any parochial agreement or award in respect of the said tithes.

Provisions of
6 & 7 Gul. 4,
c. 71, ss. 43 &
71, for substi-
tuting fixed
rent-charge,
extended to
crown lands.

“XII. And whereas certain crown lands, by reason of their being of the tenure of ancient demesne or otherwise, are exempted from payment of tithes whilst in the tenure, occupation, or manurance of her majesty, her tenants, farmers, or leasees, or their under-tenants, as the case may be, but become subject to tithes when aliened or occupied by subjects not being tenants, farmers, or leasees of the crown, and doubts have arisen how far the provisions of the said first-recited act relating to lands heretofore parcel of the possessions of any privileged order, or in the nature of glebe, or otherwise in like manner privileged and partially exempt, are applicable to such crown lands; be it declared and enacted, that all and every the said provisions of the said first-recited act do extend to such crown lands, and

(1) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, (2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 43; ss. 10 & 11; and Stat. 3 & 4 Vict. c. 15, ss. 11, 12 & 13. and Stat. 3 & 4 Vict. c. 15, s. 14.

that the provision lastly in this act contained for substituting a fixed rent-charge instead of a contingent rent-charge on lands partially exempt from tithes shall extend and be applicable to such crown lands as aforesaid: provided always, that no such fixed rent-charge shall be substituted instead of such contingent rent-charge on such crown lands without the consent of the persons or officers who are by the said first-recited act respectively required to be substituted in cases of commutation of tithes where the ownership of lands or tithes is vested in her majesty.

STAT. 2 & 3
VICT. c. 62.

“XIII. (1) And whereas large tracts of land called Lammas Lands are in the occupation of certain persons during a portion of the year only, and are liable to the tithes of the produce of the said lands increasing and growing thereon during such occupation, and at other portions of the year are in the occupation of other persons, and in their hands liable to different kinds of tithes arising from the agistment, produce, or increase of cattle or stock thereon; and by reason of such change of occupation such last-mentioned tithes cannot be commuted for a rent-charge issuing out of or fixed upon the said lands, and the said recited acts are thereby rendered inoperative in the several parishes where such lammas lands lie: and whereas the said acts are in like manner inoperative in certain cases where a personal right of commonage, or a right of common in gross, is vested in certain persons by reason of inhabitancy or occupation in the parish where any common may lie, or by custom or vicinage, but without having such right of common so annexed or appurtenant to or arising out of or in respect of any lands on which any rent-charge could be fixed instead of the tithes of the cattle or stock, or their produce, increase, or agistment, on such common, annexed to such personal right; for remedy thereof be it enacted, that in every case where by reason of the peculiar tenure of such lands, and the change during the year of the occupiers thereof, or of such right of commonage, a rent-charge cannot, in the judgment of the said commissioners, be fixed on the said lands in respect of cattle and stock received and fed thereon, or of the produce and increase of such cattle and stock, at such portion of the year as the said lands are thrown open, or where such right of commonage alone exists, it shall be lawful for the parties interested in such lands or commons and the tithes thereof in the case of a parochial agreement, or for the commissioners in the case of a compulsory award, in every such parochial agreement or award respectively, or by any supplemental agreement in the nature of a parochial agreement, or by a supplemental award, as the case may be, where any parochial agreement or award has been already made, to fix a rent-charge instead of the tithes of such lammas land or commons, to be paid during the separate occupation thereof by the separate occupiers, in like manner as other rent-charges are fixed by the said acts or any of them, and to declare in such agreement or award, or supplemental agreement or award, as the case may be, such a sum or rate per head to be paid for each head of cattle or stock turned on to such lammas land or commons by the parties entitled to the occupation thereof after the same shall have been so thrown open, or by the parties entitled to such right of commonage as aforesaid; and every such sum shall be ascertained and fixed upon a calculation of the tithes received in respect of such last-mentioned occupation or right for the period and according to the provisions for fixing rent-charges in the said recited acts, and shall be due and payable by the owner of such cattle or stock on the same being first turned upon such lands or commons, and shall be recoverable by the persons entitled thereto by distress and impounding of the cattle or stock in respect of which such sum shall be due, in like manner as cattle are distrained and impounded for rent, and be subject to the same provisions as to distress and replevin of the same as are by law provided in cases of distress for rent; provided always, that nothing herein contained shall extend to lammas lands where no tithes or payments instead of tithes have been taken during the seven years ending at Christmas one thousand eight hundred and thirty-five, in respect of the cattle or stock received and fed thereon, or of the produce and increase of such cattle or stock at such portion of the year as the said lands are thrown open.

Provision for
tithes of lam-
mas lands, &c.

“XIV. And whereas in certain cases of commons hereafter to be inclosed allot- Rent-charge

(1) *Vide* Stat. 3 & 4 Vict. c. 15, s. 15.

STAT. 2 & 3
VICT. c. 62.

in respect of
tithes of com-
mon appurte-
nant to be a
charge on the
allotments
made in respect
of the lands
to which right
of common
attached.

Recited acts
extended to
collegiate
bodies, &c.
notwithstand-
ing restraining
statute.

13 Eliz. c. 10.

6 & 7 Gul. 4,
c. 71, s. 77,
extended to
corporate and
collegiate
bodies.

Colleges and
corporations
aggregate may
charge ex-
penses on other
lands than those
in respect of
which such
expenses are
incurred.

For recovery
of expenses of
apportionment.

Extension of

ments may be made in respect of tenements and hereditaments to which a right of going on such common is appendant or appurtenant, the tithes whereof would be chargeable on the tenements or hereditaments in respect of which such allotments may be made, and such tenements or hereditaments are not of themselves an adequate security for the rent-charge to be fixed in respect of such tithes; be it therefore declared and enacted, that in every such case the rent-charge to be fixed instead of such tithes shall be a charge upon and recoverable out of any allotments to be in future made in respect of such rights, as well as upon such tenements or hereditaments in respect of which such allotments are made, and by the same ways and means as are provided for the recovery of rent-charges by the said acts or any of them, or this act.

“XV. And be it declared and enacted, that all the provisions in the recited acts or any of them in any way relating to or enabling the pulling down or sale of barns and buildings generally used for housing tithes paid in kind, and the sale of the materials and the site thereof, either with or without any farm buildings or homesteads thereto belonging, and for the conveyance and delivery thereof, and for securing the consideration money for the benefit of the persons thereunto entitled; shall apply to and may be made available by any corporate body or person, whether as trustees or otherwise, by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or ecclesiastical living, being seized or possessed of any such barns or buildings, or the site thereof, notwithstanding anything in a certain statute made in the thirteenth year of the reign of Queen Elizabeth, for making void fraudulent deeds made by spiritual persons to defraud their successors of remedy for dilapidations, or in any other statute.

“XVI. And be it declared and enacted, that so much of the said acts or any of them as enables any owner of a particular estate in lands or tithes to charge so much of the expenses of the commutation as is defrayed by him, or any part thereof, and the interest thereon, upon the lands whereof the tithes are commuted, or upon the rent-charge to be received by him instead of such tithes respectively, shall in like manner extend and be applicable to and may be made available by any corporate body or person, master or fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or other ecclesiastical living, and whether seized in fee or for a limited estate in such lands, tithes, or rent-charge, anything in the said statute of Queen Elizabeth, or any other restraining statute, or in the tenure by which such lands, tithes, or rent-charge respectively are holden, to the contrary notwithstanding, but so nevertheless that the charge upon such lands or rent-charge respectively shall be lessened in every year following such commutation by one twentieth part at least of the whole original charge thereon.

“XVII. And be it enacted, that it shall be lawful for any ecclesiastical corporation aggregate, or any collegiate body, with the consent of the said commissioners testified under their hands and seal, to charge with the amount of the expenses of commuting the tithes of any lands of which they are owners, or any part of such expenses, with interest thereon, on any other lands holden by them to the same uses or on the same trusts as the lands in respect of which such expenses were incurred, but so nevertheless that the charge upon such lands shall be lessened in every year following by one twentieth part at the least of the whole original charge thereon.

“XVIII. (1) And be it enacted, that payment of the expenses of or incident to making any apportionment, or any other expenses which the said commissioners are authorized and may have ordered or may order to be paid by any owner of lands under and by virtue of the recited acts, or any of them, or this act, may be enforced by the same ways and means as payment of rent-charge in arrear may be enforced under the provisions of the said acts or either of them.

“XIX. And be it enacted, that so much of the said first-recited act as

enables any landowner, either by parochial agreement or individually, to give land instead of tithes or rent-charge at any time before the confirmation of any instrument of apportionment, shall be and the same is hereby extended, and the powers and provisions for that purpose may be exercised in every such case at any time, as well after as before such confirmation of the apportionment as aforesaid, during the continuance of the commission constituted and with the consent of the commissioners appointed and acting under the said first-recited act.

“XX. And be it enacted, that in any case where any land shall have been or shall hereafter be taken by any ecclesiastical titheowner under any agreement for the commutation of any tithes, or for giving land instead of any rent-charge, under the recited acts, or any of them, or this act, such land shall upon the confirmation of such agreement vest absolutely in such titheowner and his successors, free from all claims of any person or body corporate, and without being thereafter subject to any question as to any right, title, or claim thereto, or in any manner affecting the same; and the commissioners shall cause to be inserted in or endorsed upon every such agreement the amount of the rent-charge instead of which such land was given, and the lands upon which the same was chargeable; and every person who if this act had not been made would have been entitled to recover any such land given instead of rent-charge, or any rents or profits issuing out of such land, shall be entitled to recover against the party or parties giving such land instead of tithes or rent-charge, his, her, or their heirs, executors, or administrators, by way of damages, in an action on the case, such compensation as he or she may be entitled to for any loss thereby sustained; and such damages, and all costs and expenses awarded to the plaintiff in such action, shall forthwith attach upon and be payable out of the lands exonerated by such agreement.

“XXI. (1) And be it enacted, that all agreements and other assurances which shall be made for the purpose of effecting the taking of land instead of rent-charge under the provisions of the said recited acts, or any of them, or this act, shall be valid and effectual for the purpose of vesting an estate of inheritance as to such lands in such ecclesiastical titheowner and his successors, notwithstanding the same be made by any corporation sole or aggregate, or any trustees or feoffees for charitable purposes, otherwise restrained from or incapable of making any such valid conveyance or assurance.

“XXII. (2) And be it enacted, that the provisions and conditions of the said secondly-recited act, whereby the said commissioners are enabled to confirm any instrument of voluntary apportionment, although they shall not be satisfied of the accuracy of any map or plan annexed thereto, or that the several quantities of land specified in such apportionment or agreement are therein truly stated, shall extend to enable the commissioners, if they shall think fit, to confirm any compulsory apportionments to which any existing map or plan, agreed to be adopted at a parochial meeting, shall be annexed, although the said commissioners shall not be satisfied of the accuracy of such map or plan, or that the several quantities of land specified in such apportionment are truly stated in such map or plan.

“XXIII. (3) And whereas in and by the said first-recited act the words ‘landowner’ or ‘titheowner,’ or ‘owner of lands’ or ‘owner of tithes,’ are defined to mean and include every person who shall be in the actual possession or receipt of the rents or profits of any lands or tithes, except (amongst other exceptions) any tenant for life or lives, or for years, holding under a lease or agreement for a lease on which a rent of not less than two-thirds of the clear yearly value of the premises therein shall have been reserved, and that without regard to the real amount of interest of such person; and in every case in which any tithes or lands shall have been leased or agreed to be leased to any person for life or lives, or for years by any lease or agreement for a lease on which a rent less than two-thirds of the clear yearly value of the premises comprised therein shall have been reserved, the person in receipt of such rent shall, jointly with the person liable to the payment thereof, be deemed for the purposes of the said act to be the owner of such tithes

STAT. 2 & 3
VICT. c. 62.
6 & 7 Gul. 4,
c. 71, ss. 29 &
62, for giving
land in lieu of
tithes.

Lands taken by
ecclesiastical
titheowners in-
stead of tithes
to vest abso-
lutely in them.

Corporations,
trustees, and
feoffees to char-
itable uses,
may convey
lands.

Apportion-
ments may be
confirmed,
though com-
missioners not
satisfied of
accuracy of
maps.

Expenses of
apportionment
to be borne in
certain cases as
commissioners
may direct.

(1) *Vide* Stat. 3 & 4 Vict. c. 15, s. 17.

(3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 12,

(2) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 1. 74 & 75.

STAT. 2 & 3
VICT. c. 62.

or lands: and whereas certain allowances and expenses to surveyors and tithe-valuers necessary for making any award, and all other expenses of or incident to making an award, are by the said recited acts or some of them directed to be paid by the landowners and titheowners interested in the said award, in such proportion, time, and manner, as the commissioners or assistant commissioners shall direct; and the expenses of or incident to making any apportionment are by the said first-recited act to be paid by owners of lands in rateable proportions to the sums charged on the said lands in lieu of tithes by such apportionment: and whereas cases have occurred and may occur, where by reason of the rent reserved in certain leases or agreements for leases not being less than two-thirds of the clear yearly value of the premises thereby demised or agreed to be demised at the date or time of coming into operation of such leases or agreements, but which premises are, at the time of putting in force the provisions of the said recited acts, of improved yearly value, so that the rent originally reserved or agreed for is less than two-thirds thereof, but by the operation of the said recited words, as defined in the said first-recited act as aforesaid, such expenses, or a part thereof, would, under the said acts, be chargeable on the original lessor or original lessee, and not on the intermediate or sub-lessors or lessees whose beneficial interest in the said lands and tithes, or rent-charge in lieu of tithes, is proposed to be or has been dealt with under the said recited acts, or some or one of them, or this act: and whereas certain other cases have occurred and may occur in which it is expedient that the commissioners should be empowered to vary and fix the proportion of the expenses of apportionment, including therein the expenses of or incident to the map or plan annexed thereto, and the copies thereof, between the owners of the lands affected thereby, as such owners are defined in the said first-recited act as aforesaid, and according to such principles as to the said commissioners shall seem just and equitable; be it therefore declared and enacted, that, notwithstanding anything in the said acts or any of them contained, it shall be lawful for the commissioners, in such cases as they may deem it just and equitable, to order and direct that such expenses of or incident to any award, or any part thereof, shall be borne and paid in such proportion and manner, by and amongst the persons interested in the lands, tithes, or rent-charge respectively dealt with in such award, and that such expenses of or incident to any apportionment, or any part thereof, shall be borne and paid by and amongst the persons interested in the lands, in such proportions and manner respectively as the said commissioners shall direct; and such expenses, and every or any part thereof, shall in every such case be recoverable in like manner as expenses, or the share thereof to be borne by any person, are or is recoverable under the provisions of the said first-recited act or this act.

Award may be made of rent-charge to certain owners of tithes by general description.

“XXIV.(1) And whereas in certain cases of compulsory award where tithes are held by one titheowner in different rights, or where by reason of owners of land having purchased or otherwise acquired such a beneficial interest in the tithes arising out of the same, for life or lives or for years, as under the said provisions of the said first-recited act requires that such persons respectively should be dealt with and distinguished in such award as joint owners with the lessor of or the person having the reversionary interest in such tithes, but great difficulties have arisen in distinguishing the sums payable to each such titheowner, as also in distinguishing the respective lands out of which the tithes accruing to any such titheowner, either as holding such tithes in different rights or as joint titheowner, arise, or where any several rent-charge should be awarded, and the completion of such award has been thereby impeded; be it therefore declared and enacted, that in any such case it shall not be necessary in any such award to distinguish the lands or award a several rent-charge to each such owner of the tithes by name, or otherwise to distinguish such titheowner, but it shall be sufficient to award a gross rent-charge to such owner of tithes in different rights in respect of such tithes so held by him, or, as the case may be, to the original lessor of such tithes, or the person in whom the ultimate reversion thereof shall be, by his proper name and description, and in any

(1) *Vide* Stat. 6 & 7 Gal. 4, c. 71, ss. 12, 21 & 50.

such case of joint ownership to the several persons claiming under him, and being so respectively joint owners of such tithes, by such general terms and description as to the commissioners or assistant commissioner making such award shall seem fit: provided always, that the name of each such titheowner, and the lands out of which his respective tithe, or the portion of such gross rent-charge instead of such tithes, shall respectively accrue or issue, shall be distinguished in the instrument of apportionment made in pursuance of such award; and every such titheowner shall be as fully entitled to take, hold, and recover such portion of the rent-charge as shall be so apportioned in such instrument of apportionment, upon the several lands the tithes or rent-charge whereof are so held by him respectively, according to his respective term and interest in such tithes or the rent-charge, in as ample a manner as if such titheowner and lands had been respectively named and distinguished in such award under the provisions of the said first-recited act.

“XXV. And be it enacted, that it shall be lawful for the said commissioners to adjourn any meeting by notice in writing under their hands or the hands of any two of them, to be affixed and published in manner provided for notices in the said firstly-recited act, without any commissioner or assistant commissioner giving attendance for the purpose of making such adjournment.

“XXVI. And be it enacted, that in case any of the lands in a parish the tithes whereof shall be in course of commutation under the provisions of the said first-recited act shall be orchards or fruit plantations, and notice in writing, under the hands of any of the owners thereof whose interest therein shall not be less than two thirds of the whole of the orchards and fruit plantations in such parish, shall be given to the valuers or commissioners or assistant commissioner by whom any apportionment provided for by the said act shall be made at any time before the draught of such apportionment shall be framed that the tithes thereof should be distinguished into two parts, the amount which shall be charged by any such apportionment upon the several orchards and fruit plantations in such parish shall be distinguished into two parts accordingly, and the same shall be called the ordinary charge and the extraordinary fruit-charge; and the extraordinary charge shall be a rate per imperial acre, and so in proportion for less quantities of ground, according to the discretion of the valuers or commissioners or assistant commissioner by whom such apportionment shall be made as aforesaid.

“XXVII. And be it enacted, that all lands the tithes whereof shall have been commuted under the said act, which shall be situate within the limits of any parish in which an extraordinary fruit-charge shall have been distinguished as aforesaid at the time of commutation, and which shall be newly cultivated as orchards or fruit plantations at any time after such commutation, shall be charged with an additional amount of rent-charge per imperial acre equal to the extraordinary fruit-charge per acre in that parish: provided always, that no such additional amount shall be charged in respect of any plantation of apples, pears, plums, cherries, and filberts, or of any one or more of those fruits, during the first five years, and half only of such additional amount during each of the next succeeding five years, of such new cultivation thereof; and that no such additional amount shall be charged in respect of any plantation of gooseberries, currants, and raspberries, or of any one or more of those fruits, during the first two years, and half only of such additional amount during each of the next succeeding two years, of such new cultivation thereof; and that no such additional amount shall be charged in respect of any mixed plantation of apples, pears, plums, cherries, or filberts, and of gooseberries, currants, or raspberries during the first three years, and half only of such additional amount during each of the next succeeding three years, of such new cultivation thereof.

“XXVIII. And be it enacted, that all lands the tithes whereof shall have been commuted as aforesaid, which shall be situated within the limits of any parish in which an extraordinary fruit-charge shall have been distinguished as aforesaid, and which shall cease to be cultivated as orchards or fruit plantations at any time after such commutation, shall be charged, after the thirty-first day of December next following such charge of cultivation, only with the ordinary charge upon such lands.

STAT. 2 & 3
VICT. c. 62.

Commissioners may adjourn meeting without attending to adjourn.

Provision for dividing the tithe of fruit plantations in certain cases.

Newly cultivated fruit plantations to be charged an additional sum.

Fruit plantations when displanted to be relieved from additional charge.

STAT. 2 & 3
VICT. c. 62.

Provision for
mixed planta-
tions of hops
and fruit.

When land
subject to rec-
torial and vica-
rial tithe,
acreable rent-
charge to be
fixed.

Provision for
future mixed
plantations.

How the rent-
charge for
hops and fruit
may be fixed in
certain cases.

Provision for
giving effect to
parochial
agreements and proceed-
ings thereon in
certain cases of
extraordinary
charge.

For the settle-
ment of dis-

“XXIX. Provided also, and be it enacted, that in case any lands within the limits of a parish in which an extraordinary fruit-charge shall have been distinguished as aforesaid shall have been or shall at any time be planted with fruit, and also with hops, the same shall, during the continuance of such mixed plantations of hops and fruit, be liable to the extraordinary hop-charge only, or to the extraordinary fruit-charge only, payable in respect of the same lands, not to both these charges; and that the extraordinary charge to which the lands so planted shall be liable shall be the higher of the two for the time being.

“XXX. And be it enacted, that where any land liable to any such extraordinary charge for the tithes of a mixed plantation of hops and fruit shall at the time of the commutation produce both rectorial and vicarial tithes payable to different persons the apportionment shall set out the same, distinguishing the amount of ordinary and extraordinary charge payable to each titheowner, and shall divide the whole acreable extraordinary charge between such titheowners, according to the quantity of land producing rectorial tithe, and the quantity producing vicarial tithe.

“XXXI. (1) And be it enacted, that in all cases in which there shall be hereafter mixed plantations of hops and of such fruit as aforesaid in any parish or district in which an extraordinary fruit-charge shall have been declared, the rectorial and vicarial tithes whereof but for the commutation would have been payable to different owners, the extraordinary charge payable in respect of the tithes of such mixed plantation shall be divided between such owners in proportion to the extent of land occupied by that produce which would have paid tithes to each of them respectively: provided always, that payment of the share of each titheowner, when so ascertained, shall be taken to be subject to the provisions contained in the said first-recited act and in this act, for lessening the amount of extraordinary charge payable in respect of hop gardens and orchards respectively at the beginning of such cultivation.

“XXXII. (2) And be it enacted, that for the purpose of fixing any charge for the tithes of hops or fruit, or of any mixed plantation as aforesaid, the commissioners may, if they see fit, assign the parish or lands in respect of which the notice shall have been given, requiring the tithes thereof to be separately valued as required by the said first-recited act, or any part or parts of such parish or lands as a district under the provisions of the said act, and may fix a charge upon such lands in respect of the tithes of hops or fruit as the rent-charge to prevail and to be established in respect of the same, without specific reference in the award to any one parish or lands, but having regard nevertheless to the general amount of commutations which they shall find to have prevailed in other parishes of a similar description, and not to the money payments in the parish under consideration, or the value of the tithes in kind therein.

“XXXIII. And be it enacted and declared, that the provisions of the said first-recited act for distinguishing rent-charges apportioned upon lands cultivated as hop grounds into two parts, and for relieving lands from and subjecting the same to an extraordinary charge when ceased to be cultivated, and when newly cultivated as such respectively, shall be held to extend to parochial agreements already or hereafter made, and to the proceedings consequent thereupon, and to the lands discharged from tithes by virtue thereof; and that every such agreement and proceeding, whereby any district has been or shall be assigned for establishing or distinguishing into two parts any rent-charge in respect of lands cultivated as aforesaid, shall be deemed valid, operative, and effectual for all the purposes of the said recited acts and of this act, and that every district assigned by virtue thereof shall be deemed a district duly assigned, and every rent-charge created thereby a valid rent-charge for the like purposes.

“XXXIV. (3) And be it enacted, that in case there shall be any question between any parishes or townships, or between any two or more landowners,

(1) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 42. & 25; Stat. 7 Gul. 4 & 1 Vict. c. 63, s. 1.

(2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 40. & 3; and Stat. 3 & 4 Vict. c. 15, s. 23.

(3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 24.

touching the boundaries of such parishes or townships, or the lands of such landowners respectively, or if such parishes or townships or landowners shall be desirous of having such boundaries ascertained or a new boundary line defined, it shall be lawful for the said commissioners, or any assistant commissioner, on the application in writing of a majority of not less than two thirds in number and value of the landowners of such parishes or townships in the case of parochial or township boundaries, or on the like application of such two or more landowners in the case of boundaries between their lands, to deal with any dispute or question concerning such boundaries, and to ascertain, adjust, set out, and define the ancient boundaries between such parishes or townships or the lands of such landowners respectively, or draw and define a new line of boundary, as they may see fit; and in every such case the powers and provisions of the said recited acts and of this act, so far as the same may, in the judgment of the said commissioners or assistant commissioner respectively, be applicable, shall extend and may be applied by them or him to such question; and the boundary line so ascertained or newly defined by the said commissioners or assistant commissioner shall thenceforward be the boundary line of and between such parishes, townships, or lands of such landowners respectively for all purposes whatsoever: provided always, that nothing in this provision contained shall extend to any boundary or part of a boundary being also the boundary line or part of the boundary line of any county, or to the boundary line of any copyhold or customary land, unless the consent in writing of the lord of the manor whereof such land is holden to such application being dealt with by the said commissioners or assistant commissioner shall have been first sent to them or him for such purpose: provided also, that every such boundary line shall be duly set out and delineated on the map annexed to the schedule of appointment, or upon a separate plan to be attached thereto, with proper descriptions and references, showing in what respects such map so annexed to the apportionment is varied, and in what respect the several closes whereon any rent-charge is fixed are affected thereby; and such map shall in every such case be deemed to be varied by such plan, and be as valid for all purposes as if the same had been originally drawn and sealed or certified by the said commissioners with such variation.

“XXXV. (1) And be it enacted, that in every case in which any judgment or determination of the commissioners or of any assistant commissioner respecting the boundary of any parish, district, or lands shall have been or shall be removed into the court of Queen's Bench, *it shall be lawful for the court to direct the trial of one or more feigned issues* (2) upon such points as the court shall think fit, and also to

STAT. 2 & 3
VICT. c. 62.
putes as to
boundaries.

How questions
of boundary
removed before
the Queen's
Bench are to
be dealt with.

(1) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 3; and Stat. 3 & 4 Vict. c. 15, s. 28.

(2) *It shall be lawful for the court to direct the trial of one or more feigned issues.*—In *Regina v. Merson*, (3 Q. B. 895,) it was held, that where an award has been made under the Tithe Commutation Acts, Stat. 7 Gul. 4 & 1 Vict. c. 69, and Stat. 2 & 3 Vict. c. 62, settling the boundary of a parish, and is removed into the court of Queen's Bench by *certiorari* under sect. 3 of the former act, the court will not, as of course, order a feigned issue under sect. 35 of the latter act, at the instance of a party dissatisfied.

And where, on motion for a feigned issue, the attorney for the applicant stated, that he, the attorney, had examined several documents and witnesses concerning the boundary, and believed, from such examination, that the commissioner had included in parish A. seventy acres of land belonging to parish B., deposing also, that, as he was informed and believed, the applicant, as one of the inhabitants of B., and a large portion of the landowners of B. were desirous of trying by such issue the validity and accuracy of the award, and whether the seventy

acres were in A. or B.: it was held, that grounds were not shown on which the court, in its discretion, ought to direct an issue. Lord Denman observing: “In this case a *certiorari* has been obtained to bring before us the judgment of an assistant tithe commissioner on a question of boundary between parishes. That judgment is delivered after examination on oath, public notice of the proceeding being first given to the parties interested, according to Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 2, it is the result of a solemn inquiry, and is conclusive, unless removed by *certiorari* under sect. 3. It is now assumed, that in case of such removal, the power exercised by the commissioner may be questioned by any person under almost any circumstances; for Mr. Erle's argument amounts to nothing, unless we are absolutely bound to grant an issue on the application of any person who feels dissatisfied with the judgment of the commissioner. But I think the power given to the commissioner is not so qualified. The act assumes, that he may do justice by his decision; and, unless it be shown to us, that he has done wrong, we ought not to set it aside merely because a party expresses

STAT. 2 & 3
VICT. c. 62.

direct who shall be the plaintiff or plaintiffs, and who shall be the defendant or defendants on such trial, or determine the same in a summary manner, or otherwise to dispose of the question or questions in dispute, and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

Commissioners may award costs of inquiry into boundaries.

"XXXVI. And be it enacted, that it shall be lawful for the said commissioners and for such assistant commissioner as aforesaid to order and direct that all reasonable costs, charges, and expenses already or hereafter to be incurred by any parties interested in or about any inquiry into any boundary which the said commissioners or such assistant commissioner are or is authorized to settle, shall be borne and paid in such proportion and manner by and amongst the several other parties interested therein (as well those who shall have signed a request to the title commissioners that the said commissioners should inquire into and settle such boundaries, as every other person interested who shall, either personally, or by his or her counsel, attorney, or agent, appear upon such inquiry before the said commissioners or before such assistant commissioner) as the said commissioners or any such assistant commissioner shall direct; and such costs, charges, and expenses, and every part thereof, shall in every such case be recoverable in the like manner as expenses or the share thereof to be borne by any person are or is recoverable by the recited acts or this act.

This act to be taken as part of 6 & 7 Gul. 4, c. 71.

"XXXVII. And be it enacted, that this act shall be taken to be a part of the first-recited act for the commutation of tithes in England and Wales, and of the secondly-recited act for amending the same, and of the said thirdly-recited act to facilitate the merger of tithes; and that in the construction of this act, unless there be something in the subject or context repugnant to such construction, the several words used in this act shall have and bear the same interpretation as is given to such words respectively in the said recited acts or either of them; and whenever a word importing the singular number or masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as one matter or thing respectively, and the converse.

Act may be amended or repealed.

"XXXVIII. And be it enacted, that this act may be amended or repealed by any act passed in this session of parliament."

STAT. 2 & 3
VICT. CAP. XCVI.

LI. STAT. 2 & 3 VICTORIÆ, CAP. XCVI. A.D. 1839.

"An Act for establishing a General Cemetery for the Interment of the Dead in the Parish of Brighton, in the County of Sussex."

STAT. 3 & 4
VICT. CAP. VII.

LII. STAT. 3 & 4 VICTORIÆ, CAP. VII. A.D. 1840

"An Act to amend an Act passed in the first year of the Reign of His late Majesty King George the Fourth, intituled, An Act for providing additional Burial Ground for the Parish of Saint Mary, Rotherhithe, in the County of Surrey, and for enabling the Rector of the said Parish to grant Building Leases of the Glebe Lands belonging to the said Rectory; and for other Purposes."

STAT. 3 & 4
VICT. CAP. VIII.

LIII. STAT. 3 & 4 VICTORIÆ, CAP. VIII. A.D. 1840.

"An Act for establishing a General Cemetery for the Interment of the Dead in the City and Borough of Winchester, in the County of Southampton."

dissatisfaction with it. This is not like a question of tithe, which lies between two parties, one of whom must necessarily be prejudiced. It may be here, that the boundary is satisfactory to every person in the two parishes except a single individual. The only complaint is, that seventy acres are included in the wrong parish; and how minute an interest is that, to disturb an arrangement affecting so many persons. If we have

any discretion, this falls far short of the law which would induce us to interfere. From the affidavit we can collect only that, without inquiry, and without looking at the evidence given before the assistant commissioner, the party making this application believes his decision to be erroneous, a belief for which no reason is given, and none. I think that in granting an order we should do what is arbitrary and wrong.

LIV. STAT. 3 & 4 VICTORIÆ, CAP. IX. A.D. 1840.

STAT. 3 & 4
VICT. CAP. IX.

"An Act to amend and enlarge the Powers and Provisions of an Act passed in the twenty-eighth year of the Reign of His Majesty King George the Second, for building a Chapel in the Town of Wolverhampton, in the County of Stafford."

LIV. STAT. 3 & 4 VICTORIÆ, CAP. XII. A.D. 1840.

STAT. 3 & 4
VICT. CAP. XII.

"An Act to enable the Rector of Weybridge, in the County of Surrey, for the time being, to grant Building Leases of Lands in the said Parish belonging to the said Rectory."

LVI. STAT. 3 & 4 VICTORIÆ, C. 13(1). [IRELAND.] A.D. 1840.

STAT. 3 & 4
VICT. C. 13.
[IR.]

"An Act to amend an Act of the first and second years of the Reign of Her present Majesty, to abolish Compositions for Tithes in Ireland, and to substitute Rent-Charges in lieu thereof."

"Whereas an act was passed in the session of parliament holden in the first and second years of the reign of her present majesty, intituled, 'An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-charges in lieu thereof;' and it is expedient to amend the said act; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in any petition to be presented under the said act by her majesty's attorney-general for Ireland to the court of Chancery or Exchequer in Ireland, or to the court of any assistant barrister or chairman, for the recovery of any arrears of tithe composition vested in her majesty under and by the operation of the provisions of the said act, it shall be lawful to include all or any two or more of the persons in default who shall be named and distinguished in the schedule annexed to any memorial for relief presented to the lord lieutenant and privy council in Ireland under the said act as having such estates or interests as in the said act described in the lands charged with any composition due and in arrear; and that the court to which any such application may be made by petition may from time to time proceed thereon as against any one or more of the persons therein named as defaulters who may appear to have had due notice thereof, although such notice may not be proved to have been given to any other or others of the persons named therein.

1 & 2 Vict.
c. 109.

Any petition under the recited act may include all or any two or more persons in default named in the schedule to any memorial for relief presented under that act; and the court may proceed thereon as to any who may appear to have had due notice. Order of court to have effect of a decree without enrolment.

"II. And be it enacted, that every order of either of the said courts of Chancery or Exchequer respectively made upon any petition, under the provisions of the said act or of this act, shall have, without enrolment, the force and effect of a decree, and shall be enforced by such writ of execution or other process as might be sued or issued to enforce any final decree or order of either of the said courts; and every order made by any assistant barrister on any such petition preferred to him shall and may be enforced, and the amount thereof levied, by all such process as may be employed to enforce or carry into execution any decree pronounced or made upon any proceeding by civil bill by any such assistant barrister or chairman under or by virtue of any statute heretofore made, or by any of the means in force before the passing of the said act, for the recovery of tithe composition.

"III. And be it enacted, that in the case of any petition presented by the attorney-general to any assistant barrister or chairman under the said act, the period of notice of such petition required by the said act shall be computed to be fourteen days before the commencement of the general or quarter sessions at which such petition is intended to be preferred for the division in which the person in default shall reside; anything in the said act contained to the contrary notwithstanding.

What shall be the period of notice of proceeding before the assistant barrister.

"IV. And whereas it is desirable to make provision for the final distribution and dividend of the relief fund provided by the said act, without waiting the ter-

Lord lieutenant of Ireland in

STAT. 3 & 4
VICT. c. 13.
[1A.]

council, upon
a statement of
erroneous re-
turn of arrears,
may revise and
correct the
same.

mination of the proceedings which may be taken by the said attorney-general, and for that purpose it is necessary to ascertain and determine, within a reasonable time, in what cases only such proceedings may or should be taken: and whereas several persons who presented memorials for relief to the said lord lieutenant and privy council of Ireland under the said act have, since orders have been made thereupon by the said lord lieutenant and privy council, represented that they had erroneously returned therein arrears of tithe composition as owing to them by persons having such estates or interests in the lands subject thereto as made such persons liable to be sued for the same by her majesty's attorney-general, pursuant to the provisions of the said act; be it therefore enacted, that it shall be lawful for any person who has presented any such memorial under the said act to lodge with the clerks of her majesty's privy council in Ireland, within one month from the passing hereof, a statement of errors, signed by him, of any arrears which may have been so erroneously returned by him in the said memorial, and of his reasons for believing that such error has been committed in the said memorial; and it shall be lawful for the said lord lieutenant of Ireland in council to cause the said memorial and statement to be revised in such manner as shall seem proper, and after such revision to cause the memorial to be corrected as may be found necessary, and to declare the memorialist entitled to receive such dividend upon any monies originally returned by him as due by persons having such estates or interests as aforesaid as he would have been entitled to had not such errors been committed by him, and the memorialist shall receive such dividend accordingly: and it shall be lawful to and for the lord lieutenant of Ireland in council, after the expiration of the said period of one month, and on such correction of such memorial or memorials, to direct that so much of the relief fund created by the said act as shall be deemed necessary for the purpose shall be retained and set apart to provide for the payment of the costs, charges, and expenses attendant on the revision of the said memorial or memorials, and of any costs which may be incurred in the proceedings to be taken by the said attorney-general, and which may not be recoverable or recovered from the defendants in such proceedings, or payable out of any sum thereby recovered, and to direct that the residue of the said relief fund shall be forthwith paid over to and distributed among the several memorialists rateably and in proportion to the respective sums found to have been payable to them by persons not having such estates or interests; and the said lord lieutenant shall thereupon certify to the commissioners of her majesty's Treasury the proportionate sum so payable to each memorialist, and they shall give the necessary directions for the payment thereof accordingly; and if the sum which shall be so retained and set apart for defraying such costs and charges as aforesaid shall be found to be less than sufficient for that purpose, the balance thereof shall be paid over to the lord primate of Ireland and the venerable the archdeacon of Armagh, to the end that the same may be applied by them as they may think fit for the benefit of the widows and orphans of deceased clergymen of the established church in Ireland.

Interpretation
clause.

"V. And be it enacted, that the provisions made by the said act for the interpretation of certain words and expressions therein shall apply and extend to the like words and expressions in this act; and that by the expression 'relief fund' shall be understood the monies paid or payable to the credit of the account opened at the bank of Ireland, and entitled 'The Tithe Arrear Account,' pursuant to the provisions of the said act.

Act may be
altered this
session.

"VI. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

STAT. 3 & 4
VICT. c. 15.

LVII. STAT. 3 & 4 VICTORIÆ, c. 15. A.D. 1840.

"An Act further to explain and amend the Acts for the Commutation of Tithes in England and Wales."

6 & 7 Gal. 4,
c. 71, s. 67.

"Whereas by an act passed in the seventh year of the reign of his late majesty King William the Fourth, intituled, 'An Act for the Commutation of Tithes in

England and Wales,' it is enacted, that from the first day of January next following the confirmation of any apportionment in any parish under the said act the lands of such parish shall be absolutely discharged from tithes, except as in the said act is provided in certain cases, and instead thereof there shall be payable to the person entitled to such tithes, and in that behalf mentioned in the said apportionment, a sum of money in the nature of a rent-charge issuing out of the lands charged therewith; and by an act passed in the first year of the reign of her present majesty, intituled, 'An Act to amend an Act for the Commutation of Tithes in England and Wales,' provision is made for the lands in a parish being discharged from tithes (except as in the said first-recited act is excepted) by agreement between the parties to any parochial agreement or supplemental agreement, from certain days preceding or following the confirmation of the apportionment, instead of the said first day of January next following such confirmation, but so that the first payment of the rent-charge be made and recoverable at the expiration of six calendar months from the time from which such lands are discharged from the payment of tithes; and by an act passed in the last session of parliament the commissioners appointed under the said first-recited act are enabled by their award, and the landowners and titheowners by supplemental agreement, in like manner to fix the period at which any rent-charge shall commence; and whereas, after an agreement for or award of rent-charge has been made and confirmed by the said commissioners, much delay is often occasioned in settling and adjusting the apportionment before the same can be confirmed by the commissioners; and, to avoid the loss of the proportion of tithes or composition for the period intervening between the expiration of any former agreement or composition and the commencement of such rent-charge, the titheowner is compelled to have recourse to taking tithes in kind, or to a suit in equity; and in other cases, by reason of the lands so remaining subject to tithes, or composition for tithes, during such period, such tithes continue to be taken in kind, or may be so taken on the determination of any composition existing at the date of such agreement or award, notwithstanding that the parties have agreed for, or the commissioners awarded, the sum which under the provisions of the said acts ought to be taken as the permanent rent-charge payable instead of such tithes; and great hardship is thereby occasioned, contrary to the spirit and intent of the said acts: and whereas it is expedient to make provision for remedy thereof, and otherwise to explain and amend the said recited acts, in manner hereinafter mentioned: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in every case where an annual sum by way of rent-charge shall have been fixed in any parish, instead of the tithes of such parish, either by agreement or award, it shall be lawful for the said commissioners, by a declaration in writing under their hands and seal of office, or the hands of any two of them, at any period after the confirmation of any such agreement or award respectively, and before the confirmation of the apportionment to be made in respect of the rent-charge so fixed, upon the application in writing of any landowner or occupier, and upon such security being given to the said commissioners as they shall in their discretion think sufficient for the due payment to the parties entitled thereto of such rent-charge from the day to be fixed in such declaration, to declare that the lands in such parish shall be discharged from the liability to payment or render of tithes, or composition or rent in the nature thereof instead of tithes, and that instead thereof the annual payment or rent-charge so fixed by any such award or agreement respectively shall be paid to the person entitled to the same by half-yearly payments, commencing and calculating from such day of discharge named in such declaration as aforesaid; provided always, that the day to be fixed in such declaration of the said commissioners as aforesaid shall, in every case in which any agreement for a composition or rent in the nature thereof instead of tithes shall be in force at the time of making such application to them as aforesaid, be the day on which such composition or rent shall determine, and in every other case shall be either the first day of January, the first day of April, the

STAT. 3 & 4
Vict. c. 15.

7 Gul. 4 & 1
Vict. c. 69,
s. 11.

2 & 3 Vict.
c. 62, s. 10

Power to declare lands discharged from tithes in certain cases after confirmation of the award or agreement for gross rent-charge.

As to the time of commencing such rent-charge.

STAT. 3 & 4
VICT. c. 15.
Intermediate
payments, &c.
to be deducted.

first day of July, or the first day of October, either before or after the day on which the agreement or award fixing the amount of such rent-charge shall bear date, as to the said commissioners shall appear most just and equitable; provided also, that when such period of discharge shall have been fixed to take effect from any of such days preceding the date of such agreement or award, the said commissioners shall cause due inquiry to be made, and shall allow and deduct from the first payment to be made under such security the value of any tithes which shall have been rendered in kind, and the amount of any payment in respect of tithes, or composition or rent as aforesaid, which shall have been made between such day and the date of such first payment of rent-charge.

Leases of tithes
granted before
25th March
not to be
affected by
this act.

"II. Provided also, and be it enacted, that nothing in this act shall extend or be construed to extend to annul or make void any lease or leases of tithes granted before the twenty-fifth day of March and which shall end or determine on or before the first day of January next; and that in any parish or place where such lease or leases shall have been granted as aforesaid, no tithepayer shall be at liberty to make the application hereby authorized to be made, until after the expiration of such lease or leases respectively, except in respect of lands the tithes whereof are not included in such lease.

Notice of de-
claration to be
published.

"III. And be it enacted, that the said commissioners shall, within ten days after the receipt of such application, cause notice thereof to be given to the tithe-owner to whom such rent-charge will be payable, and shall cause notice of such declaration to be twice published in some newspaper having circulation in the county where such parish is situated within twenty-one days from the date of such declaration, and from and after the expiration of such twenty-one days all the provisions of the said recited acts applicable to the rent-charge payable after the confirmation of the apportionment shall be applicable to the rent-charge payable by virtue of the provisions hereinbefore contained from the period fixed by any such declaration.

Provision for
landowner
paying esti-
mated propor-
tion of rent-
charge in aid
of security.

"IV. And be it enacted, that if any owner of lands so discharged from such liability shall be desirous of paying in exoneration of such security, the proportion of rent-charge to which the whole of such lands, whether in his own occupation or in the occupation of any tenant, shall be liable, it shall be lawful for such owner to apply in writing to the valuer or valuers appointed to apportion such rent-charge, at any time after they shall have subscribed the declaration required in that behalf in the said first-recited act, and before the confirmation of the apportionment, and to demand of such valuer or valuers a statement of the probable amount of such proportion, and such valuer or valuers shall and he or they is or are hereby required to furnish the same accordingly, and shall distinguish therein the probable amount to which the whole of the lands in the occupation of any tenant under such owner would be liable; and on receipt thereof such owner may cause a copy of such statement or an extract of such parts thereof as shall relate to the lands in the occupation of any tenant who, but for such declaration of discharge, would be liable to the render or payment of tithe in respect of such lands, to be served on such tenant by leaving the same at his usual place of abode, with an undertaking subscribed thereto by such owner to pay the amount set forth in such statement in aid or exoneration of such security; and in every such case such tenant shall thenceforward be liable to pay to such owner, by way of additional rent, such estimated proportion at the half-yearly days of payment fixed in the award or agreement for payment of rent-charge; and such owner shall be entitled to demand and recover the same as rent by all the usual remedies for recovery of rent in arrear, until the half yearly payment falling due next after the confirmation of the apportionment; provided always, that it shall be lawful for any such landowner or tenant, at any time within six months after the date of such confirmation, to apply to the said commissioners to take an account of the amount paid by any such tenant, and certify the amount of the difference, if any, between the amount so paid and the amount of rent-charge calculated as finally apportioned on such lands for the same period as such estimated amount has been paid, and if the rent-charge finally apportioned shall be greater than the amount so paid, it shall

be lawful for such owner to demand and recover the difference accordingly; but if such tenant shall have paid more than the amount of such rent-charge, then it shall be lawful for such tenant, or (in case of his death) for his executors or administrators, to deduct the excess so verified as aforesaid from the next payment of rent accruing after the date of such certificate; provided also, that in the event of the expiration or other sooner determination of the period of tenancy before the confirmation of the appointment, such excess shall be deemed a debt due to the tenant, his executors or administrators, and shall be recoverable in an action of debt to be brought against such landowner as aforesaid, or his personal representatives.

STAT. 3 & 4
VICT. c. 15.

“V. And be it enacted, that in every such case the production of such certificate as aforesaid, or of an office copy thereof sealed or stamped with the seal of the said commissioners, shall be sufficient evidence of the right to recover or retain the amount or excess in payment which shall appear by such certificate to have been made by the landowner or his tenant respectively.

Certificate of commissioners to be evidence of right of recovery of retainer.

“VI. (1) And whereas it may happen that a tenant, being an occupier of lands, who shall, by virtue of the provisions of the said first-recited act, be entitled to deduct the amount of any rent-charge from the rent payable by him to his landlord, may be desirous of paying, in exoneration of such security as aforesaid, the proportion of rent-charge to which the lands in his occupation shall be liable; be it enacted, that, upon the application in writing of any such tenant, the valuer or valuers shall, in like manner as aforesaid, furnish to such tenant a statement of the probable amount of such proportion of rent-charge as aforesaid, and on receipt thereof the tenant may cause a copy of such statement to be served on his landlord by leaving the same at his usual place of abode, accompanied by a written notice of his intention to undertake the payment of such proportion of rent-charge as aforesaid; and in case the landowner shall not, within twenty-one days after the service of such copy and notice, undertake, by some writing subscribed by him or his agent lawfully authorized, and served in like manner as aforesaid upon the tenant, to pay the amount set forth in such statement, it shall be lawful for the tenant to undertake the payment thereof, and from time to time to deduct the amount paid by him from his rent until the period at which the half-yearly payment of rent-charge to be made next after the confirmation of the apportionment shall have become due; provided always, that in every such case the provisions hereinafter contained for taking accounts between the person who shall have given such security as aforesaid and the owners of lands subject to the rent-charge shall be applicable to the case of every such landowner from whose rental such deductions shall have been made as aforesaid.

Provision for occupying tenant paying (in the place of his landlord) estimated proportion of rent-charge in aid of security.

“VII. And be it enacted, that in every such case, if the person liable under such security shall not make due payment to the person entitled to the same according to the tenor of such security, it shall be lawful for the said commissioners from time to time, as and when any half-yearly payment of such rent-charge shall accrue, and the same or any part thereof shall remain unpaid for the space of twenty-one days from any day fixed for payment thereof, and notwithstanding execution shall have been previously issued in respect of any former arrears, to sue for and recover any such half-yearly payment, or so much thereof as shall from time to time remain unpaid in respect thereof, against the person liable under such security, by taking out a summons, returnable before a judge of any of the superior courts of common law, to compute what is due in respect of such rent-charge; and it shall be lawful for any judge of such courts, on hearing the parties, or such of them as shall appear, and on production of such security, and proof by affidavit of the amount so due as aforesaid, and of the service of such summons on such person or on any occupier of any of the lands of such person in any such parish, by delivery of the same personally, or by leaving the same at his place of abode, to order that it be referred to the masters of the court to compute what is due in respect of such security, and to tax the costs of such application, and all such orders shall

Provision for recovery of such rent-charge from persons giving security for same.

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Remedy for
the landowner
against whom
execution has
issued.

Provision for
taking ac-
counts between
the person
giving security
and the land-
owners liable
to contribute
thereto.

Period for
which security
to be available
against such
owners.

If security
insufficient,
arrear may be
recovered as if
accruing after
apportionment.

Security to be
free of stamp
duty.

have the effect of judgments in the superior courts of common law in like manner as rules of such courts, and execution may issue accordingly, and such security shall be available against such person liable under the same up to and including the half-yearly payment accruing due next before the confirmation of such apportionment, and shall be in full force notwithstanding any change in the party entitled to such rent-charge.

“VIII. And be it enacted, that in every such case the said commissioners shall make due inquiry as to any payment of rent-charge made by any such person in respect of such security previous to the confirmation of the apportionment of such rent-charge, and shall indorse on such apportionment a certificate of such payment, and that the parties entitled to such rent-charge have been duly paid the amount thereof according to the tenor of such security; and such person shall thereupon, after the confirmation of such apportionment, be entitled to recover the amount specified in such certificate as having been paid by him, against the lands of the said parish subject to such rent-charge, in the proportions fixed for payment of rent-charge by such apportionment, by distress and entry on such lands respectively, and shall have the like remedies or modes of recovery as are given to owners of rent-charge for recovery thereof in the said recited acts or any of them: provided always, that if the owner or occupier of any such lands shall have contributed to the payment of such rent-charge, or of any part thereof, or of the arrears thereof, under such security, or in exoneration thereof, it shall be lawful for him to take out a summons, returnable before any judge as aforesaid, to stay any proceedings taken by the person liable under such security as aforesaid, for the purpose of taking an account of what he shall have so contributed or paid in respect of such rent-charge or arrears; and it shall be lawful for any judge as aforesaid to refer it to the masters of the court to take such account and make all just allowances between the parties; and if, on taking such account, such owner or occupier shall be found to have paid his due proportion, or any amount exceeding the same, according to the proportionate amount of rent-charge fixed on such lands, then it shall be lawful for any judge as aforesaid to stay proceedings, and order payment, by the person liable under such security, of the amount, if any, so overpaid by such owner or occupier, as the case may require, and every such order shall have the effect of a judgment as aforesaid; but if on taking such account the whole or any balance shall be found due from such owner or occupier, then it shall be lawful for such judge to allow the same against such owner or occupier, whose lands shall thereupon be liable to the repayment thereof, to the person liable under such security, and who shall be entitled to the said remedies in respect thereof accordingly; and the cost of every such proceeding shall be in the discretion of the judge hearing the same, and shall be added to the amount found due on such order, if he shall see fit so to direct: provided also, that no such security shall be available by the person liable under the same against any such lands for more than two years' payment or arrear of such rent-charge, unless the said commissioners shall, previous to the expiration of two years from the date of such security, have enlarged the operation thereof for any period not exceeding twelve months, by indorsement thereon, under their hands or the hands of any two of them, and which they are hereby authorized to do if they shall so think fit.

“IX. And be it enacted, that if such security shall be insufficient to meet the full amount of payments which shall accrue due in respect thereof, or the person liable under the same shall fail to make good the amount due thereon by the space of twenty-one days next after the date of the confirmation of the apportionment of such rent-charge, it shall be lawful for the person entitled to the benefit thereof to recover the same against the lands of the said parish subject to such rent-charge, in the proportions fixed in such apportionment, by the said remedies or modes of recovery given by the said recited acts, or either of them, in respect of rent-charge fixed under any confirmed apportionment, in like manner as if the amount so due and in arrear had accrued subsequent to the confirmation.

“X. And be it enacted, that every security taken by the said commissioners, by virtue of the provisions of this act, and every assignment thereof, shall be free of stamp duty.

“XI.(1) And whereas by the lastly-recited act the said commissioners are empowered, by any award, or by a supplemental award, after a parochial agreement, in certain cases, and under certain provisions, to fix the sum to be paid in consideration of the time, if any, which may intervene between the termination of any previous agreement or composition for tithes and the time at which any such rent-charge shall commence; and it is expedient to extend such power in manner hereinafter mentioned; be it enacted, that it shall be lawful for the said commissioners, at any time before the confirmation of the apportionment of any rent-charge, to exercise the said powers so given to them for fixing the sum to be paid for such intervening time as aforesaid, by a supplemental award after an award.

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Extension of
power to fix
sum to be paid
after determination of composition.

“XII. And be it enacted, that when any such sum shall be fixed to be paid in consideration of such intervening time as aforesaid, either by parochial agreement or supplemental agreement, or by award or supplemental award, the parties by and to whom such sum is to be paid, and the lands in respect of which the same shall be payable, as also the proportionate amount to be paid by each party, shall be specified and set forth in the instrument fixing such sum, or in the instrument of apportionment to be made in pursuance thereof; and in default thereof such sum shall be payable by and to the parties and in the proportions fixed in such apportionment in respect of the rent-charge therein provided for.

Particulars to
be specified as
to payment of
such sum.

“XIII. And whereas by the said lastly-recited act the said commissioners are enabled by their award, and the titheowners and landowners by a parochial agreement after an award, are enabled to fix the period at which the rent-charge shall commence, and it is expedient to extend such power in manner hereinafter mentioned; be it enacted, that it shall be lawful for the commissioners, by supplemental award, to exercise the powers so given to them for fixing the period at which any rent-charge shall commence, as well after an award as after a parochial agreement, where the same shall not have been previously fixed by any such award or agreement, or by any supplemental award or agreement, under the said recited acts, or either of them, or this act: provided always, that where the said commissioners shall not have fixed that the period at which any rent-charge shall commence shall be the first day of January next following the confirmation of the apportionment, such period shall be fixed by them on the first day of January preceeding such confirmation, or on the first day of April, the first day of July, or the first day of October preceeding or following such confirmation, whichever of such days may happen nearest to the termination of any previous agreement or composition, or of any customary year of tithing in the parish or district to which such rent-charge shall relate: provided also, that when any period of commencement shall have been so fixed by the said commissioners in any award or supplemental award, or any day preceeding the date thereof, the commissioners shall cause due inquiry to be made as to the value of any tithes rendered in kind, and the amount of any payment in respect of tithe which shall have been made, subsequent to such period of commencement, and prior to the first day fixed for payment of such rent-charge, and shall take into account and allow such value or amount to be deducted from such payment accordingly.

Extension of
power to fix
period for
commence-
ment of rent-
charge.
2 & 3 Vict.
c. 62, s. 10.

“XIV.(2) And whereas by the said lastly-recited act powers are given to landowners and titheowners, and also to the said commissioners, to substitute a fixed rent-charge in certain cases instead of a contingent rent-charge, where lands are partially exempted from the payment of tithes or rent-charge by reason of having been parcel of the possessions of a privileged order, and it is desirable to extend such powers in manner hereinafter mentioned; be it enacted, that such power shall extend to all cases where, by reason of lands being partially exempted from the payment of tithes, by custom or otherwise, or by being subject to a shifting or leaping modus, or other customary payment, or rendered due only on certain contingencies, a contingent rent-charge has been already fixed, or would, according to the provisions of the said firstly-recited act, be fixed in respect of such lands; and

Extension of
powers to sub-
stitute fixed
rent-charge
instead of
contingent
rent-charge.

(1) *Vide* Stat. 2 & 3 Vict. c. 62, s. 10. & 71; and Stat. 2 & 3 Vict. c. 62, s. 11.

(2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 43

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it shall be lawful for the said commissioners, with such consent of both landowners and titheowners as in the said lastly-recited act is required in that respect, at any time before the confirmation of the apportionment of any rent-charge, by any award, or by a supplemental award, where an award or parochial agreement has been made before the passing of this act, or for the landowners or titheowners by a parochial agreement, or supplemental agreement where a parochial agreement or award has already been made in respect of such lands, to exercise such powers, in such manner and subject to the same conditions as are given by the said lastly-recited act in cases of lands formerly part of the possessions of a privileged order: provided always, and it is hereby declared, that nothing herein contained extends to cases of change of cultivation only, nor to cases of prescription relating to woodland.

Extension of
powers in
respect of
lammas and
common lands.

“XV.(1) And whereas by the said lastly-recited act certain provisions are made and powers given in respect of the tithes of lammas and common lands, which powers are to be exercised by the landowners and titheowners by parochial agreement, or by a supplemental agreement after a parochial agreement, and by the commissioners by compulsory award, or by a supplemental award after an award; be it enacted, that such provisions may be carried into effect and such powers exercised at any time before the confirmation of the apportionment of any rent-charge, by the landowners and titheowners by a supplemental agreement, after an award, or by the commissioners by supplemental award after a parochial agreement.

Commissioners
to give notice
to proceed by
supplemental
award.

“XVI.(2) And be it enacted, that in every case where it shall be the intention of the commissioners to proceed in any parish under this act by supplemental award after a parochial agreement, either to fix the period of the commencement of such rent-charge, or to carry into effect the provisions and powers of the said lastly-recited act in respect of the tithes of lammas and common lands, they shall cause the like notice of their intention to be given in such parish as is required by the said first-recited act in the case of an award: and if at any time after giving such notice, and before the expiration thereof, any proceedings shall be had under the said recited acts, or either of them, or this act, by the landowners and titheowners in such parish, towards making and executing any parochial agreement or supplemental agreement in respect of the matters specified in such notice, the commissioners shall refrain from acting on the same until the result of such proceeding shall appear.

Extension of
powers of con-
veyance of
lands to trust-
tees and
feoffees for
parochial
purposes.

“XVII.(3) And be it declared and enacted, that so much of the said lastly-recited act as relates to the vesting of an estate of inheritance as to any lands in any ecclesiastical titheowner and his successors, notwithstanding the same be made by any corporation sole or aggregate, or any trustees or feoffees for charitable purposes, otherwise restrained from or incapable of making any such valid conveyance or assurance, extends to churchwardens and overseers, or to trustees or feoffees of parish property, or of property held by or vested in such trustees or feoffees for parochial or other uses or purposes in the nature of a parochial or public trust.

Power for
parties to
parochial
agreement, and
for commis-
sioners, to
declare the
amount of
extraordinary
charge to be
payable in
respect of hop
grounds, &c.

“XVIII.(4) And be it enacted, that in any case where the parties to a parochial agreement, or the commissioners in the case of an award, shall have proceeded, according to the provisions of the said recited acts, to ascertain and fix a rent-charge in any parish wherein any of the lands shall at the time of making such agreement or award be cultivated as hop-grounds or market gardens, and in case of proceeding by award when notice shall have been given that the tithes of any of the lands so cultivated should be separately valued, it shall be lawful for the said parties to declare in such agreement, or for the said commissioners to declare in such award, the amount of extraordinary charge per acre to be in future payable in respect of hop-grounds and market gardens respectively in such parish or any district therein; and the rent-charge mentioned in every such agreement or award respectively shall, subject to the addition of such acreable extraordinary charge, consist of the amount agreed for or awarded in respect of the tithes in such parish,

(1) *Vide* Stat. 2 & 3 Vict. c. 62, s. 13.

(2) *Vide* Stat. 2 & 3 Vict. c. 62, s. 13.

(3) *Vide* Stat. 2 & 3 Vict. c. 62, s. 21.

(4) *Vide* Stat. 6 & 7 Gal. 4, c. 71, s. 40

& 42; and Stat. 2 & 3 Vict. c. 62, s. 26-33.

other than the tithes of the lands cultivated therein as hop-grounds and market gardens respectively, and the ordinary charge in respect of the lands so cultivated as hop-grounds and market gardens respectively added thereto: provided always, that no such extraordinary charge shall be payable in respect of any such hop-grounds and market gardens during the first year, and only half such extraordinary charge during the second year, in which they shall be newly cultivated as such, whether such new cultivation shall have commenced before or after the making of such parochial agreement or award as aforesaid.

“XIX. And be it enacted, that it shall not be necessary to distinguish in any apportionment the amount of extraordinary rent-charge to be charged upon the lands of each individual landowner which shall be cultivated as hop-grounds, market gardens, orchards, fruit plantations, or mixed plantations of hops and fruit, provided that the acreable amount of extraordinary charge for all the lands so cultivated respectively in any district which shall have been assigned, or in any parish wherein any extraordinary rent-charge shall have been declared, previous to the confirmation of the instrument of apportionment, shall be inserted therein.

“XX. And be it declared and enacted, that every half-yearly payment of rent-charge under the said recited acts or either of them, or this act, shall from time to time be regulated by the averages published under the provisions of the said first-recited act in the month of January next preceding every such half-yearly day of payment.

“XXI. (1) And be it enacted, that, unless a majority in value of the owners of lands included in any apportionment shall, by writing under their hands, request the commissioners to omit the same, the instrument of apportionment shall distinguish the amount or portion of rent-charge payable in respect of the several closes of the said lands, and such closes shall be laid down in the map or plan annexed to such apportionment: provided always, that nothing in this provision contained shall apply to any instrument of apportionment the valuers for effecting which shall have been appointed previous to the passing of this act; and no such last-mentioned instrument of apportionment shall be deemed invalid if made in conformity with the instructions given to the valuers for making the same, although the amount of rent-charge payable in respect of the several closes of land shall not have been distinguished therein, nor such closes laid down in the map or plan annexed thereto.

“XXII. (2) And be it enacted, that every occupier whose lands or goods shall be liable to distress in respect of any expenses chargeable under the said recited acts, or either of them, or this act, against any landlord or lessor of the lands in his occupation, shall be entitled to recover the amount of any such expenses which he shall pay, with interest on such payment from time to time at four per centum per annum, and may deduct the same from any rent or renewal fines payable to such landlord or lessor; and where the estate of such landlord or lessor in the lands in respect whereof such payment shall have been made shall be less than an immediate estate of fee simple or fee tail, or subject by settlement to any uses or trusts, he shall be entitled to charge such amount and interest upon such estate in like manner and subject to the same restrictions and provisions as are contained in the said recited acts or any of them in relation to owners of particular estates, or of estates settled to the same uses and trusts as the lands in respect of which such expenses have been incurred respectively.

“XXIII. (3) And be it enacted, that every person, as defined in the said first-recited act, who is empowered under the said recited acts or any of them, or this act, to charge upon his lands or rent-charge any expenses of commutation payable by him, may exercise such powers, in the case of expenses incurred, as well in respect of the commutation of tithes payable to him as the owner thereof as of tithes to which any lands whereof he is owner are liable; and the word ‘lands’ shall, in the construction of the said acts and of this act, be construed to extend to

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No extraordinary charge payable on hop grounds, &c. for the first year of their being cultivated as such, &c.

Extraordinary rent-charge need not be distinguished on separate lands in apportionment.

Half-yearly payments of rent-charge to be regulated by averages declared under 6 & 7 Gul. 4, c. 71, s. 67.

Instrument of apportionment to distinguish the amount of rent-charge payable in respect of each close.

Act not to extend to cases in which valuers are already appointed.

For recovery of expenses in certain cases.

Power to charge expenses of commutation, in certain cases, on renewal fines, &c.

(1) *Vide* Stat. 7 Gul. 4 & 1 Vict. c. 69, s. 5.

(2) *Vide* Stat. 2 & 3 Vict. c. 62, s. 18.

(3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 12, 77 & 78; and Stat. 2 & 3 Vict. c. 62, ss. 16 & 17.

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Provision for
discovery of
books and
documents
relating to
commutation.
6 & 7 Gul. 4,
c. 71, s. 10.

Gardens or
lawns of small
extent may be
exempted from
rent-charge.

The commis-
sioners to
cause a new
apportionment
to be made in
cases in which

and include any income or sum receivable by or accruing to such person from redeemed land tax, or from fines or other sums of money payable on the renewal of any term or estate in lands, tithes, or rent-charge holden of or by him to the same uses and upon the same trusts as the lands, tithes, or rent-charge in respect of which such expenses of commutation are incurred.

“XXIV.(1) And be it enacted, that notwithstanding anything in either of the said acts contained, in all cases where under the said recited acts or any of them the said commissioners or any assistant commissioner may examine persons upon oath, and cause to be produced before them or him all books and other documents, as therein mentioned, relating to the commutation of tithes, the said commissioners or assistant commissioner may, by summons under their or his hand, require the attendance of and examine any party interested in the lands or tithes of any parish, or any other person, and require the production also of all deeds and documents in the custody or power of either party, and allow such portions only of them to be read as in their or his judgment shall be thought proper; and also that in all cases where under the said acts parties in a feigned issue are required to produce to each other, and their respective attorneys or counsel, at such time and place as any judge may order before trial, and also to the court and jury upon the trial of such issue, all deeds, books, and other documents, as in the said act mentioned, relating to the matters in issue in their respective custody or power, the parties shall be obliged to produce only such documents, and such portions of them only shall be inspected or read, as the judge shall think proper, who may order the parties to discover the documents in their possession, upon oath, if he shall think fit; and it shall be lawful for the judge, and also for the commissioners or assistant commissioner, in the cases aforesaid respectively, to direct copies or extracts to be taken or furnished of the same documents, at the expense of the person requiring the same, at the rate of sixpence for every common law folio: provided always, that in no case shall any person be compellable to produce any part of the deeds or documents in his possession which relate to the title to the property therein referred to, but only such parts thereof as relate to the matter immediately in issue; and such person may, if he see fit, withhold any such deeds or documents, or any portion thereof, on making an oath that the deeds or documents or parts thereof so withheld do not relate to the matter so in issue as aforesaid.

“XXV.(2) And whereas in many cases titheowners have, during the seven years of average prescribed by the said first-recited act, forborne to take the tithes of lands used and occupied as gardens, lawns, or the like, or compositions in lieu thereof, on account of such lands being of small extent, and the tithes thereof being of inconsiderable value: be it enacted, that where in such cases the tithes of a parish or district have been commuted, whether by a parochial agreement or by a compulsory award, and it shall be shown to the satisfaction of the said commissioners that the rent-charge or rent-charges specified in the said agreement or award has or have been based upon the average value of the tithes of the said parish or district during the said seven years of average, exclusive of any tithes in respect of such gardens, lawns, or such like small holdings, according to the provisions of the said first-recited act, and that no part of the said rent-charge or rent-charges has been agreed to be given or awarded in respect of the tithes of such gardens, lawns, or other such like small holdings, it shall be lawful for the said commissioners, if they think fit, to order and direct that no part of the said rent-charge or rent-charges shall be apportioned upon such gardens, lawns, or other such like small holdings.

“XXVI.(3) And whereas it hath happened that in cases where, during the seven years of average prescribed by the said first-recited act, tithes shall not have been demanded of certain tenements, by reason of their small extent or of the small amount of such tithes, such tenements have notwithstanding been included in the apportionment of the rent-charge for the parish, whereby the occupiers of such

(1) *Vide* Stat. 6 & 7 Gul. 4, c. 71, ss. 10 & 46.

(2) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 61.

(3) *Vide* Stat. 6 & 7 Gul. 4, c. 71, s. 32, 33 & 53.

tenements have become liable to have their goods distrained upon, and the titheowner has been subjected to much increased difficulty and expense in the collection of the rent-charge, contrary to the true intent and meaning of the said first-recited act; and it is therefore expedient, under certain restrictions, to give relief in such cases; be it enacted, that in any such case in which the apportionment shall have included any number of small tenements, exceeding in the whole one hundred, from which tenements no tithe or composition for tithe shall have been demanded or taken (notwithstanding their liability thereto) during the period of seven years next preceding Christmas in the year one thousand eight hundred and thirty-five, it shall be lawful for the commissioners, and they are hereby authorized, if they shall see fit, upon the application in writing of any ten or more of the owners or occupiers of such small tenements, or of the titheowner, and after satisfactory proof shall have been given that no part of the rent-charge has been agreed to be given or awarded in respect of the tithes of such small tenements, to cause a new apportionment to be made of the said rent-charge, and to order and direct that no part thereof shall be apportioned upon such small tenements; and the provisions in the said first-recited act contained for hearing and determining objections to apportionments, and for rendering the same, or any map or plan therein referred to, final and conclusive, shall be and are hereby respectively made applicable to every such new apportionment; and, subject to such provisions, such new apportionment shall commence and take effect from the half-yearly day of payment of the said rent-charge which shall happen next before the confirmation of the same apportionment: provided always, that no payment of such rent-charge, or right to arrears thereof, which shall have become due or accrued on or before the said half-yearly day of payment, nor any remedy in case of nonpayment, shall in anywise be affected by any such new apportionment.

“XXVII. And be it enacted, that the costs of attending every such new apportionment shall be paid and borne by the parties making such application, in such proportions as the commissioners shall direct, and shall be recoverable in like manner as the costs of any apportionment under the said first-recited act; and as to any part of such costs as may be borne by the titheowner, such titheowner, being an ecclesiastical beneficed person, may charge or assign the rent-charge as a security for the repayment of such costs in like manner as for the costs of the commutation under the said act.

“XXVIII. (1) And whereas by the said lastly-recited act powers are given to the said commissioners or any assistant commissioner, upon the application in writing of not less than two-thirds in number and value of the landowners in any parishes or townships, to set out and define the boundaries of such parishes or townships in manner in the said act provided; and it is expedient to extend such power in manner hereinafter mentioned; be it enacted, that it shall be lawful for the said commissioners, or assistant commissioner, but at the sole discretion of the said commissioners, and only in such manner as they shall see fit and proper, to exercise all and every the powers so given by the said lastly-recited act relating to boundaries of parishes or townships, on the application in writing of two-thirds in number and value of the landowners of any one parish, place, or township whose boundary shall be in question, notwithstanding the landowners in the parish, place, or township adjoining such boundary shall not join in such requisition: provided always, that in every such case the said commissioners or assistant commissioner shall, twenty-one days at least before proceeding to make inquiry and adjudicate on such question of boundary, cause a notice to be sent by the post, or otherwise given, addressed to the churchwardens and overseers, and also to the surveyors of the highways of every parish, place, or township adjoining such boundary, of the intention of the said commissioners or assistant commissioner to proceed on the question of such boundary, and shall specify in such notice a time and place of meeting so to proceed therein, and shall annex to each copy of such notice a copy of the application of the landowners requiring the commissioners to

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the apportionment shall have included tenements from which no tithe has been taken during seven years previous to Christmas, 1835.

Provision for the costs of new apportionment.

Commissioners may adjudicate parochial boundaries on requisition of landowners of any parish.

(1) *Vide* Stat. 2 & 3 Vict. c. 62, ss. 34 & 35; and Stat. 7 Gul. 4 & 1 Vict. c. 69, ss. 2 & 3.

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make such inquiry and adjudication, and shall also cause a copy of such notice to be inserted, once at least in two successive weeks previous to the day of such meeting, in some newspaper having circulation in the county where such parish, place, or township is situated; and no assistant commissioner shall proceed in any such inquiry without exhibiting at such meeting the papers containing the advertisement of such notice, and also a certificate, under the hands of the said commissioners, or any one or two of them, of one copy of such notice having been respectively sent to such churchwardens and overseers, and a copy to such surveyors as aforesaid; and the assistant commissioner shall thereupon proceed in all respects, and his proceedings shall be as valid and binding, as if the said inquiry had been instituted on the application in writing of two-thirds in number and value, as well of the landowners of the parish, place, or township to which such notice shall have been so sent, as of the parish, place, or township causing such inquiry to be instituted: provided nevertheless, that upon the application in writing, addressed to the said commissioners during the interval of such twenty-one days, of not less than two-thirds in number and value of the landowners in any parish, place, or township adjoining such boundary, and not being parties to any such application as aforesaid, objecting to the said commissioners or assistant commissioner proceeding under the same in the matter of such boundary, all proceedings which shall have been instituted upon the application of such single parish, place, or township under this act shall forthwith be stayed.

Proviso.

This act to be taken as part of the recited acts, and of 1 & 2 Vict. c. 64.

“XXIX. And be it enacted, that this act shall be taken to be a part of the said recited acts, and also of an act passed in the second year of the reign of her present majesty, intituled, ‘An Act to facilitate the Merger of Tithes;’ and in the construction of this act, unless there be something in the subject or context repugnant to such construction, the several words used in this act shall have and bear the same interpretation as is given to such words respectively in the said acts or either of them; and whenever a word importing the singular number or masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as one matter or thing respectively, and the converse.

Act may be amended this session.

“XXX. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.”

STAT. 3 & 4
VICT. cap. xix.

LVIII. STAT. 3 & 4 VICTORIÆ, cap. xix. A.D. 1840.

“An Act to discharge the Advowson of the Rectory of Doddington, otherwise Doddington, with the Chapels of March and Benwick, from Rent-Charges and Pensions charged by Settlements affecting the same.”

STAT. 3 & 4
VICT. c. 20.

LIX. STAT. 3 & 4 VICTORIÆ, c. 20. A.D. 1840.

“An Act to amend an Act passed in the first year of the Reign of His late Majesty King George the First, intituled, *An Act for rendering more effectual Her late Majesty's Gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy*; and to render valid certain Agreements which have been made in pursuance of the said Act; and for other Purposes.”

Letters patent, 3rd November, 3 Anne, incorporating the governors of the bounty of Queen Anne.

“Whereas by letters patent of her majesty Queen Anne, under the great seal of England, bearing date the third day of November, in the third year of her reign, incorporating ‘The Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy,’ the said governors were authorised to consider, consult, advise, agree upon, draw up, prepare, and propose in writing to her said majesty, her heirs and successors, such proper and necessary rules, methods, directions, orders, and constitutions as the said governors, or any seven or more of them, with such quorum as is therein directed, should in their discretion judge most convenient to be observed for and towards the better rule and government of the said corporation and the members thereof, and the receiving, accounting for, and managing all and every the revenues thereby granted, and all arrears thereof

and also for and concerning the distributing, paying, and disposing of the same, and all other gifts and benevolences that should or might be given or bequeathed to the said corporation for the charitable ends in the said letters patent mentioned for the augmentation of the maintenance of the poor clergy aforesaid, and that such rules, methods, orders, directions, and constitutions as should be so proposed, and should be approved, altered, or amended by her said majesty, her heirs or successors, and such as should be made by her said majesty, her heirs or successors, and so signified and declared by her, her heirs or successors, under her or their great seal, her said majesty thereby willed should be the rules, methods, directions, orders, and constitutions by which the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, and their successors, should receive, manage, govern, apply, and dispose her said majesty's royal bounty, and other gifts and benevolences which should or might after that time be given or bequeathed to the said corporation, (where the donors thereof should not particularly direct the application thereof,) to and for the increase of the maintenance of such parsons, vicars, curates, and ministers officiating in any church or chapel within the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, where the liturgy and rites of the church of England, as then by law established, were and should be used and observed, for whom a maintenance was not then sufficiently provided: and whereas, pursuant to the said letters patent of incorporation, the said governors did agree upon, prepare, and propose to her said majesty certain rules and constitutions, for the better rule and government of the said corporation, the fourth of which said rules and constitutions was to the effect following; (that is to say,) that in order to encourage benefactions from others, and thereby the sooner to complete the good that was intended by her said majesty's bounty, the governors might give the sum of two hundred pounds (which was the stated sum to be allowed to each cure) to cures not exceeding thirty-five pounds per annum, where any persons would give the same or greater sum or value in lands or tithes; and her said majesty, by letters patent under her great seal, bearing date the fifth day of March, in the twelfth year of her reign, did establish the said rules and constitutions, reserving to herself, her heirs and successors, power from time to time, under her or their great seal, to alter the same, and to give and make in like manner such other rules and constitutions, according to the true intent of the said letters patent of incorporation, as to her said majesty, her heirs or successors, should seem meet: and whereas by an act passed in the first year of the reign of his majesty King George the First, intituled, 'An Act for making more effectual Her late Majesty's gracious Intentions for augmenting the Maintenance of the Poor Clergy,' after reciting (amongst other things) the said several letters patent of her said majesty, it was enacted and declared, that all such rules, methods, orders, directions, and constitutions as should from time to time be by the said governors agreed upon, prepared, and proposed to his said majesty, his heirs and successors, according to the true intention of the said letters patent of incorporation, and by his said majesty, his heirs and successors, approved under his or their sign manual, should be as good, valid, and effectual rules, methods, directions, orders, and constitutions for the purposes aforesaid as if the same were made and established under the great seal of his said majesty, his heirs or successors; and by the same act, after reciting the said fourth rule or constitution established by the said letters patent of the fifth day of March, in the twelfth year of her said majesty's reign, and that the right of presentation or nomination to small livings was of inconsiderable value, and yet it might be a great inducement to such benefactions as aforesaid if the benefactor might have some right of presentation or nomination to the cure which himself contributed to augment, it was therefore further enacted, that all agreements with such benefactor and benefactors, with the consent and approbation of the said governors, touching the patronage or right of presentation or nomination to any such augmented cure made or to be made for the benefit of such benefactor and benefactors, his, her, or their heirs or successors, by the king's most excellent majesty, his heirs and successors, under his and their sign manual, or by any bodies politic or corporate, or by any person or

STAT. 3 & 4
VICT. c. 20.

Rules prepared
by the govern-
ors according
to the said
letters patent.

1 Geo. 1, c. 10.

STAT. 3 & 4
VICT. C. 20.

Rules have
been altered
and extended.

persons being of the full age of twenty-one years, having an estate of inheritance either in fee-simple or fee-tail in their own right, or in the right of their churches or wives, or jointly with their wives, made before coverture or after, or having an estate for life or for years determinable upon his and their own life and lives, with remainder in fee-simple or fee-tail to any issue of his or their own bodies, in such patronage or right of presentation or nomination, in possession, reversion, or remainder, should be respectively good and effectual in the law against his majesty, his heirs and successors, or against all and every such bodies politic and corporate, or against the person so agreeing, their wives, heirs, and successors respectively, and every of them, and against all and every their issue, and against every other person and persons claiming in remainder and reversion after such estate tail as aforesaid, according to the form of such agreement, and the advowson, patronage, and right of presentation and nomination to such augmented churches and chapels should be vested in such benefactors, their heirs and successors, as against his majesty, his heirs and successors, or the said bodies politic and corporate and their successors, or the said respective persons as aforesaid, as fully and in like manner and form, as if the same had been granted by his said majesty, his heirs or successors, under his and their great seal, and as if such bodies politic or corporate had been free from any restraint, and as if such other persons so agreeing had been sole seised in his and their own right of such advowson, patronage, right of presentation, and nomination, in fee-simple, and had granted the same to such benefactors, their heirs and successors respectively, according to such agreements; and it was thereby further enacted, that the agreements of guardians for and on behalf of infants or idiots under their guardianship should be as good and effectual, to all intents and purposes, as if the said infants or idiots had been of full age and of sound mind, and had themselves entered into such agreements; provided always, that in case of any such agreement as aforesaid, by any parson or vicar, the same should be with the consent and approbation of his patron and ordinary; provided also, that in case of any such agreement as aforesaid made by any person seised in right of his wife, the wife should be a party to the agreement, and should seal and execute the same: and whereas under the provisions of the herein before-recited letters patent and act of parliament, or some or one of them, divers rules, orders, and constitutions have been from time to time made, whereby the power of the said governors to augment cures to the augmentation of which any benefactor or benefactors should also contribute as aforesaid has from time to time been enlarged and extended, both with respect to the amount of the yearly value of the cures which the said governors were empowered to augment, and with respect to the amount which the said governors were empowered to appropriate out of the funds at their disposal towards such augmentation, and such power so enlarged and extended has in many cases been exercised by the said governors, and in some of such cases agreements have been made with the benefactor or benefactors contributing to such augmentations touching the patronage or right of presentation or nomination to such augmented cures, according to the provision of the said recited act: and whereas doubts have arisen whether appropriations made by the said governors for the augmentation of any cure were strictly authorized by the rules, orders, and constitutions for the time being in force, in those cases in which the amount so appropriated to any cure by the said governors has exceeded in any one year the sum of two hundred pounds; and doubts have also arisen whether the agreements made with such benefactor or benefactors as aforesaid are strictly valid and effectual in those cases in which the yearly value of the augmented cure has previously to such augmentation exceeded the sum of thirty-five pounds, or the amount so appropriated by the said governors as aforesaid has exceeded in any one year the sum of two hundred pounds: and whereas it is expedient to remove and obviate all such doubts as aforesaid, both with respect to appropriations made by the said governors, and with respect to agreements made and to be made with any such benefactor or benefactors as aforesaid: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that

all appropriations heretofore made by the said governors of any sum or sums of money out of the monies at their disposal to the augmentation of any cure shall be good, valid, and effectual, to all intents and purposes whatsoever, in all cases in which any benefactor or benefactors has or have, in order to obtain any such appropriation for the augmentation of the same cure, contributed not less than the amount of benefaction which was at the time of any such augmentation required in that behalf by the rules, orders, and constitutions then in force, notwithstanding that the sum or sums so appropriated by the said governors to the augmentation of such cure shall have exceeded in any one year the sum of two hundred pounds.

“II. And be it further enacted, that all agreements already made and hereafter to be made, with such consent and approbation of the patron and ordinary as required by the said recited act, and with the consent and approbation of the said governors, with any benefactor or benefactors contributing to the augmentation of any cure, touching the patronage or right of presentation or nomination to such augmented cure, for the benefit of such benefactor or benefactors, his, her, or their heirs or successors, according to the provisions of the said recited act, and all grants and assurances made and to be made for carrying such agreements into effect, shall be good, valid, and effectual in the law, to all intents and purposes whatsoever, in all cases in which the yearly value of the augmented cure shall have been or shall be within the limits prescribed for the same by the rules, orders, and constitutions which shall have been or shall be in force at the time of making such agreements respectively as aforesaid, notwithstanding that such yearly value shall have exceeded or shall exceed the sum of thirty-five pounds, or that the amount appropriated by the said governors out of the monies at their disposal to the augmentation of such cure shall have exceeded or shall exceed in any one year the sum of two hundred pounds, or that such yearly value and also the amount so appropriated shall both have exceeded or shall both exceed the same several sums respectively; provided nevertheless, that so far as relates to such agreements as aforesaid the amount of all appropriations hereafter to be made by the said governors to the augmentation of any cure shall be within the limits prescribed for the same by the rules, orders, and constitutions which shall be in force at the time of making such agreements respectively as aforesaid.

“III. And whereas it is expedient to extend the provisions of the said recited act, with respect to such agreements as aforesaid, to cases in which no appropriation shall be made by the said governors out of the funds at their disposal to the augmentation of the cures to which such agreements shall respectively relate; be it therefore further enacted, that all agreements hereafter to be made, with such consent and approbation of the patron and ordinary, as required by the said recited act, and with the consent and approbation of the said governors, with any benefactor or benefactors contributing to or providing for the augmentation of any cure, touching the patronage or right of presentation or nomination to such cure, for the benefit of such benefactor or benefactors, his, her, or their heirs or successors, according to the provisions of the said recited act, and all grants and assurances to be made for carrying such agreements into effect, shall be good, valid, and effectual in the law, to all intents and purposes whatsoever, in all cases in which the yearly value of such cure shall be within the limits prescribed for the same by the rules, orders, and constitutions which at the time of making such agreements respectively as aforesaid shall be in force with respect to cures for the augmentation of which appropriations to meet benefactions may be made by the said governors out of the funds at their disposal, notwithstanding that in any of such cases no appropriation whatsoever shall be made by the said governors out of the funds at their disposal to the augmentation of the cure to which such agreements as aforesaid shall respectively relate.

“IV. And be it further enacted, that every cure touching the patronage or right of nomination to which any such agreement as aforesaid with any benefactor or benefactors shall be made for the benefit of such benefactor or benefactors, his, her, or their heirs or successors, though no appropriation whatsoever to the said cure for the augmentation thereof shall be made by the said governors out of the

STAT. 3 & 4
VICT. c. 20.

Certain appropriations made by the governors confirmed.

Certain agreements made by the governors confirmed, and provisions of recited act extended.

Amount of appropriations hereafter to be made shall be within the limit prescribed by rules in force at the time.

Provisions of 1 Geo. 1, c. 10, extended to this act in cases where no appropriation shall be made by the governors.

On completion of an agreement for transfer of patronage of a cure to a benefactor,

STAT. 3 & 4
VICT. c. 20.
though no ap-
propriation be
made by the
governors, the
cure to be
considered as
one augmented
by them.
2 & 3 Vict.
c. 49.

funds at their disposal, shall, from and immediately after the completion of such agreement, be deemed and considered in law, in all respects, and to all intents and purposes whatsoever, as a cure augmented by the said governors, and the same, and the minister or incumbent thereof, and his successors, shall be subject and liable to all the laws, rules, and regulations relating to or concerning cures augmented by them and the ministers or incumbents thereof.

"V. And whereas by an act passed in the second and third years of the reign of her present majesty, (chapter forty-nine,) intituled, 'An Act to make better Provision for the Assignment of Ecclesiastical Districts to Churches or Chapels augmented by the Governors of the Bounty of Queen Anne, and for other Purposes,' after reciting that it was expedient to make provision for the more permanent security of the endowments and emoluments which should have been or might thereafter be provided for the use or benefit of any church or chapel, whether built, acquired, or appropriated, or to be built, acquired, or appropriated, under the authority of certain acts therein recited or referred to, or of any of them, or under any other authority, or for the use or benefit of the incumbent of any such church or chapel, or of the spiritual person serving the same, it was enacted, that it should and might be lawful for the said governors of the bounty of Queen Anne to accept, take, and hold any such endowments and emoluments upon the trusts and for the intents and purposes for which the same should have been or might thereafter be given or granted by the person or persons providing the same, in like manner as any such endowments or emoluments might then be taken or held by any private trustees or trustee; and that it should and might be lawful for any trustee or trustee of any such endowments or emoluments to assign and transfer the same to the said governors of the bounty of Queen Anne, to be held and applied by them upon the same trusts and for the same intents and purposes as the same previously to such assignment and transfer were held by such trustees or trustee; and whereas it is expedient to make such further provision as is hereinafter contained for the application and disposition of all endowments and emoluments accepted by or assigned to or to be accepted by or assigned to the said governors under the aforesaid provisions of the last-recited act; be it therefore further enacted, that all endowments and emoluments whatsoever already accepted or taken by or assigned or transferred to, or to be hereafter accepted or taken by or assigned or transferred to the said governors, under the aforesaid provisions of the last-recited act, and the money, stocks, parliamentary or other funds or securities, land, hereditaments, or other property of which the same respectively may consist, shall, so far as circumstances will permit, and subject and without prejudice to the trusts, intents, and purposes upon and for which the same shall have been given or granted by the person or persons providing the same, be appropriated by the said governors to the particular benefice for which the same respectively shall have been provided, and be applicable and disposable by them for the benefit and augmentation of such benefice, in such and the same manner, and with such and the same powers of investment in the purchase of land, and exchange for other lands and hereditaments, and otherwise, and other powers and authorities, in all respects, according to the rules, orders, and constitutions for the time being in force for the management of the bounty of Queen Anne, as if the money, stock, land, hereditaments, or other property of which such endowments and emoluments may respectively consist had been originally provided or appropriated by the said governors out of the funds at their disposal for the benefit and augmentation of the same benefice."

Endowments
accepted under
the last recited
act by the
governors to
be (except in
special cases)
subject to the
same rules as
if they had
been appro-
priated by the
governors.

STAT. 3 & 4
VICT. cap.
xxiii.

LX. STAT. 3 & 4 VICTORIÆ, cap. xxiii. A.D. 1840.

"An Act to enable the Trustees of Boteler's Free Grammar School at Warrington, in the County of Lancaster, to effect a Sale to John Wright, Esquire, of an Estate, called the Arrouve Estate, in Arrouve, in the County of Chester; and also to sell, exchange, and lease certain other Estates belonging to the said School; and also for the general Management of the said School; and for other Purposes."

LXI. STAT. 3 & 4 VICTORIÆ, c. 26. A.D. 1840.

"An Act to remove Doubts as to the Competency of Persons being rated Inhabitants of any Parish, to give Evidence in certain Cases."

"Whereas it is expedient to remove all doubt whether persons are by law competent to give evidence in cases where they have been formerly held to be disqualified by the liability to pay parochial rates; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act no person called as a witness on any trial in any court whatever may and shall be disabled or prevented from giving evidence by reason only of such person being, as the inhabitant of any parish or township, rated or assessed, or liable to be rated or assessed to the relief of the poor, or for and towards the maintenance of church, chapel, or highways, or for any other purpose whatever.

"II. And be it enacted, that no churchwarden, overseer, or other officer in and for any parish, township, or union, or any person rated or assessed, or liable to be rated or assessed as aforesaid, shall be disabled or prevented from giving evidence on any trial, appeal, or other proceeding by reason only of his being a party to such trial, appeal, or other proceeding, or of his being liable to costs in respect thereof, when he shall be only a nominal party to such trial, appeal, or other proceeding, and shall be only liable to contribute to such costs in common with other the rate-payers of such parish, township, or union."

STAT. 3 & 4
VICT. c. 26.

Persons not disqualified from giving evidence on account of being assessed to parochial rates.

Nominal parties on any trial not disabled from giving evidence.

LXII. STAT. 3 & 4 VICTORIÆ, c. 33. A.D. 1840.

"An Act to make certain Provisions and Regulations in respect to the Exercise, within England and Ireland, of their Office, by the Bishops and Clergy of the Protestant Episcopal Church in Scotland; and also to extend such Provisions and Regulations to the Bishops and Clergy of the Protestant Episcopal Church in the United States of America; and also to make further Regulations in respect to Bishops and Clergy other than those of the United Church of England and Ireland."

STAT. 3 & 4
VICT. c. 33.

"Whereas an act was passed in the thirty-second year of the reign of his late majesty King George the Third, intituled, 'An Act for granting Relief to Persons of the Episcopal Communion in Scotland:' and whereas it is expedient to alter and amend the said act, and to enable the bishops of the protestant episcopal church in Scotland, and the priests of such church canonically ordained, under certain limitations and restrictions, to perform divine service, to preach, and to administer the sacraments, according to the rites and ceremonies of the united church of England and Ireland, in churches or chapels within England or Ireland where the Liturgy of the said united church is used; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it shall be lawful for the bishop of any diocese in England or Ireland, if he shall think fit, on the application of any bishop of the protestant episcopal church in Scotland, or of any priest of such church canonically ordained by any bishop thereof residing and exercising at the time of such ordination, episcopal functions within some district or place in Scotland, to grant permission under his hand, and from time to time also under his hand to renew such permission, to any such bishop or priest to perform divine service, and to preach, and administer the sacrament, according to the rites and ceremonies of the united church of England and Ireland, for any one day or any two days, and no more, in any church or chapel within the diocese of the said bishop where the Liturgy of the said united church is used, such day or days and church or chapel to be specified in such permission or renewed permission; and thereupon it shall be lawful for the party mentioned in such permission or renewed permission, with the consent of the incumbent or officiating minister of such church or chapel, to perform divine service, and to preach, and administer the sacraments therein, according to the rites

32 Geo. 3, c. 63.

Bishops of England or Ireland may permit clergy of the protestant episcopal church in Scotland to officiate in their dioceses under certain restrictions.

STAT. 3 & 4
VICT. c. 33.

Certain letters
commendatory
to be produced
to the bishop
before permis-
sion granted.

Provisions of
this act as to
the clergy of
the episcopal
church in
Scotland
extended to
the clergy of
the episcopal
church in the
United States.

Penalty on
allowing clergy
of the pro-
testant epis-
copal church
in Scotland, or
in the United
States of Ame-
rica, to officiate
without such
permission, or
on allowing
other clergy to
officiate.

Penalty on
officiating con-
trary to recited
acts or this
act, save as
herein men-
tioned.

and ceremonies of the united church of England and Ireland, on the day or days specified in such written permission or renewed permission, and on no other.

“II. Provided always, and be it enacted, that no such written permission or renewed permission shall be granted unless the party applying for the same shall first produce to the bishop of the diocese letters commendatory given within six months before the production thereof, in the case of a bishop under the hand and seal of two other bishops of the church to which he belongs, and in the case of a priest under the hand and seal of the bishop exercising episcopal functions within the district or place in which such priest usually officiates, and also a testimonial given within six months before the production thereof, under the hand and seal of such last-mentioned bishops or bishop, that the party applying is a person of honest life and godly conversation, and professeth the doctrines of the united church of England and Ireland.

“III. And whereas another act was passed in the twenty-sixth year of the reign of his said late majesty, intituled, ‘An Act to empower the Archbishop of Canterbury and the Archbishop of York for the time being, to consecrate to the Office of a Bishop Persons being Subjects or Citizens of Countries out of Her Majesty’s Dominions:’ and whereas it is expedient to alter and amend the said act, and to enable the bishops and priests of the protestant episcopal church in the United States of America to officiate in England and Ireland, under restrictions and limitations similar to those hereinbefore enacted and provided with respect to the bishops and priests of the protestant episcopal church in Scotland; be it therefore enacted, that all the several provisions hereinbefore contained with respect to the bishops and priests canonically ordained of the protestant episcopal church in Scotland, shall respectively extend to the bishops of the protestant episcopal church in the United States of America, and to the priests canonically ordained by a bishop of such church residing and exercising at the time of such ordination episcopal functions within some district or place in the United States of America.

“IV. And be it enacted, that any incumbent or stipendiary curate who, without the production of such written permission or renewed permission as aforesaid, shall allow any bishop or priest of the protestant episcopal church in Scotland or in the United States of America, or who shall allow any deacon of either of such churches, or any other bishop, priest, or deacon, not being a bishop, priest, or deacon, of the united church of England and Ireland, or of any her majesty’s foreign possessions, to officiate in any church or chapel of which he is incumbent or curate, shall for the first offence be liable to be called to appear before the bishop of the diocese in person, and, if he show no sufficient cause to the contrary, to be publicly or privately monished, at the discretion of the said bishop; and for the second and every subsequent offence, if a curate, he shall, after having been in like manner called to appear, and showing no sufficient cause to the contrary, be liable to be removed, or to be temporarily suspended from his curacy, at the discretion of the said bishop; and if an incumbent, he shall, on proof of the offence in due course of law, be suspended from his office and benefice for any time not exceeding three months, or be subject to other ecclesiastical censures; and the said bishop shall, during any such suspension, provide for the performance of the spiritual duties of such benefice, by sequestration or otherwise, as in the case of non-residence.

“V. And be it enacted, that if any bishop or priest of the protestant episcopal church in Scotland or in the United States of America shall, save as hereinbefore mentioned, or if any deacon of either of such churches shall, officiate, contrary to the provisions of the said recited acts, in any church or chapel in England or Ireland where the Liturgy of the said united church is used, or if any bishop, priest, or deacon, not being a bishop, priest, or deacon of the united church of England or Ireland, or of any of her majesty’s foreign possessions, or of the protestant episcopal church in Scotland or in the United States of America, shall officiate in any such church or chapel, he shall for every such offence forfeit and pay the sum of fifty pounds to the governors of Queen Anne’s bounty, to be recovered, by action of debt brought in the name of the treasurer of the said bounty in any of her majesty’s courts of Record at Westminster, or in the courts of Session in Scotland at the suit of the public prosecutor.

“VI. And be it enacted, that no person who has been or shall be ordained a deacon by any protestant bishop other than an archbishop or bishop of the united church of England and Ireland, and who shall after the passing of this act be ordained a priest by any archbishop or bishop of the united church of England and Ireland, shall be thereby enabled, save as in this act is provided, to exercise his office within England or Ireland.

“VII. And be it further enacted, that all admissions, institutions, and inductions to benefices in the church of England or church of Ireland, and all appointments to act as curates therein, which shall be made contrary to the provisions of this act, shall be to all intents and purposes null and void; provided always, that nothing herein shall be construed to affect any admission, institution, or induction to any benefice or any appointment as curate which shall have been made previous to the passing of this act.

“VIII. Provided always, that nothing in this act contained shall be construed to affect or to repeal any of the provisions of an act passed in the fifty-ninth year of the reign of his late majesty King George the Third, intituled, ‘An Act to permit the Archbishops of Canterbury and York, and the Bishop of London, for the time being, to admit Persons into Holy Orders specially for the Colonies.’”

STAT. 3 & 4
VICT. c. 33.

Deacons ordained out of England or Ireland, and afterwards ordained priests in England or Ireland.

Admissions, &c. to benefices and curacies contrary hereto void.

Proviso.

Not to affect

the Act 59
Geo. 3, c. 60.

LXIII. STAT. 3 & 4 VICTORIÆ, c. 35. A.D. 1840.

“An Act to reunite the Provinces of Upper and Lower Canada, and for the Government of Canada.”

STAT. 3 & 4
VICT. c. 35.

“XLII. And be it enacted, that whenever any bill or bills shall be passed by the legislative council and assembly of the province of Canada, containing any provisions to vary or repeal any of the provisions now in force contained in an act of the parliament of Great Britain, passed in the fourteenth year of the reign of his late majesty King George the Third, intituled, ‘An Act for making more effectual Provision for the Government of the Province of Quebec in North America,’ or in the aforesaid acts of parliament passed in the thirty-first year of the same reign, respecting the accustomed dues and rights of the clergy of the church of Rome; or to vary or repeal any of the several provisions contained in the said last-mentioned act, respecting the allotment and appropriation of lands for the support of the protestant clergy within the province of Canada, or respecting the constituting, erecting, or endowing of parsonages or rectories within the province of Canada, or respecting the presentation of incumbents or ministers of the same, or respecting the tenure on which such incumbents or ministers shall hold or enjoy the same; and also that whenever any bill or bills shall be passed containing any provisions which shall in any manner relate to or affect the enjoyment or exercise of any form or mode of religious worship, or shall impose or create any penalties, burdens, disabilities, or disqualifications in respect of the same, or shall in any manner relate to or affect the payment, recovery, or enjoyment of any of the accustomed dues or rights hereinbefore mentioned, or shall in any manner relate to the granting, imposing, or recovery of any other dues, or stipends, or emoluments to be paid to or for the use of any minister, priest, ecclesiastic, or teacher, according to any form or mode of religious worship, in respect of his said office or function; or shall in any manner relate to or affect the establishment or discipline of the united church of England and Ireland among the members thereof within the said province; or shall in any manner relate to or affect her majesty’s prerogative touching the granting of waste lands of the crown within the said province; every such bill or bills shall, previously to any declaration or signification of her majesty’s assent thereto, be laid before both houses of parliament of the United Kingdom of Great Britain and Ireland; and that it shall not be lawful for her majesty to signify her assent to any such bill or bills until thirty days after the same shall have been laid before the said houses, or to assent to any such bill or bills in case either house of parliament shall, within the said thirty days, address her majesty to withhold her assent from any such bill or bills; and that no such bill shall be valid or effectual so any of the said purposes within the said province of Canada, unless the legisla-

Ecclesiastical and crown rights.

14 Geo. 3, c. 83.

STAT. 3 & 4
VICT. c. 35.

tive council and assembly of such province shall in the session in which the same shall have been passed by them, have presented to the governor of the said province an address or addresses specifying that such bill or bills contains provisions for some of the purposes hereinbefore specially described, and desiring that, in order to give effect to the same, such bill or bills may be transmitted to England without delay, for the purpose of its being laid before parliament previously to the signification of her majesty's assent thereto."

STAT. 3 & 4
VICT. cap.
XXXV.

LXIV. STAT. 3 & 4 VICTORIÆ, cap. XXXV. A.D. 1840.

"An Act for removing Doubts as to the Right of nominating a Minister to the Church or Chapel lately erected by the Right Honourable Lord Francis Egerton, on part [of certain Trust Estates in the Counties of Lancaster and Chester, belonging to the late Duke of Bridgewater]."

STAT. 3 & 4
VICT. c. 48.
[Sc.]

LXV. STAT. 3 & 4 VICTORIÆ, c. 48 (1). [SCOTLAND.] A.D. 1840

"An Act to enable Proprietors of Entailed Estates in Scotland to feu or lease on long Leases Portions of the same for the building of Churches and Schools, and for Dwelling Houses and Gardens for the Ministers and Masters thereof."

STAT. 3 & 4
VICT. c. 52.

LXVI. STAT. 3 & 4 VICTORIÆ, c. 52. A.D. 1840.

"An Act to provide for the Administration of the Government in case the Crown should descend to any Issue of Her Majesty whilst such Issue shall be under the Age of Eighteen Years, and for the Care and Guardianship of such Issue."

"Whereas your majesty, by your majesty's royal message to both houses of parliament, has been pleased to state that the uncertainty of human life, and the deep sense your majesty feels of duty to your people, rendered it incumbent upon your majesty to recommend to both houses of parliament to consider contingencies which may hereafter take place, and to make such provision as will, in any event, secure the exercise of the royal authority; and that your majesty would be prepared to concur with the two houses of parliament in those measures which may appear best calculated to maintain unimpaired the power and dignity of the crown, and thereby to strengthen the securities which protect the rights and liberties of your people; and whereas, with the most cordial sense of duty and gratitude to your majesty for the tender concern and regard so uniformly and now more especially demonstrated for the happiness of your people and the security of their rights and liberties, we have taken this most important business into our consideration, and being thoroughly convinced of the wisdom and expediency of what your majesty has thought fit to recommend, we are firmly and zealously determined to contribute everything in our power to maintain unimpaired the power and dignity of the crown, and to strengthen the securities which protect the rights and liberties of the people; we therefore, your majesty's most dutiful and loyal subjects, the lords spiritual and temporal, and commons, in parliament assembled, do most humbly beseech your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if at the demise of her present majesty, (whom God long preserve,) there shall be issue of her said majesty who shall become and be king or queen of this realm whilst under the age of eighteen years, his royal highness Prince Albert, the consort of her said majesty, shall be the guardian, and shall have the care, tuition, and education of such issue, until such issue shall attain the age of eighteen years, and shall till such age have the disposition, ordering, and management of all matters and things relating thereto; and his said royal highness Prince Albert shall, until such issue of her said majesty shall attain the age of eighteen years, and no longer, have full power and authority, in the name of such issue, and in his or her stead, and under the style and title of Regent of the United Kingdom of Great Britain and Ireland, to exercise and administer, according to the laws and constitution thereof, the royal power and government of

On demise of her majesty, in case there shall be issue of her majesty who shall become king or queen under eighteen years of age, his royal highness Prince Albert appointed guardian of such issue, and empowered to exercise royal

¹ (1) Vide Stat. 4 & 5 Vict. c. 38, s. 22.

this realm, and all the dominions, countries, and territories to the crown thereof belonging, and use and exercise and perform all prerogatives, authorities, and acts of government and administration of government which belong to the king or queen of this realm to use, execute, and perform, according to the laws thereof, but in such manner and subject to such conditions, restrictions, limitations, and regulations as are hereinafter for that purpose specified, mentioned, and contained.

“II. And be it further enacted by the authority aforesaid, that all acts of royal power, prerogative, government, and administration of government, of what nature or kind soever, which shall be done or executed during the regency established by this act otherwise than by and with the consent and authority of the said regent, in the manner and according to the direction of this act set forth and prescribed, shall be absolutely null and void to all intents and purposes.

“III. And be it further enacted by the authority aforesaid, that the regent, before he shall act or enter upon his said office of regent, shall take the oaths of allegiance and supremacy in the form prescribed and required by an act passed in the first year of the reign of King William and Queen Mary, intituled, ‘An Act for abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths;’ and shall also take the oath of abjuration in such manner and form as is set down and prescribed in an act passed in the sixth year of the reign of King George the Third, intituled, ‘An Act for altering the Oath of Abjuration and the Assurance, and for amending so much of an Act of the seventh year of Her late Majesty Queen Anne, intituled, “An Act for the Improvement of the Union of the Two Kingdoms,” as after the Time herein limited requires the Delivery of certain Lists and Copies therein mentioned to Persons indicted of High Treason or Misprision of Treason;’ as also the following oath; that is to say,

“‘I do solemnly promise and swear, that I will truly and faithfully execute the office of regent of the United Kingdom of Great Britain and Ireland, according to an act of parliament made in the fourth year of her majesty Queen Victoria, intituled, “An Act to provide for the Administration of the Government, in case the Crown should descend to any Issue of Her Majesty whilst such issue shall be under the Age of Eighteen Years, and for the Care and Guardianship of such Issue;” and that I will administer the government of this realm, and of all the dominions thereunto belonging, according to the laws, customs, and statutes thereof, and will in all things, to the utmost of my power and ability, consult and maintain the safety, honour, and dignity of his or her [*as the case shall require*] majesty, and the welfare of his or her [*as the case shall require*] people. So help me God.’

“‘I do faithfully promise and swear, that I will inviolably maintain and preserve the settlement of the true protestant religion, with the government, discipline, rights, and privileges of the church of Scotland, as established by law. So help me God.’

“Which oaths shall be taken before the privy council then in being, who are hereby empowered and required to administer the same, and to enter the same in the council books.

“IV. And be it further enacted by the authority aforesaid, that it shall not be lawful for the king or queen of this realm, for whom a regent is hereby appointed, to intermarry before his or her age of eighteen years, with any person whomsoever, without the consent, in writing, of the regent, and the assent of both houses of parliament, previously obtained; and every marriage without such consent, and such assent of the two houses of parliament, shall be null and void to all intents and purposes; and every person who shall be acting, aiding, abetting, or concerned in obtaining, procuring, or bringing about any such marriage, and the person who shall be so married to such king or queen under the age of eighteen years, shall be guilty of high treason, and suffer and forfeit as in cases of high treason.

“V. Provided always, and be it further enacted by the authority aforesaid, that the regent shall not give or have power to give the royal assent to any bill or bills in parliament for repealing, changing, or in any respect varying from the order and course of succession to the crown of this realm as the same stands now established by the act of the twelfth year of the reign of King William the Third, intituled, ‘An Act for the further Limitation of the Crown, and better securing the Rights

STAT. 3 & 4
VICT. c. 52.

authority under
the title of
Regent of the
United King-
dom.

Acts done
contrary to
such authority
void.

Regent to take
the oaths pre-
scribed by
1 G. & M.
seas. 1, c. 8,
and 6 Geo. 3,
c. 53.

Oaths.

The king or
queen not to
marry under
the age of
eighteen, with-
out consent of
the regent and
assent of par-
liament.

Abetting such
marriage, high
treason.

Regent not
empowered to
give the royal
assent to any
act altering
the succession.
12 Gul. 3, c. 2.

STAT. 3 & 4
VICT. c. 52.
13 & 14 Car.
2, c. 4.

5 Ann. (Sc.)

In case his
royal highness
should marry a
person pro-
fessing the Ro-
man catholic
religion, his
powers under
this act to
determine.

and Liberties of the Subject,' or to any act for repealing or altering the act made in the thirteenth year of the reign of King Charles the Second, intituled, 'An Act for the Uniformity of Public Prayers and Administration of Sacraments, and other Rites and Ceremonies, and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of England,' or an act of the fifth year of the reign of Queen Anne, made in Scotland, intituled, 'An Act for securing the Protestant Religion and Presbyterian Government.'

"VI. Provided always, and be it further enacted, that if his said royal highness Prince Albert shall, at any time after becoming such guardian and regent, be reconciled to or shall hold communion with the see or church of Rome, or shall profess the popish religion, or shall marry a person professing the Roman catholic religion, or shall cease to reside in or absent himself from the United Kingdom of Great Britain and Ireland, then and in any of such cases his said royal highness shall no longer be guardian and regent, and all the powers and authorities which he may have derived under and by virtue of this act shall thenceforth cease and determine."

STAT. 3 & 4
VICT. c. 60.

LXVII. STAT. 3 & 4 VICTORIÆ, c. 60. A.D. 1840.

"An Act to further amend the Church Building Acts."

58 Geo. 3, c. 45.

59 Geo. 3,
c. 134.

3 Geo. 4, c. 72.

5 Geo. 4, c. 103.

7 & 8 Geo. 4,
c. 72.

1 & 2 Gul. 4,
c. 38.

2 & 3 Gul. 4,
c. 61.

7 Gul. 4 & 1
Vict. c. 75.

1 & 2 Vict.
c. 107.

2 & 3 Vict.
c. 49.

"Whereas an act was passed in the fifty-eighth year of the reign of his majesty King George the Third, intituled, 'An Act for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the fifty-ninth year of the reign of his said majesty King George the Third, intituled, 'An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the third year of the reign of his majesty King George the Fourth, intituled, 'An Act to amend and render more effectual two Acts, passed in the fifty-eighth and fifty-ninth years of His late Majesty, for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the fifth year of the reign of his said majesty King George the Fourth, intituled, 'An Act to make further Provision, and to amend and render more effectual three Acts passed in the fifty-eighth and fifty-ninth years of His late Majesty and in the third year of His present Majesty, for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the seventh and eighth years of the reign of his said majesty King George the Fourth, intituled, 'An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes:' and whereas another act was passed in the first and second years of the reign of his late majesty King William the Fourth, intituled, 'An Act to amend and render more effectual an Act passed in the seventh and eighth years of the Reign of His late Majesty, intituled, "An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes:"' and whereas another act was passed in the second and third year of the reign of his said late majesty, to render more effectual the aforesaid act passed in the fifty-ninth year of the reign of his majesty King George the Third: and whereas another act was passed in the first year of the reign of her present majesty Queen Victoria, intituled, 'An Act to prolong for ten years Her Majesty's Commission for building new Churches:' and whereas another act was passed in the first and second years of the reign of her said majesty Queen Victoria, intituled, 'An Act to amend and render more effectual the Church Building Acts' and whereas another act was passed in the second and third years of the reign of her present majesty, intituled, 'An Act to make better Provision for the Assignment of Ecclesiastical Districts to Churches or Chapels augmented by the Governors of the Bounty of Queen Anne, and for other Purposes:' and whereas it is expedient to further explain and amend some of the provisions of the said several recited acts: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be

Commissioners

lawful for her majesty's commissioners for building new churches to assign a new district chapelry or new district chapelries, under the provisions of the herein before-recited acts, or some or one of them, with such consent and in such manner as is therein required and specified, to any church or chapel situated in a district chapelry which has been or hereafter may be formed under the said recited acts, or some or one of them, and such new district chapelry or district chapelries may be formed out of a part or parts of one or more such first formed district chapelry or chapelries, with or without any part or parts of the parish or parishes out of which such district chapelry or chapelries may have been formed, and also of any extra-parochial place, or any part thereof; and the right of nomination to the chapel or chapels of such new district chapelry or district chapelries shall belong to and be exercised by the incumbent of the parish out of which such first assigned district chapelry shall have been taken, unless the right of nomination thereto shall be legally vested in some other party or parties, and in that case such right of nomination shall belong to him or them, or to such party or parties as shall be agreed upon by him or them and the said commissioners, with consent of the bishop; and the chapel or chapels of such new district chapelry or district chapelries shall respectively be subject to the provisions and regulations contained in the herein before-recited acts respecting district chapelries.

"II. And be it further enacted, that in any case where, under the herein before-recited acts or either of them, or of this act, an endowment, grant, or conveyance, consisting of or arising out of houses, lands, tithes, advowsons, rent-charges, tenements, or other hereditaments, or consisting of money to be laid out in lands or other hereditaments, is authorized to be made, for the purpose of a site for any church or chapel, or churchyard, or parsonage house, or glebe, or for the use or benefit of any church or chapel, or of the incumbent or minister thereof, or for the repairs thereof, such endowment, grant, or conveyance, whether made before or after the passing of this act, shall be good and valid, without any licence or writ of *ad quod damnum*, the Statutes of Mortmain or any other statute or law to the contrary notwithstanding.

"III. Provided nevertheless, and be it enacted, that nothing herein contained shall authorize an exemption from the provisions of the Mortmain Acts where, in the case of an endowment as aforesaid for the use or benefit of any church or chapel, or of the incumbent or minister thereof, such endowment, whether made at one period or at different periods, shall in any one case exceed in the whole the clear annual value of three hundred pounds.

"IV. And be it further enacted, that in every case in which it shall be desired to ascertain the clear annual value of such endowment, it shall be lawful for the said commissioners or for the bishop of the diocese to cause such clear annual value to be determined and ascertained by any two persons whom they or he shall appoint for that purpose, by writing under the common seal of the said commissioners, or by writing under the hand of the said bishop, which writing is hereby directed to be afterwards annexed to the instrument by which such endowment shall be effected; and a certificate of such clear annual value, written and indorsed on the instrument by which such endowment shall be effected, and signed by such persons as aforesaid, shall for all the purposes of this act be conclusive evidence of such clear annual value as aforesaid.

"V. And whereas it is expedient that her majesty's commissioners for building new churches should have the power, with the consent of the bishop of the diocese, to augment, out of the surplus pew rents of a church or chapel, the stipend of the incumbent or minister thereof, (in respect to which church or chapel the said commissioners have made or hereafter may make an order for the reservation of the pew rents thereof, and an assignment thereof of an annual stipend to such incumbent or minister, under the authority of the said recited act passed in the fifty-eighth year of the reign of his late majesty King George the Third;) be it therefore enacted, that it shall be lawful for the said commissioners, if they shall think fit, to direct, under their common seal, with the consent of the bishop of the diocese under his hand and seal, a further assignment to the incumbent or minister of any

STAT. 3 & 4
VICT. c. 60.
may assign a new district chapelry or new district chapelries out of a district chapelry or chapelries already formed.

Licence in mortmain not necessary in cases of endowment, grant, or conveyance of houses, lands, &c. under the Church Building Acts.

Mortmain Acts to apply where endowment exceeds the annual value of 300l.

Power to determine the clear annual value of such endowment.

Commissioners, with consent of the bishop, may, in certain cases, augment the stipend of the incumbent or minister of a church or chapel out of the surplus pew rents.

STAT. 3 & 4
VICT. C. 60.

This power not to be exercised where surplus pew rents have been invested in government securities to form a fund for building or purchasing a parsonage house, &c.

Boundaries of distinct and separate parishes, or district parishes or district chapelries, may be altered by an order in council, on representation by the commissioners, with certain consents.

Alteration of boundaries not to take effect, without incumbent's consent, until next avoidance.

Select vestries under 59 Geo. 3, c. 134, s. 30, may appoint new vestrymen where vestrymen neglect to attend.

church or chapel, for his use and benefit, of a part or of the whole of the surplus pew rents thereof, already accrued or hereafter to accrue, in respect to which church or chapel the said commissioners may have made or hereafter may make, under the said last-mentioned act, an order for the reservation of pew rents, and an assignment thereout to such incumbent or minister, anything in the said recited acts to the contrary notwithstanding; and every such further assignment shall be registered in the registry of the diocese: provided always, that the power herein given shall not be exercised in any case where such surplus pew rents have been invested in government securities in the names of trustees to be appointed by the bishop of the diocese, and suffered to accumulate, for the purpose of forming a fund for the building or purchasing a house of residence, with the consent of the bishop of the diocese, for the spiritual person serving such church or chapel, or where such surplus pew rents have been charged or chargeable by the said commissioners with the payment of any sum or sums of money borrowed or advanced by way of loan at interest, or by way of annuity, or otherwise, for or towards the building any such church or chapel, or for the purchasing any site or sites for the same, and defraying all expenses relative thereto, and in keeping such church or chapel in repair.

“VI. And whereas by the said recited act passed in the fifty-eighth year of the reign of his late majesty King George the Third it is provided, that by an order in council, upon the representation of the said commissioners made with the consent of the bishop of the diocese, the boundaries of a distinct and separate parish, or of a district parish, formed under the said act, may be altered within five years after a description of such boundaries has been enrolled in the high court of Chancery; and it is expedient that the power of altering such boundaries should be enlarged, with certain consents: be it therefore enacted, that if her majesty in council, upon the representation of the said commissioners made with the consents of the bishop of the diocese and of the patron and incumbent of the parish church, signified under their respective hands and seals, shall think fit to alter the boundaries of a distinct and separate parish, or a district parish or a district chapelry, (formed under the herein before-mentioned acts passed in the fifty-eighth and fifty-ninth years of the reign of his late majesty King George the Third, or either of them,) at any time after five years from the time the description of such boundaries has been enrolled in the high court of Chancery, such order in council shall be good and valid in law for the purpose of effecting such alteration, anything in the said recited act of the fifty-eighth year of the reign of his late majesty King George the Third, limiting the power of making such alteration in such boundaries to five years from the time the description of such boundaries has been enrolled in the high court of Chancery, to the contrary notwithstanding; and such order in council shall be enrolled and registered in manner directed by the said last-mentioned act.

“VII. And be it further enacted, that if the consent of the incumbent as aforesaid is not obtained to such alteration of boundaries, such order in council on the representation of the said commissioners may be made, and shall be good and valid with the consents of the bishop of the diocese and the patron aforesaid, though without the consent of such incumbent; provided that such alteration does not take effect until after the next avoidance of the parish church.

“VIII. And be it further enacted, that the power given to a select vestry appointed under the provisions of the hereinbefore recited act passed in the fifty-ninth year of the reign of his late majesty King George the Third, to elect new members of such vestry as vacancies may arise by death, resignation, or ceasing to inhabit the parish, shall be extended to cases where any such vestrymen shall neglect to attend the meetings of such select vestry for the space of twelve months, provided such select vestry shall have met at least three times during such twelve months; and in every such case it shall be lawful for such select vestry to declare the member or members of such select vestry so neglecting to attend no longer a member or members of such vestry, and the vacancy or vacancies thereby created shall be filled up in the manner directed by the said last-mentioned act with respect to vacancies arising by death, resignation, or ceasing to inhabit the parish.

“IX. And be it further enacted, that so much of the said recited act passed in the first and second years of the reign of his late majesty King William the Fourth, chapter thirty-eight, as requires that when a church or chapel shall have been or shall be built by subscription under that act, the nomination or appointment thereto shall be signified to the said commissioners, for their consideration, by the major part in value of such subscribers, at the time of the application to the said commissioners, shall be and the same is hereby repealed, so far only that it shall not be necessary for the major part in value of the subscribers to the building and endowment of such church or chapel to declare such nomination or appointment to the said commissioners at the time of such application, but the same may be signified by such subscribers to the said commissioners for their consideration at the time of or subsequently to such application; provided that the same be so signified before the said commissioners affix their common seal to any instrument granting the right of nomination to such church or chapel.

“X. And be it further enacted, that the right of patronage already granted with respect to any such church or chapel shall not be affected by reason of such nomination or appointment not having been sent to the said commissioners at the same time as the application aforesaid.

“XI. And be it further enacted, that from and after the passing of this act no subscriber for a less amount than fifty pounds towards the building or endowment of any church or chapel shall be entitled to join in making such nomination or appointment as aforesaid, under the said recited act, to the said commissioners or the bishop of the diocese.

“XII. And be it further enacted, that for the purposes of the said recited acts passed in the first and second years of the reign of his late majesty King William the Fourth, chapter thirty-eight, and the first and second years of her present majesty's reign, chapter one hundred and seven, an endowment consisting of houses or lands in fee-simple of the value of one thousand pounds at the least, or an endowment of one thousand pounds at the least vested in houses or lands in fee-simple, or an endowment of such a sum vested in houses or lands in fee-simple as will with a further investment in the funds amount to one thousand pounds at the least, may be taken in those cases where the bishop of the diocese is authorized, if he sees fit, to grant the perpetual right of nominating a minister in the manner specified in the said recited acts or either of them; provided that where such endowment consists of houses or lands in fee-simple of the value of one thousand pounds at the least, or where such endowment is composed of such a sum vested in houses or lands in fee-simple as will, with a further investment in the funds, amount to one thousand pounds at the least, a certificate shall in each such case be produced to the bishop of the diocese, signed by two architects or surveyors to the effect that the actual value of such endowment amounts to one thousand pounds at the least.

“XIII. And be it further enacted, that where by the said recited act passed in the first and second years of the reign of his late majesty King William the Fourth future trustees or a future trustee for any church or chapel built and endowed under that act are directed to be chosen in such manner as may in the first instance be agreed upon by the persons building and endowing such church or chapel, or the major part of them, and the bishop of the diocese, under their hands and seals, in the place and stead of any one or more of the trustees who shall from time to time die, resign, or become incapable of acting, and in whom the right of nominating a minister to such church or chapel shall be vested, the major part in value of the subscribers to the building and endowing such church or chapel shall in every such case be entitled to make such agreement touching the appointment of any such future trustees or trustee, with the bishop of the diocese, under their hands and seals, anything in the said recited act to the contrary notwithstanding; providing that from and after the passing of this act no such subscriber shall be so entitled unless his subscription shall amount to at least fifty pounds, as provided by this act.

“XIV. And be it further enacted, that where a parish has been divided into

STAT. 3 & 4
VICT. c. 60.

Subscribers to the building and endowing of a church or chapel under 1 & 2 Gul. 4, c. 38, may nominate a patron to the commissioners subsequent to the application.

In case of neglect to nominate.

Who entitled to make such nomination.

Amount of endowment necessary where the bishop is authorized to grant the patronage of a church built under 1 & 2 Gul. 4, c. 38, and 1 & 2 Vict. c. 107.

Major part in value of subscribers to a church or chapel may in certain cases appoint new trustees.

Census of

STAT. 3 & 4
VICT. c. 60.
original parish
may be used in
certain cases
under 1 & 2
Gul. 4, c. 38,
and 1 & 2
Vict. c. 107.

separate and distinct parishes, or a district parish or district parishes have been formed out of such parish, under the provisions of the said recited acts, or by any competent authority, and where no separate census has been made by authority of parliament of the population of such distinct and separate or district parishes, the jurisdiction given by the said recited acts of the first and second years of the reign of his late majesty King William the Fourth, or of the first and second years of the reign of her present majesty, to the said commissioners, or to the bishop of the diocese, (as the case may be,) to declare the right of patronage under such acts, shall not be invalidated by reason of no such separate census having been made, whether such jurisdiction has been or may be exercised before or after the passing of this act: and that it shall be sufficient in every such case, with reference to the amount of population, to state in the notices or copies of application, (required to be served on or sent to the patron or incumbent under such acts, or one of them,) the amount of the population according to the last parliamentary census of the original parish; and the patron and incumbent of the distinct and separate parish or district parish in which the new church or chapel built or proposed to be built shall be situate shall in every such case be considered to be the patron and incumbent to whom such notices or copies of application are required to be sent or served under such acts or one of them; provided that in every such case where the bishop of the diocese claims to have jurisdiction under the said recited acts or either of them to grant such right of patronage, by reason of the population of the parish amounting to two thousand persons, with church accommodation for not more than one third of the inhabitants thereof, the population of such original parish shall amount, according to the last parliamentary census, to two thousand persons at the least, and that the existing churches and chapels in such original parish do not afford accommodation for more than one third of the inhabitants thereof.

A perpetual
rent-charge
for repairs
under 1 & 2
Gul. 4, c. 38
and 1 & 2
Vict. c. 107,
may be secured
on lands, &c.
which may be
assigned to the
incumbent.

"XV. And be it further enacted, that for the purpose of a fund directed or authorized to be secured for the repairs of a church or chapel built and endowed or to be built and endowed under the said last-mentioned acts or one of them, a perpetual rent-charge, equal in value to the repair fund directed or authorized by the said acts or either of them to be secured for such purpose, may be made on lands or other hereditaments; and it shall and may be lawful for the incumbent of such church or chapel, so soon as the same has been consecrated, and a particular district assigned thereto, under the said recited act of the first and second years of his late majesty King William the Fourth, to accept, take, and hold any such rent-charge upon the trusts and for the intents and purposes for which the same shall have been or hereafter may be given or granted, by the person or persons providing the same, in like manner as any such repair fund may now be taken or held by any private trustee or trustees; and it shall and may be lawful for any trustee or trustees of any such repair fund to assign and transfer such rent-charge to such incumbent and his successors, to be held and applied by him or them, or to allow the same to be so applied, upon the same trusts, intents, and purposes as the same previously to such assignment and transfer were held by such trustee or trustees.

Where a
church, &c. is
built in an
extra-paro-
chial place,
and there is no
incumbent,
notices may be
sent to the
bishop.

"XVI. And be it further enacted, that where a church or chapel has been or shall hereafter be built and endowed, under the provisions of the said last-mentioned acts or either of them, in any extra-parochial place, where there is no incumbent, it shall be sufficient, with respect to the notices required to be sent or served on the patron and incumbent, to send such notices with respect to such extra-parochial place to the bishop of the diocese alone; and such notices, when so sent, shall be deemed to be as good and valid as if the same had been sent to the patron and incumbent.

Additional
endowments
may be made;
but not to be
exempted from
the Mortmain
Acts, where

"XVII. And be it further enacted, that an additional permanent endowment may be at any time made for the use or benefit of any church or chapel, or of the incumbent or minister thereof, which may have been previously built and endowed under the said last-mentioned acts or either of them; and such additional endowment may consist of houses, lands, tithes, advowsons, rent-charges, tenements, or other hereditaments, or of money in the funds, or of money to be had

out in lands or other hereditaments; provided always, that nothing herein contained shall be construed to extend to the authorizing any such additional endowment, without the same being subject to the provisions of the Mortmain Acts, which shall amount, together with the former endowment or endowments, in any one case to more than the clear yearly value of three hundred pounds.

“XVIII. And be it further enacted, that in any case in which the said commissioners, or the bishop of the diocese, as the case may be, shall hereafter grant the patronage of any church or chapel built and endowed or to be built and endowed under the said recited acts passed in the first and second years of the reign of his late majesty King William the Fourth and in the first and second years of the reign of her present majesty, or either of them, and shall hereafter assign a particular district to such church or chapel under the said first-mentioned act, and shall determine under that act that the offices of baptisms, churchings, or burials, or some or one of them, shall be performed in such church or chapel, it shall be lawful for the said commissioners, if they think fit, with the consent in writing of the bishop of the diocese, or for the bishop of the diocese alone, as the case may be, to order and direct that all or a portion of the fees arising from the performance of such offices, and from the making, opening, or using any catacombs, vaults, or ground for burials of or belonging to such church or chapel, shall, from and after the next avoidance of the parish church of the parish in which such church or chapel is situated, belong and be paid to the incumbent of such church or chapel for his own use and benefit; and every such order or direction shall be good and valid, anything in the said recited acts or either of them, to the contrary notwithstanding; and every such order and direction shall be registered in the registry of the diocese.

“XIX. And be it enacted, that in every case in which any grant shall have been or shall be made of any land or ground to the said commissioners for any of the purposes of the said recited acts or of any of them, either for a valuable consideration being paid for the same, and in which the said commissioners shall determine to apply a part only of such land or ground to any of the purposes of the said recited acts or any of them, it shall be lawful for the said commissioners and they are hereby authorized and empowered, with the consent of the grantor or grantors or donor or donors (as the case may be) of such land or ground, or of his, her, or their heirs or successors, (which consent such grantor or grantors or donor or donors, and his, her, or their heirs and successors, whether he, she, or they shall or shall not be under any legal or equitable disability or incapacity whatsoever to give such consent, is and are hereby fully authorized and empowered to give accordingly,) to apply any part of such land or ground which shall not have been or shall not be applied by the said commissioners for the purposes of the said recited acts, or of any of them, to any other ecclesiastical purposes, either as glebe or otherwise, for the use of the incumbent or minister of the parish, place, or district in which such land or ground is situate, or for the purpose of any parochial or charitable school or any other charitable or public purpose relating to any such parish or place.

“XX. And be it enacted, that it shall be lawful for the said commissioners, and they are hereby authorized, if they think proper, to defray the law costs and other incidental expenses of amending or consolidating the hereinbefore recited acts and this act, out of any money in their hands arising out of exchequer bills issued to them under the provisions of the hereinbefore recited acts of the fifty-eighth year of the reign of his late majesty King George the Third, and of the fifth year of the reign of his late majesty King George the Fourth, or either of them.

“XXI. And be it further enacted, that the provisions contained in an act passed in the first and second years of the reign of her present majesty, intituled, ‘An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy,’ touching the party or parties who for the purposes of such act shall be in the cases therein mentioned considered the patron or patrons, and the manner in which the consent of or the execution of any deed or deeds, instrument or instruments by or notice to such patron or patrons shall be given or effected, shall apply to the consent of, or the execution of any deed or

STAT. 3 & 4
VICT. c. 60.
the clear yearly
value of the
whole is more
than 300*l*.

Commissioners, with consent of bishop, or bishop alone, may order the fees for ecclesiastical offices to belong, after next avoidance of parish church, to the incumbent of the endowed church or chapel.

Commissioners may apply land to ecclesiastical purposes, or to parochial or charitable uses.

Commissioners may defray the costs of consolidating the recited acts and this act.

The provisions of 1 & 2 Vict. c. 106, as to the parties to be considered patrons, and to the mode of giving consents, to apply to this act.

STAT. 3 & 4
VICT. c. 60.

To what parts
only this act
shall extend.

deeds, instrument or instruments by or notice to such patron or patrons for the purposes of the hereinbefore first recited acts or this act.

"XXII. And be it further enacted, that this act shall extend only to that part of the United Kingdom called England and Wales, and to the isle of Man, and to the islands of Guernsey, Jersey, Alderney and Sark."

STAT. 3 & 4
VICT. c. 72.

LXVIII. STAT. 3 & 4 VICTORIÆ, c. 72. A.D. 1840.

"An Act to provide for the Solemnization of Marriages in the Districts in or near which the Parties reside."

4 Geo. 4, c. 76.

"Whereas by an act passed in the fourth year of the reign of King George the Fourth, intituled, 'An Act for amending the Laws respecting the Solemnization of Marriage in England,' it is provided, that in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever: and whereas by an act passed in the seventh year of the reign of his late majesty, intituled, 'An Act for Marriages in England,' provision is made for marriages intended to be solemnized in England, after notice given, according to the forms authorized by the last-recited act, which act has been explained and amended by an act passed in the first year of the reign of her present majesty: and whereas it is expedient to restrain marriages under the said act of his late majesty from being solemnized out of the district in which one of the parties dwells, unless either of the parties dwells in a district within which there is not any registered building, wherein, under the provisions of the said act of his late majesty, as explained and amended by the said act of her present majesty, marriage is solemnized according to the form, rite, or ceremony the parties see fit to adopt: be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that it is not and shall not be lawful for any superintendent registrar to give any certificate of notice of marriage where the building in which the marriage is to be solemnized, as stated in the notice, shall not be within the district wherein one of the parties shall have dwelt for the time required by the said act of his late majesty, except as herein-after is enacted.

6 & 7 Gul. 4,
c. 85.

7 Gul. 4 & 1
Vict. c. 22.

Certificate of
notice not to
be granted for
marriage out of
the district
where the
parties dwell,
except as here-
inafter enacted.

In what case
marriage may
be solemnized
out of the
district in
which the
parties dwell.

"II. And be it enacted, that it shall be lawful for any party intending marriage under the provisions of the said act of his late majesty, in addition to the notice required to be given by that act, to declare at the time of giving such notice, by indorsement thereon, the religious appellation of the body of Christians to which the party professeth to belong, and the form, rite, or ceremony which the parties desire to adopt in solemnizing their marriage, and that, to the best of his or her knowledge and belief, there is not within the district in which one of the parties dwells any registered building in which marriage is solemnized according to such form, rite, or ceremony, and the district nearest to the residence of that party in which a building is registered wherein marriage is so solemnized, and the registered building within such district in which it is intended to solemnize their marriage; and after the expiration of seven days or twenty-one days, as the one may require, under the said act of his late majesty, it shall be lawful for the superintendent registrar to whom any such notice shall have been given to issue his certificate, according to the provisions of that act; and after the issuing of such certificate the parties shall be at liberty to solemnize their marriage in the registered building stated in such notice: provided always, that after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the truth of the facts herein authorized to be stated in the notice, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

Form of
notice.

"III. And be it enacted, that the additional notice hereinbefore authorized to be given may be according to the form in the schedule to this act annexed, or to the like effect.

"IV. And be it enacted, that every person who shall knowingly and wilfully make any false declaration under the provisions of this act, for the purpose of procuring any marriage out of the district in which the parties or one of them dwell, shall suffer the penalties of perjury: provided always, that no such prosecution shall take place after the expiration of eighteen calendar months from the solemnization of such marriage.

STAT. 3 & 4
VICT. c. 72.

Persons making false declarations guilty of perjury. Provision as to marriages of members of the society of friends, and Jews.

"V. Provided always, and be it enacted, that, notwithstanding anything herein or in the said recited acts or either of them contained, the society of friends commonly called quakers, and also persons professing the Jewish religion, may lawfully continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively, after notice for that purpose duly given, and certificate or certificates duly issued, pursuant to the provision of the said recited act of his late majesty, notwithstanding the building or place wherein such marriage may be contracted or solemnized be not situate within the district or either of the districts (as the case may be) in which the parties shall respectively dwell.

"VI. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

Act may be amended this session.

"THE SCHEDULE TO WHICH THE ACT REFERS.

"I, the undersigned and within-named *James Smith*, do hereby declare, that I, being [*here insert, a member of the church of England, a Roman catholic, independent, baptist, presbyterian, unitarian, or such other description of the religion of the party*], and the within-named *Martha Green*, in solemnizing our intended marriage, desire to adopt the form, rite, or ceremony of the [*Roman catholic church, independents, baptists, presbyterians, unitarians, or other description of the form, rite, or ceremony the parties state it to be their desire to adopt*]; and that to the best of my knowledge and belief there is not within the superintendent registrar's district in which [*I dwell*], or [*in which the said Martha Green dwells*], any registered building in which marriage is solemnized according to such form, rite, or ceremony; and that the nearest district to [*my dwelling-place*], or to [*the dwelling-place of the said Martha Green*], in which a building is registered wherein marriage may be solemnized according to such form, rite, or ceremony, is the [*here insert the name by which the superintendent registrar's district is designated*]; and that we intend to solemnize our marriage in the registered building within that district known by the name of [*here insert the name by which the building has been registered*]. Witness my hand this *tenth day of August, one thousand eight hundred and forty*.

"(Signed) *James Smith*."

"[*The italics in this schedule to be filled as the case may be.*]"

LXIX. STAT. 3 & 4 VICTORIÆ, c. 77. A.D. 1840.

STAT. 3 & 4
VICT. c. 77.

"*An Act for improving the Condition and extending the Benefits of Grammar Schools*(1)."

"Whereas there are in England and Wales many endowed schools, both of royal and private foundation, for the education of boys or youth wholly or principally in grammar; and the term 'grammar' has been construed by courts of equity as having reference only to the dead languages, that is to say, Greek and

(1) *Grammar Schools*:—Respecting the endowment of grammar schools, appointment, dismissal, power, and duty of the master of a grammar school, previously to Stat. 3 & 4 Vict. c. 77, vide *Wilkinson v. Malin*, 2 C. & J. 636; *Attorney-General v. Brentwood School (Master of)*, 1 M. & K. 377; *In re Rugby School*, 1 Beav. 457; *Attorney-General v. Mansfield (Earl of)*,

2 Russ. 501; *Attorney-General v. Hartley*, 2 J. & W. 379; *Withnell v. Gartham (Clerk)*, 6 T.R. 388; *Res. v. York (Archbishop of)*, Ibid. 490; *King v. Ford*, 1 Stark. N. P. C. 421; *Doe d. Coyle (Clerk) v. Cole*, 6 C. & P. 359; *Doe d. Davy v. Huddon*, 3 Doug. 310; and *Doe d. Thanet (Earl of) v. Gartham (Clerk)*, 1 Bing. 357.

STAT. 3 & 4
VICT. C. 77.

Courts of equity empowered, whenever a question comes before them, to make decrees or orders extending the system of education and the right of admission into any school, and to establish schemes for the application of its revenues, having due regard to the intentions of the founder.

Latin; and whereas such education, at the period when such schools or the greater part were founded, was supposed not only to be sufficient to qualify boys or youth for admission to the universities, with a view to the learned professions, but also necessary for preparing them for the superior trades and mercantile business; and whereas from the change of times and other causes such education, without instruction in other branches of literature and science, is now of less value to those who are entitled to avail themselves of such charitable foundations, whereby such schools have, in many instances, ceased to afford a substantial fulfilment of the intentions of the founders; and the system of education in such grammar schools ought therefore to be extended and rendered more generally beneficial, in order to afford such fulfilment; but the patrons, visitors, and governors thereof are generally unable of their own authority to establish any other system of education than is expressly provided for by the foundation, and her majesty's courts of law and equity are frequently unable to give adequate relief, and in no case but at considerable expense; and whereas in consequence of changes which have taken place in the population of particular districts it is necessary, for the purpose aforesaid, that in some cases the advantages of such grammar schools should be extended to boys other than those to whom by the terms of the foundation or the existing statutes the same is now limited, and that in other cases some restriction should be imposed, either with reference to the total number to be admitted into the school, or as regards their proficiency at the time when they may demand admission; but in this respect also the said patrons, visitors, and governors, and the courts of equity, are frequently without sufficient authority to make such extension or restriction; and whereas it is expedient that in certain cases grammar schools in the same place should be united; and whereas no remedy can be applied in the premises without the aid of parliament, be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that whenever, after the passing of this act, any question may come under consideration in any of her majesty's courts of equity concerning the system of education thereafter to be established in any grammar school, or the right of admission into the same, whether such question be already pending, or whether the same shall arise upon any information, petition, or other proceedings which may be now or at any time hereafter filed or instituted, for whatever cause the same may have been or may be instituted, according to the ordinary course of proceedings in courts of equity, or under the provisions of this act, it shall be lawful for the court to make such decrees or orders as to the said court shall seem expedient, as well for extending the system of education to other useful branches of literature and science, in addition to or (subject to the provisions hereinafter contained) in lieu of the Greek and Latin languages, or such other instruction as may be required by the terms of the foundation or the then existing statutes, as also for extending or restricting the freedom or the right of admission to such school, by determining the number or the qualifications of boys who may thereafter be admissible thereto, as free scholars or otherwise, and for settling the terms of admission to and continuance in the same, and to establish such schemes for the application of the revenues of any such schools as may in the opinion of the court be conducive to the rendering or maintaining such schools in the greatest degree efficient and useful, with due regard to the intentions of the respective founders and benefactors, and to declare at what period and upon what event such decrees or orders, or any directions contained therein, shall be brought into operation, and that such decrees and orders shall have force and effect, notwithstanding any provisions contained in the instruments of foundation, endowment, or benefaction, or in the then existing statutes: provided always, that in case there shall be any special visitor appointed by the founder, or other competent authority, opportunity shall be given to such visitor to be heard on the matters in question, in such manner as the court shall think proper, previously to the making such decrees or orders.

Before making

“II. Provided always, and be it enacted, that in making any such decrees or orders

order the court shall consider and have regard to the intentions of the founders and benefactors of every such grammar school, the nature and extent of the foundation and endowment, the rights of parties interested therein, the statutes by which the same has been hitherto governed, the character of the instruction theretofore afforded therein, and the existing state and condition of the said school, and also the condition, rank, and number of the children entitled to and capable of enjoying the privilege of the said school, and of those who may become so capable if any extended or different system of education, or any extension of the right of admission to the said school, or any new statutes, shall be established.

“III. Provided also, and be it enacted, that unless it shall be found necessary from the insufficiency of the revenues of any grammar school, nothing in this act contained shall be construed as authorizing the court to dispense with the teaching of Latin and Greek, or either of such languages now required to be taught, or to treat such instruction otherwise than as the principal object of the foundation; nor to dispense with any statute or provision now existing, so far as relates to the qualification of any schoolmaster or under master.

“IV. Provided also, and be it enacted, that in extending, as hereinbefore provided, the system of education or the right of admission into any grammar school in which the teaching of Greek or Latin shall be still retained, the court shall not allow of the admission of children of an earlier age or of less proficiency than may be required by the foundation or existing statutes, or may be necessary to show that the children are of capacity to profit by the kind of education designed by the founder.

“V. Provided also, and be it enacted, that whenever, on account of the insufficiency of the revenues of any grammar school, the court shall think fit to dispense with the teaching of Greek or Latin, the court shall prescribe such a course of instruction, and shall require such qualifications in the children at the period of their admission, as will tend to maintain the character of the school as nearly as, with reference to the amount of the revenues, it may be analogous to that which was contemplated by the founder; and that whenever, on the like account, the court shall think fit to dispense with any statute or provision as far as relates to the qualification of any schoolmaster or under master, the court shall substitute such qualification as will provide for every object implied in the original qualification, which may be capable of being retained notwithstanding such insufficiency of the revenues.

“VI. Provided also, and be it enacted, that in case the appointment of any additional schoolmaster or under master shall be found necessary for the purpose of carrying the objects of this act into execution, the court shall require the same qualification in such new schoolmaster or under master respectively as may be required by the existing statutes in the present schoolmaster or under master, except such as may be wholly referable to their capability of giving instruction in any particular branch of education; but that every other qualification implied in the qualification of the original schoolmaster or under master, and capable of being retained, shall be retained and required in such new schoolmaster or under master; and the court shall also in such case declare in whom the appointment of such new schoolmaster or under master shall be vested, so as to preserve as far as may be the existing rights of all parties with regard to patronage.

“VII. Provided also, and be it enacted, that although under the provisions hereinbefore contained the teaching of Greek or Latin in any grammar school may be dispensed with, every such school, and the masters thereof, shall be still considered as grammar schools and grammar schoolmasters, and shall continue subject to the jurisdiction of the ordinary as heretofore; and that no person shall be authorized to exercise the office of schoolmaster or under master therein without having such licence, or without having made such oath, declaration, or subscription as may be required by law of the schoolmasters or under masters respectively of other grammar schools.

“VIII. Provided also, and be it enacted, that whenever the court shall think it to extend the freedom of or the right of admission into any grammar school,

STAT. 3 & 4
VICT. c. 77.

such decrees, the courts shall consider the intentions of the founders, the state of school, &c.

Court not to dispense with the principal objects, or the qualifications required, unless revenues are insufficient.

Standard of admission not to be lowered where Greek and Latin is retained.

Where the teaching of Greek and Latin is dispensed with, analogous instruction to be substituted, &c.

Qualifications of new schoolmasters, and right of appointment, regulated.

Schools to be grammar schools, though Greek and Latin dispensed with, and masters subject to the ordinary.

Extension of right of ad-

STAT. 3 & 4
VICT. c. 77.
mission not to
prejudice
existing rights

Where several
schools are in
one place, and
the revenues
of any are
insufficient,
they may be
united.

Consents
necessary to
union.

Present school-
masters not to
be affected,
but to be at
liberty to
resign on
receiving
pensions.

How new ap-
pointment of
master to be
made.

Lapse of right
of nomination
of master shall
take place
from time of
settling the
new statutes.

Where suffi-
cient powers of
discipline
exist, the
persons pos-
sessing to be
at liberty to
exercise them.

Where such
powers not

such extension sha'll be so qualified by the court, that none of the boys who are by the foundation or existing statutes entitled to such privilege shall be excluded, by the admission of other boys into the said school, either from such school itself or from competition for any exhibition or other advantage connected therewith.

“IX. And be it enacted, that in case there shall be in any city, town, or place any grammar school or grammar schools, the revenues of which shall of themselves be insufficient to admit of the purposes of their founder or founders being effected, but which revenues if joined to the revenues of any other grammar school or grammar schools in the same city, town, or place would afford the means of effecting the purposes of the founders of such several schools, it shall be lawful for the court of Chancery to direct such schools to be united, and the revenues of the schools so united to be applied to the support of one school to be formed by such union, and which shall be carried on according to a scheme to be settled for that purpose under the direction of the said court; provided always, that before application shall be made to the court to direct such union the consent of the visitor, patron, and governors of every school to be effected thereby shall be first obtained.

“X. Provided always, and be it enacted, that no new statutes affecting the duties or emoluments of any schoolmaster or under master shall be brought into operation as regards any such master who shall have been appointed previously to the passing of this act without his consent in writing; but that in case any such schoolmaster or under master as last aforesaid shall be unwilling to give such consent as aforesaid, and shall be desirous or willing to resign his office on receiving a retiring pension, it shall be lawful for the governors, if there be any competent to act, or if there be no such governors, for the visitor, to award to such master such pension as to them or him, (as the case may be,) shall seem reasonable from the time of his resignation, which pension, if approved as hereinafter mentioned, the trustees of the said school are hereby authorized and required to pay to him, or his order, according to the terms of such awardment.

“XI. And be it enacted, that any schoolmaster appointed in any grammar school after the passing of this act shall receive his appointment subject to such new statutes as may be made and confirmed by the court of Chancery, in pursuance of any proceedings which may be commenced under this act, within six months after such vacancy shall have occurred.

“XII. Provided always, and be it enacted, that the term on the expiration of which any right of nomination or appointment of the master in any grammar school would otherwise lapse shall, on the first avoidance of the office which shall occur after the passing of this act, be computed from the time of the confirmation of the new statutes by which the school is to be in future governed, or if no proceedings are pending for the purpose of having statutes established from the expiration of the time within which such proceedings may be instituted, and not from the time of the avoidance.

“XIII. And whereas it is expedient that the discipline of grammar schools should be more fully enforced; be it declared and enacted, that in all cases in which sufficient powers, to be exercised by way of visitation or otherwise in respect of the discipline of such schools, shall already exist and be vested in any person or persons, it shall be lawful for such person or persons to exercise the same when and so often as they shall deem fit, either by themselves personally or by commission, without being first requested or required so to do, and likewise to direct such returns to be made by the masters of such schools, of the state thereof, of the books used therein, and of such other particulars as they may think proper, and also to order such examinations to be held in respect of the proficiency of the scholars attending the same as to him or them may seem expedient.

“XIV. And be it enacted, that in all cases in which any person or persons having authority, by way of visitation or otherwise, in respect of the discipline

of any grammar school, may not have sufficient power properly to enforce the same, it shall be lawful for the court of Chancery to order and direct that the powers of such person or persons shall be enlarged to such extent and in such manner, and subject to such provisions, as to the said court shall seem fit.

“XV. And be it enacted, that in all cases in which no authority, to be exercised by way of visitation in respect of the discipline of any grammar school, is now vested in any known person or persons, it shall be lawful for the bishop of the diocese wherein the same is locally situated to apply to the court of Chancery, stating the same: and the said court shall have power if it so think fit to order that the said bishop shall be at liberty to visit and regulate the said school in respect of the discipline thereof, but not further or otherwise.

“XVI. And be it enacted, that in event of the person or persons by whom powers of visitation in respect of the discipline of any grammar school ought to be exercised refusing or neglecting so to do within a reasonable time after the same ought to be exercised, or in the event of its being uncertain in whom the right to exercise such powers is vested, such powers shall be exercised *pro hac vice* by some person specially appointed by the authority of the court of Chancery, on application made by any person or persons interested in such grammar school: provided always, that nothing herein contained shall exempt any visitor from being compelled by any process to which he is now amenable to perform any act which he is now compellable to perform.

“XVII. And whereas it is expedient to provide for the more easy removal of unfit and improper masters; be it declared and enacted, that it shall be lawful for the court of Chancery to empower the person or persons having powers of visitation in respect of the discipline of any grammar school, or who shall be specially appointed to exercise the same under this act, and the governors, or either of them, after such inquiries and by such mode of proceeding as the court shall direct, to remove any master of any grammar school who has been negligent in the discharge of his duties, or who is unfit or incompetent to discharge them properly and efficiently, either from immoral conduct, incapacity, age, or from any other infirmity or cause whatsoever.

“XVIII. Provided always, and be it enacted, that in case the cause for which any master may be removed shall be incompetency from age or other infirmity, it shall be lawful for the said governors, with the approbation of the visitor, to assign to the use of such master any portion of the annual revenues of the said grammar school in one or more donations, or by way of annuity determinable on the death of such master, or on any other specified event during his life, or to assign to him any part of the estate of the said grammar school for his occupation for a term determinable in like manner; provided that there shall remain sufficient means to provide for the efficient performance of the duties which belong to the office from which such master shall be removed.

“XIX. And for the more speedy and effectual recovery of the possession of any premises belonging to any grammar school which the master who shall have been dismissed as aforesaid, or any person who shall have ceased to be master, shall hold over after his dismissal or ceasing to be master, except under such assignment as may have been made under the provisions of this act, the term of such assignment being still unexpired, and the premises assigned being in the actual occupation of the master so dismissed or ceased to be master, be it enacted, that when and as often as any master holding any schoolroom, schoolhouse, or any other house, land, or tenement, by virtue of his office, or as tenant or otherwise under the trustees of the said grammar school, except on lease for a term of years still unexpired, shall have been dismissed as aforesaid, or shall have ceased to be master, and such master, or (if he shall not actually occupy the premises or shall only occupy a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, except such as are hereinbefore excepted, within the space of three months after such dismissal or ceasing to be master, it shall be lawful for justices of the peace acting for the dis-

STAT. 3 & 4
VICT. c. 77.

sufficient,
court may
enlarge them.
Where no such
powers, court
may create
them.

Court of Chan-
cery may sub-
stitute a person
to act *pro hac*
vice in certain
cases.

Proviso.

Court of Chan-
cery to have
power to ap-
point mode of
removing
masters.

Power in
certain cases
to assign
retiring pen-
sion.

Premises held
over by mas-
ters dismissed,
or ceasing to
hold office, to
be recovered in
a summary
way.

STAT. 3 & 4
VICT. C. 77.

trict or division in which such premises or any part thereof are situated, in petty sessions assembled, or any two of them, and they are hereby required, on the complaint of the said trustees or their agents, and on the production of an order of the court of Chancery declaring such master to have been duly dismissed or to have ceased to be master, to issue a warrant, under their hands and seals, to the constables and peace officers of the said district or division, commanding them, within a period to be therein named, not less than ten nor more than twenty-one clear days from the date of such warrant, to enter into the premises, and give possession of the same to the said trustees or their agents, in such manner as any justices of the peace are empowered to give possession of any premises to any landlord or his agent under an act passed in the session of parliament held in the first and second year of the reign of her present majesty, intituled, 'An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy.'

1 & 2 Vict.
c. 74.

Master shall
not set up
title, &c.

"XX. Provided always, and be it enacted, that nothing in this act or the said recited act shall extend or be construed to extend to enable any master so dismissed or ceasing to be master as aforesaid, to call in question the validity of such dismissal, provided that the same shall have proceeded from the persons authorized to order the same, after such inquiries and by such mode of proceeding as required in that behalf, or to call in question the title of the trustees to possession of any premises of which such master shall have become possessed by virtue of his late office, or as tenant or otherwise under the trustees of the said grammar school for the time being.

Applications to
court to be
made by peti-
tion.

Such petitions
to be decided
under 52 Geo.
3, c. 101.

"XXI. And whereas it is expedient to facilitate applications to the court of Chancery under this act; be it enacted, that all applications may be heard and determined, and all powers given by this act to the court of Chancery may be exercised in cases brought before such court by petition only, such petitions to be presented, heard, and determined according to the provisions of an act passed in the fifty-second year of the reign of his late majesty King George the Third, intituled, 'An Act to provide a summary Remedy in Cases of Abuses of Trusts created for charitable Purposes.

If crown is
patron, lord
high chancellor
or chancellor of
duchy of Lan-
caster shall act.

"XXII. And be it enacted, that in every case in which the patronage of any grammar school, or right of appointing the schoolmaster or under master thereof, is vested in the crown, the lord high chancellor, or the chancellor of the duchy of Lancaster in respect of any grammar school within the county palatine of Lancaster, shall be considered as the patron of such grammar school for the purposes of this act.

Powers of lord
chancellor to
be exercised by
lord keeper,
&c.
Saving of
rights of ordi-
nary.

"XXIII. And be it enacted, that the powers and authorities hereinbefore given to the lord high chancellor shall and may be exercised in like manner by and on hereby given to the lord keeper or lords commissioners for the custody of the great seal respectively for the time being.

Certain found-
ations ex-
empted from
this act.

"XXIV. Provided always, and be it enacted, that neither this act nor anything therein contained shall be any way prejudicial or hurtful to the jurisdiction or power of the ordinary, but that he may lawfully execute and perform the same as heretofore he might according to the statutes, common law, and customs of this realm, and also as far as he may be further empowered by this act; and that this act shall not be construed as extending to any of the following institutions; (that is to say,) to the universities of Oxford or Cambridge, or to any college or hall within the same, or to the university of London, or any colleges connected therewith, or to the university of Durham, or to the colleges of Saint David's or Saint Bee's, or the grammar schools of Westminster, Eton, Winchester, Harrow, Charter House, Rugby, Merchant Tailors, Saint Paul's, Christ's Hospital, Birmingham, Manchester, or Macclesfield, or Louth, or such schools as form part of any cathedral or collegiate church.

Construction
of terms.

"XXV. And be it enacted, that in the construction and for the purposes of this act, unless there be something in the subject or context repugnant to such construction, the word 'grammar school' shall mean and include all endowed schools, whether of royal or other foundation, founded, endowed, or maintained for the purpose of teaching Latin and Greek, or either of such languages, whether in

the instrument of foundation or endowment, or in the statutes or decree of any court of record, or in any act of parliament establishing such school, or in any other evidences or documents, such instruction shall be expressly described, or shall be described by the word 'grammar,' or any other form of expression which is or may be construed as intending Greek or Latin, and whether by such evidences or documents as aforesaid, or in practice, such instruction be limited exclusively to Greek or Latin, or extended to both such languages, or to any other branch or branches of literature or science in addition to them or either of them; and that the words 'grammar school' shall not include schools not endowed, but shall mean and include all endowed schools which may be grammar schools by reputation, and all other charitable institutions and trusts, so far as the same may be for the purpose of providing such instruction as aforesaid; that the word 'visitor' shall mean and include any person or persons in whom shall be vested solely or jointly the whole or such portion of the visitatorial power as regards the subject of the enactment or provision, or any powers in regard to the discipline or making of new statutes in any school; that the word 'governors' shall mean and include all persons or corporations, whether sole or aggregate, by whatever name they may be styled, who may respectively have the government, management, or conduct of any grammar school, whether they have also any control over the revenues of the school as trustees or not; that the word 'trustees' shall mean and include all persons and corporations, sole or aggregate, by whatever name they may be styled, who shall have the management, disposal, and control over the revenues of any grammar school, whether the property be actually vested in them or not; that the word 'statutes' shall mean and include all written rules and regulations by which the school, schoolmasters, or scholars are, shall, or ought to be governed, whether such rules or regulations are comprised in, incorporated with, or authorized by any royal or other charter, or other instrument of foundation, endowment, or benefaction, or declared or confirmed by act of parliament, or by decrees of any court of record, and also all rules and regulations which shall be unwritten, and established only by usage or reputation; that the word 'schoolmaster' shall mean and include the head master only, and the word 'under master' every master, usher, or assistant in any school except the head master; and that the word 'master' shall mean and include as well any head master as under master; that the words 'discipline' or 'management,' of a school shall mean and include all matters respecting the conduct of the masters or scholars, the method and times of teaching, the examination into the proficiency of the scholars of any school, and the ordering of returns or reports with reference to such particulars, or any of them; and that any word importing the singular number only shall mean and include several persons or things as well as one person or thing, and the converse.

STAT. 3 & 4
VICT. C. 77.

"XXVI. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

Act may be
amended this
session.

LXX. STAT. 3 & 4 VICTORIÆ, c. 78(1). A.D. 1840.

STAT. 3 & 4
VICT. C. 78.

"An Act to provide for the Sale of the Clergy Reserves in the Province of Canada, and for the Distribution of the Proceeds thereof."

"Whereas it is expedient to provide for the final disposition of the lands called Clergy Reserves in Canada, and for the appropriation of the yearly income arising

(1) In 1840, the following questions respecting the clergy reserves in Canada were submitted to the judges by the House of Lords:

"I. Whether the words, 'a protestant clergy,' in Stat. 31 Geo. 3, c. 31, ss. 35-42, include any other than clergy of the church of England, and protestant bishops and priests and deacons, who have received episcopal ordination? And if any other, what other?"

"II. Whether the effect of the 41st section of Stat. 31 Geo. 3, c. 31, be not en-

tirely prospective, giving power to the legislative council and assembly of either of the provinces of Upper or Lower Canada as to future allotments and appropriations; or whether it can be extended to affect lands which have been already allotted and appropriated under former grants?"

"III. Whether the legislative council and assembly of the province of Upper Canada, having in an act 'to provide for the sale of the clergy reserves, and for the distribution of the proceeds thereof,' enacted, that it

STAT. 3 & 4
VICT. C. 78.

Clergy reserves
may be sold.

Proviso.

Investment of
proceeds of
sales under
7 & 8 Geo. 4,
c. 62.

Present pay-
ments to reli-
gious bodies
out of crown
revenues to be
the first charge
on the fund.

or to arise therefrom, for the maintenance of religion and the advancement of Christian knowledge within the said province; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the passing of this act it shall be lawful for the governor of the province of Canada, by and with the advice of his executive council, and under such regulations as may be by him from time to time in council established in that behalf, and approved by the queen in council, to sell, grant, alienate, and convey in fee-simple all or any of the said clergy reserves: provided nevertheless, that the quantity of the said clergy reserves so to be sold as aforesaid in any one year shall not in the whole exceed one hundred thousand acres, without the previous approbation in writing of one of her majesty's principal secretaries of state.

"II. And be it enacted, that the proceeds of all past sales of such reserves which have been or shall be invested under the authority of an act passed in the eighth year of the reign of King George the Fourth, intituled, 'An Act to authorize the Sale of Part of the Clergy Reserves in the Provinces of Upper and Lower Canada,' shall be subject to such orders as the governor in council shall make for investing, either in some public funds in the province of Canada, secured on the consolidated fund of the said province, or in the public funds of Great Britain and Ireland, the amount now funded in England, together with the proceeds hereafter to be received from the sales of all or any of the said reserves, or any part thereof: provided always, that the necessary expenses of such sales shall be borne and defrayed out of the first monies received therefrom.

"III. And be it enacted, that the interest and dividends accruing upon such investments of the proceeds of all clergy reserves sold or to be sold, and also the interest to accrue upon sales on credit of clergy reserves, and all rents arising from clergy reserves that have been or may be demised for any term of years, shall be paid to the receiver-general of the province of Canada, or such other person as shall be appointed to receive the public revenues of the said province, and shall together form an annual fund for the purposes hereinafter mentioned, and shall be paid by him from time to time in discharge of any warrant or warrants which shall from time to time be issued by the governor, in pursuance of the provisions of this act; (that is to say,) in the first place, to satisfy all such annual stipends and allowances as have been heretofore assigned and given to the clergy of the churches of England and Scotland, or to any other religious bodies or denominations of Christians in Canada, and to which the faith of the crown is pledged, during the natural lives

should be lawful for the governor, by and with the advice of the executive council, to sell, alienate, and convey in fee-simple, all or any of the said clergy reserves; and having further enacted, in the same act, that the proceeds of all past sales of such reserves which have been or may be invested under the authority of the act of the imperial parliament passed in the seventh and eighth years of the reign of his late majesty King George the Fourth, intituled, 'An Act to authorize the sale of Part of the Clergy Reserves in the Province of Upper and Lower Canada,' shall be subject to such orders and directions as the governor in council shall make and establish for investing in any securities within the province of Upper Canada, the amount now funded in England, together with the proceeds hereafter to be received from the sales of all or any of the said reserves, or any part thereof, did, in making such enactments, or either of them, exceed their lawful authority?"

To the first question, the judges answered: That the words "a protestant clergy," in Stat. 31 Geo. 3, c. 31, were large enough to include, and that they did include, other clergy

than the clergy of the church of England.

And when their lordships asked, "If any other, what other?" the judges answered, "The clergy of the church of Scotland."

To the second question, the judges replied: That the effect of the 41st section of the statute was prospective only; and that the power thereby given to the legislative council and assembly of either province could not be extended to affect lands which had been already allotted and appropriated under former grants.

In answer to the last question, the judges said: That the legislative council and assembly in Upper Canada had exceeded their authority in passing an act "to provide for the sale of the clergy reserves, and for the distribution of the proceeds thereof," in respect of both the enactments specified in the question propounded to them by their lordships; and that the sales which had been, or might be, effected in consequence, were void. 3 Mirror of Parliament, 2390, 2719.

This opinion of the judges caused the enactment of Stat. 3 & 4 Vict. c. 78.

or incumbencies of the parties now receiving the same: provided always, that until the annual fund so to be created and deposited with the receiver-general shall suffice to meet the above-mentioned stipends and allowances, the same, or so much thereof as the said fund may be insufficient to meet, shall be defrayed out of the casual and territorial revenue of the crown in the province of Canada.

STAT. 3 & 4
VICT. c. 78.
Proviso.

“IV. And be it enacted, that as soon as the said fund shall exceed the amount of the several stipends and allowances aforesaid, and subject always to the prior satisfaction and payment of the same, the said annual fund shall be appropriated as follows; (that is to say,) the net interest and dividends accruing upon the investments of the proceeds of all sales of such reserves sold or to be sold under the authority of the before-recited act of the eighth year of the reign of King George the Fourth shall be divided into three equal parts, of which two shall be appropriated to the church of England and one to the church of Scotland in Canada; and the net interest and dividends accruing upon the investments of the proceeds of all sales of such reserves sold under the authority of this act shall be divided into six equal parts, of which two shall be appropriated to the church of England and one to the church of Scotland in Canada: provided always, that the amount of the before-mentioned stipends and allowances which shall be paid to and received by any clergyman of either of the said churches of England or Scotland shall be taken, as far as the same will go, as a part of the share accruing to each church respectively by virtue of this act; (that is to say,) the stipends and allowances to any clergyman of the church of England as part of the share accruing to the church of England, and the stipends and allowances to any clergyman of the church of Scotland as part of the share accruing to the said church of Scotland, so that neither of the said churches shall receive any further or other sum beyond such respective stipends and allowances until the proportion of the said annual fund allotted to them respectively in manner aforesaid shall exceed the annual amount of such stipends and allowances.

Provision for
the churches
of England
and Scotland.

“V. And be it enacted, that the share allotted and appropriated to each of the said churches shall be expended for the support and maintenance of public worship and the propagation of religious knowledge, the share of the said church of England being so expended under the authority of the ‘Society for the Propagation of the Gospel in Foreign Parts,’ and the share of the said church of Scotland under the authority of a board of nine commissioners, to be elected by the synod or synods of the presbyterian church of Canada in connexion with the church of Scotland, under such regulations as shall be from time to time established by the governor of Canada, with the advice of his executive council.

Application of
the funds so
allotted.

“VI. And be it enacted, that the share of each of the said churches shall be paid by the receiver-general or other person appointed as aforesaid in discharge of any warrant or warrants which shall from time to time be issued by the governor of the said province in favour of the treasurer or other officer who shall be respectively appointed to receive the same by the said society on behalf of the said church of England, and by the said commissioners on behalf of the said church of Scotland.

How allotted
funds are to be
paid.

“VII. And be it enacted, that, subject to the foregoing provisions, the residus of the said annual fund shall be applied by the Governor of Canada, with the advice of the executive council, for purposes of public worship and religious instruction in Canada.

Application of
residue of the
fund.

“VIII. And be it enacted, that the receiver-general or other person appointed as aforesaid to receive the interest and dividends accruing from the investment of the proceeds of all clergy reserves sold or to be sold shall, on or before the fifteenth day of January in every year, deliver to the governor a certificate in writing under his hand of the net amount which in that year will be applicable to the several churches of England and Scotland out of the said fund under the provisions of this act; and whenever the sum mentioned in any such certificate to be applicable to the church of England in Upper Canada shall be less than seven thousand seven hundred pounds, or the sum mentioned in the certificate to be applicable to the church of Scotland in Upper Canada shall be less than one thousand five hundred

Guarantee of
the sums of
7700l. to the
church of
England, and
1580l. to the
church of
Scotland.

STAT. 3 & 4
VICT. c. 78.

and eighty pounds, the deficiency in each case shall be made good out of the consolidated fund of the United Kingdom of Great Britain and Ireland, and shall be charged thereupon at the quarter day next ensuing the receipt of such certificate at the Treasury; and the lord high treasurer, or three or more commissioners of her majesty's Treasury of the United Kingdom of Great Britain and Ireland, shall be authorized by their warrant to direct the issue of the sums needed to supply such deficiency in the following manner; (that is to say,) such sum as shall be needed to supply the deficiency of the said sum of seven thousand seven hundred pounds to such person or persons as shall be appointed to receive the same by the Society for the Propagation of the Gospel in Foreign Parts, and such sum as shall be needed to supply the deficiency of the said sum of one thousand five hundred and eighty pounds to such person or persons as shall be appointed to receive the same by any writing under the hands of any three or more of the commissioners under whose authority the share of the church of Scotland is to be expended as aforesaid; and all sums so paid out of the consolidated fund shall be severally applied, under the authority of the said society and of the last-mentioned commissioners respectively, for the support and maintenance of public worship and the propagation of religious knowledge in each of the said churches in Canada.

Accounts of
expenditure
to be rendered
to governor in
council.

"IX. And be it enacted, that accounts of the expenditure of every sum of money so to be received out of the said annual fund, or out of the consolidated fund of the United Kingdom of Great Britain and Ireland, by the said churches of England and Scotland, or by any other religious body or denomination of Christians respectively, under the authority of this act, shall be, on or before the twentieth day of July in each year, rendered to the governor of the said province in council; and that until such accounts shall have been rendered, and the due and proper expenditure of the sum granted during any preceding year shall have been established to the satisfaction of the governor of the said province in council, no other or further sum or proportion of the said annual fund shall be paid or allowed to any or either of the churches, religious bodies, or denominations of Christians failing, neglecting, or refusing to render such account, or to verify the same as aforesaid; and that copies of such accounts shall annually be laid before the legislature of the said province.

Summary
remedy for
misapplication
of monies.

"X. And be it enacted, that whenever there shall appear to the governor of the said province in council sufficient reason to apprehend that there has been any misappropriation or non-appropriation of any sum or sums of money paid to any of the said churches, religious bodies, or denominations of Christians, out of the said annual fund, or any neglect or abuse in the expenditure or management of any such sum or sums, upon direction for that purpose given by the governor, it shall be lawful for the attorney-general to apply summarily, either by petition or information, to or in the court of Chancery in Upper Canada, or to any one of the superior courts of record in Lower Canada, setting forth the nature of the abuse apprehended, and praying discovery, and relief in the premises, as the nature of the case may require.

Repeal of part
of 31 Geo. 3,
c. 31.

"XI. And be it enacted, that from and after the passing of this act, so much of an act passed in the thirty-first year of the reign of King George the Third, intituled, 'An Act to repeal certain Parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, "An Act for making more effectual Provision for the Government of the Province of Quebec in North America, and to make further Provision for the Government of the Province,"' as relates to any relocations of land hereafter to be made in Upper Canada or Lower Canada for the support and maintenance of a protestant clergy, shall be repealed.

Meaning of
terms, "pro-
vince of Ca-
nada," and
"governor."

"XII. And be it enacted, that in this act the words 'province of Canada' shall be taken to mean the province of Canada as constituted under an act passed in the session of parliament, intituled, 'An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada'; and the word 'governor' shall be taken to mean and include the governor, lieutenant governor, or person administering the government of the province of Canada.

Act may be
amended, &c.

"XIII. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament."

LXXI. STAT. 3 & 4 VICTORIÆ, CAP. LXXXV. A.D. 1840.

"An Act for establishing a general Cemetery in the Parish of Holy Cross and Saint Giles, in or near the Town of Shrewsbury, in the County of Salop."

STAT. 3 & 4
VICT. CAP.
LXXXV.

LXXII. STAT. 3 & 4 VICTORIÆ, C. 86(1). A.D. 1840.

"An Act for better enforcing Church Discipline(2)."

STAT. 3 & 4
VICT. C. 86.

"Whereas the manner of proceeding in causes for the correction of clerks

(1) In *Sanders v. Head*, (3 Curt. 47.) Sir Herbert Jenner *Post* gave the following judicial opinion respecting the phraseology of the Church Discipline Act: "Undoubtedly the phraseology of the act is not such as, unless the act had been passed in a hurry, would have been permitted to remain. It is clear, that the same words are used in different senses in different parts of the act: for example, in the 13th section which directs the bishop to send letters of request to this court, the words 'first instance' are used in a different sense from that in which they are used in the 15th section; for the 15th section enacts, 'that it shall be lawful for any party who shall think himself aggrieved by the judgment pronounced in the *first instance* by the bishop, or in the court of appeal of the province, to appeal from such judgment, and such appeal shall be to the archbishop, and shall be heard before the judge of the

court of appeal of the province.' Now, there the words *first instance*, cannot mean the *notice*, but the *sentence* on the first hearing of the cause. So they are used in the latter part of the same section. 'When the cause shall have been heard and determined in the *first instance* in the court of the archbishop.' By these words, the same meaning is not intended to be conveyed in the two sections. What I understand by them is, that at any time before the commissioners have proceeded in the inquiry, the bishop may send the case up to be heard elsewhere."

It may be here observed, that Stat. 3 & 4 Vict. c. 86, does not apply to the Isle of Man.

(2) *Church Discipline*.—The following is a statement of the principal statutes enacted since A.D. 1800, which apply to the general rights, duties, and responsibilities of the clergy in England:

Ages of persons admitted into deacons' and priests' orders, enforcing the due observance of the Canons and Rubric respecting	44 Geo. 3, c. 43.	U. K.
Arrest of a clergyman when performing, going to perform, or returning from performing divine service, punishment for	9 Geo. 4, c. 31, s. 23.	E.
Augmentations of small vicarages and curacies by ecclesiastical persons, &c., extending the provisions of 29 Car. 2, c. 8, for confirming and perpetuating	1 & 2 Gul. 4, c. 45. 1 & 2 Vict. c. 107, s. 14. 3 & 4 Vict. c. 115, s. 76. 4 & 5 Vict. c. 39, s. 26.	E.
Avoidance of benefices by incumbents accepting augmented curacies, suspending an act of 36 Geo. 3, c. 83, relating to	47 Geo. 3, Sess. 2, c. 75.	E.
Benefices, securing, in certain cases, spiritual persons in the possession of	48 Geo. 3, c. 5. 59 Geo. 3, c. 40.	E.
Benefit of clergy, defining the rights of convicts after having been punished for clergyable offences; placing clerks in orders on the same footing with other persons, as to felonies; and limiting the effect of	6 Geo. 4, c. 25.	E.
Colonies, permitting the archbishops and the bishop of London to ordain persons specially for the	7 & 8 Geo. 4, cc. 27, 28 & 29. 59 Geo. 3, c. 60.	E.
Curates, granting 8,000 <i>l.</i> for the present relief of	44 Geo. 3, c. 2.	E.
Curates, for the further support and maintenance of stipendiary	53 Geo. 3, c. 149.	E.
Amended by	54 Geo. 3, c. 175, s. 11.	E.
Repealed, and other provisions made by	57 Geo. 3, c. 99.	E.
Which was repealed and other provisions made by	1 & 2 Vict. c. 106.	E.
Gaols and houses of correction, providing clergy for	55 Geo. 3, c. 48.	E.
Amended by	58 Geo. 3, c. 32.	E.
Repealed, and other provisions made by	4 Geo. 4, c. 64. 2 & 3 Vict. c. 56.	E.
Holy orders, persons in, disqualified to sit in parliament	41 Geo. 3, c. 63.	U. K.

STAT. 3 & 4
VICT. c. 86.

requires amendment; be it enacted by the queen's most excellent majesty, by

Holy orders, enforcing the due observance of the Canons and Rubric respecting the ages of persons admitted into deacons' and priests' orders	44 Geo. 3, c. 43.	U. K.
..... clergy to be ordained specially for the colonies by the Archbishops of Canterbury and York, and Bishop of London	59 Geo. 3, c. 60.	U. K.
..... regulations in respect to bishops and clergy, other than those of the united church of England and Ireland	3 & 4 Vict. c. 33.	{ U. K. & U. S. A.
Holy Trinity, relieving from certain penalties persons who impugn the doctrine of	53 Geo. 3, c. 160.	G. B.
<i>Extended to Ireland by</i>	57 Geo. 3, c. 70.	I.
House of commons, removing doubts as to eligibility of persons in holy orders to sit in	41 Geo. 3, c. 63.	U. K.
Houses and glebe lands, spiritual persons enabled to exchange parsonage	55 Geo. 3, c. 147.	{ E.
<i>Amended by</i>	{ 56 Geo. 3, c. 52. 1 Geo. 4, c. 6. 6 Geo. 4, c. 8. 7 Geo. 4, c. 66.	
..... relieving incumbents of livings or benefices mortgaged for providing	5 Geo. 4, c. 89.	
..... amending the law for providing fit houses for the beneficed clergy	{ 1 & 2 Vict. c. 23. 1 & 2 Vict. c. 29. 2 & 3 Vict. c. 49, <i>am.</i> 14, 17.	
<i>Amended by</i>	{ 46 Geo. 3, c. 133. 49 Geo. 3, c. 67. 50 Geo. 3, c. 58.	{ G. B.
Land tax, small livings exonerated from	53 Geo. 3, c. 123.	
<i>Amended by</i>	57 Geo. 3, c. 100.	{ G. B.
..... other small livings exonerated from		
..... renewing powers of exoneration		
Penalties, relieving spiritual persons and patrons from, and rendering valid certain resignation bonds	7 & 8 Geo. 4, c. 25.	E.
Pluralities of livings, staying proceedings for	41 Geo. 3, c. 102.	{ E.
<i>Continued by</i>	{ 42 Geo. 3, <i>cc.</i> 30 & 86. 43 Geo. 3, c. 34, <i>expired.</i>	
Plurality, abridging the holding of benefices in	1 & 2 Vict. c. 106.	E.
Queen Anne's bounty, making more effectual, and enlarging the powers	{ 43 Geo. 3, c. 107. 45 Geo. 3, c. 84. 7 Geo. 4, c. 66.	{ E.
<i>See further</i>	{ 2 & 3 Vict. c. 49. 3 & 4 Vict. c. 20, a. 5. 3 & 4 Vict. c. 60.	
Residence, staying proceedings for non-residence until 25th March, 1802	41 Geo. 3, c. 102.	{ E.
<i>Continued by</i>	{ 42 Geo. 3, <i>cc.</i> 30 & 86. 43 Geo. 3, c. 34, <i>expired.</i>	
..... amending laws relating to spiritual persons holding farms, and for enforcing residence	45 Geo. 3, c. 84.	{ E.
<i>Amended by</i>	{ 43 Geo. 3, c. 109. 54 Geo. 3, c. 175.	
<i>Repealed</i> , and other provisions made by Which was repealed and other provisions made by	57 Geo. 3, c. 99.	{ E.
..... staying proceedings in actions for non-residence under 43 Geo. 3, c. 84	1 & 2 Vict. c. 106.	
<i>Continued by</i>	54 Geo. 3, c. 6.	{ E.
..... preventing vexatious suits under 43 Geo. 3, c. 84, for non-residence	54 Geo. 3, <i>cc.</i> 44, 54, <i>exp.</i>	
..... explaining and amending act relating to spiritual persons holding farms, and for enforcing residence for one year	54 Geo. 3, c. 84.	E.
<i>Continued until 5th April, 1817, by</i>	54 Geo. 3, c. 175.	{ E.
..... consolidating and amending laws relating to spiritual persons holding farms, and for enforcing residence	56 Geo. 3, <i>cc.</i> 6 & 123.	
<i>Repealed</i> , and other provisions made by	57 Geo. 3, c. 99.	{ E.
..... rendering acts more effectual for promoting residence, by providing houses, &c. for benefices	1 & 2 Vict. c. 106.	
	7 Geo. 4, c. 66.	E.

and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that an act passed in the first year of the reign of King Henry the Seventh, intituled, 'An Act for Bishops to punish Priests and other Religious Men for dishonest Lives,' shall be repealed.

STAT. 3 & 4
VICT. c. 86.
Repeal of
1 Hen. 7, c. 4.

"II. And be it enacted, that, unless it shall otherwise appear from the context, the term 'preferment,' when used in this act, shall be construed to comprehend every deanery, archdeaconry, prebend, canonry, office of minor canon, priest, vicar, or *vicar-choral in holy orders*(1), and every precentorship, treasurer'ship, sub-deanery, chancellorship of the church, and other dignity and office in any cathedral or collegiate church, and every mastership, wardenship, and fellowship in any collegiate church, and all benefices with cure of souls, comprehending therein all parishes, perpetual curacies, donatives, endowed public chapels, parochial chapelries, and chapelries or districts belonging to or reputed to belong, or annexed or reputed to be annexed, to any church or chapel, and every curacy, lectureship, readership, chaplaincy, office, or place which requires the discharge of any spiritual duty, and whether the same be or be not within any exempt or peculiar jurisdiction; and the word '*bishop*,' when used in this act, shall be construed to comprehend (2) 'archbishop;' and the word '*diocese*,' when used in this act, shall be construed to comprehend all places to which the jurisdiction of any bishop extends, under and for the purposes of an act passed in the second year of the reign of her present majesty, intituled, 'An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy.'

Definition of
the terms,
"preferment,"
"bishop,"
"archbishop,"
and
"diocese."

"III. And be it enacted, that in every case of any clerk in holy orders of the united church of England and Ireland who may be charged with any offence against the laws ecclesiastical(3), or concerning whom there may exist scandal or evil

1 & 2 Vict.
c. 106.

Bishop may
issue a com-
mission of
inquiry.

Residence, making better provisions for the residence of the clergy	1 & 2 Vict. c. 106.	2 & 3 Vict. c. 49.	E.
	3 & 4 Vict. c. 20, s. 5.	3 & 4 Vict. c. 60, s. 21.	
	3 & 4 Vict. c. 86, s. 2.	3 & 4 Vict. c. 113, s. 34.	
	4 & 5 Vict. c. 39, ss. 9, 10, 23, & 24.		
	5 & 6 Vict. c. 26.		
Riding-horse, granting exemption from duty for one	41 Geo. 3, c. 40.		U. K.
Repealed by	43 Geo. 3, c. 161.		
Provisions now in force	4 & 5 Gul. 4, c. 73.		

(1) *Vicar-choral in holy orders*:—The vicars-choral of St. Paul's are laymen, and the same remark will, in some instances, apply to other cathedrals. The Church Discipline Act only applies to vicars-choral in *holy orders*, consequently, lay vicars-choral are not subjected to its provisions; but they continue under the jurisdiction of the visitor, whose authority is unimpaired by Stat. 3 & 4 Vict. c. 86.

(2) *Bishop* construed to comprehend:—Bishops are not comprehended under the words "ecclesiastical persons." The rule of the canon law, is, "Clericus, ex vi verbi, non comprehendit episcopum, sed cum adjuncto, sic, in quantum illud adjunctum potest concernere episcopum;" (Lyndw. de Loc. et Con. c. Vendent. v. *Si quis Clericus*;) and the same principle is recognised in the following extracts: "Ecclesiasticos judices intellige de inferioribus episcopis; nam episcopi hac pœnâ non ligantur, eò quòd de eis non fit mentio specialis;" (Ibid. de Testam. c. Ita quor. v. *Eccles. Jud.*;) "Hanc pœnam in hoc casu non incurrunt episcopi, eò quòd de eis non fit mentio specialis." Ibid. c. Adeo. quor. v. *Suspensionis*.

(3) *Charged with any offence against the laws ecclesiastical*:—1992—2076.

- I. Clergymen solemnizing marriages without making due inquiries as to the residence of the parties. 1992—1995.
- II. Celebrating a marriage between two persons within the prohibited degrees of affinity. 1995.
- III. The doctrine relating to contracts of marriage, as contradistinguished from marriage itself. 1996—2006.
- IV. Refusing burial; and improperly performing the burial service. 2006—2012.
- V. Baptism by persons alleged to be heretics or schismatics. 2012—2035.
- VI. Quarrelling, chiding, and brawling. 2035—2037.
- VII. Drunkenness, indecent conduct, demeanour, and language. 2037—2039.
- VIII. Depraving of the Book of Common Prayer. 2039—2040.
- IX. Observance or non-observance of church offices. 2041—2072.
- X. A decent communion table. 2072—2076.

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I. CLERGYMEN SOLEMNIZING MARRIAGES
WITHOUT MAKING DUE INQUIRIES AS
TO THE RESIDENCE OF THE PARTIES.

In *Wyns (Clerk) v. Davies & Weever*, (1 Curt. 69,) the principal offence charged was, that of publishing the banns of marriage, and of marrying persons not resident within the parish; and the objection taken to the admissibility of the articles, was, that the offence imputed to the appellant, if a violation of the law, was not cognizable in the ecclesiastical courts; and a doubt was raised, whether in fact it ever was cognizable in those courts; or if so, whether the jurisdiction had not been taken away by subsequent statutes.

Upon such questions Sir *Herbert Jenner* observed: "The correction of the clergy in matters relating to the performance of divine worship, is, and always has been, more peculiarly the province of the ordinary.

"That the canon law prohibited clandestine marriages, and inflicted punishment on the parties contracting such marriages, as well as on the minister solemnizing them, is abundantly clear; and it is no less certain, that marriages were forbidden to be solemnized by any other than the priest of the parish in which the parties resided; unless with the licence of the diocesan and of the curate of the parish. . . .

"The Constitution of Archbishop Reynolds is as follows: (Lyndw. l. 4, tit. 1, De Sponsalibus et Matrimonio): 'In matrimonio quoque contrahendo semper tribus diebus dominicis vel festivis à se distantibus, [this now, by Stat. 4 Geo. 4, c. 76 (*ante* 1229), must be on three Sundays,] quasi tribus edictis, perquirant sacerdotes à populo de immunitate sponsi et sponse. Si quis autem sacerdos hujusmodi edicta non servaverit, poenam nuper in concilio super hoc statutam non evadat.'

"And as Lyndwood observes in the Gloss.: 'Hæc poena est suspensioalis per triennium.' Decretal. Greg. l. 4, tit. 3, c. 3.

"Here then is suspension for three years of the minister solemnizing matrimony without publication of banns. Simon Mepham's Constitution is an authority also on this point: 'Quia ex contractibus matrimonialibus absque bannorum editione præhabita initia, nonnulla pericula evenerunt, et manifestum est indices provenire, omnibus et singulis suffraganeis nostris præcipimus statuendo quod decretalem cum inhibitione, (quæ prohibetur ne qui matrimonium contrahant, bannis non premisis in singulis ecclesiis parochialibus sue diocesis pluribus diebus solemnibus cum major populi affuerit multitudo,) exponi faciant in vulgari, et eam firmiter observari, quibusvis sacerdotibus etiam non parochialibus, qui contractibus matrimonialibus ante solennem editionem bannorum initis præsumperint interesse, poenam suspensionis ab officio per triennium infigendo et hujusmodi contrahentes etiam si nullum subest impedimentum poenâ debitâ percellendo.' Lyndw. l. 4, tit. 3.

"Also Archbishop Stratford (*Ibid.*): 'Præsentis auctoritate concilii statuimus, quod exnunc matrimonia contrahentes, et ea inter se solemnizari facientes, quæcunque impedi-

menta canonica in ea parte scientes, aut presumptionem verisimilem eorumdem habentes; sacerdotes quoque qui solemnizationes matrimoniorum prohibitorum hujusmodi seu etiam licitorum inter alios quam suos parochianos in posterum scienter fecerint, discommuniari vel curatorem ipsorum contrahentium super hoc licentiâ non obtentâ . . . majoris excommunicationis sententiam incurrant ipso facto.'

"The text law then especially prohibits priests from solemnizing marriage, even though lawful, between others than their own parishioners; and Lyndwood on the same chapter observes, 'Matrimonium dicitur clandestinum multis modis;' and amongst others, says, 'Quia non præmittuntur publicæ denuntiationes sive banna publica.'

"There is then no doubt that, not only the parties contracting, but also the priest solemnizing clandestine marriages, were punishable by the ancient canon law as received and allowed here; and that a marriage, not preceded by publication of banns, or licence, or between persons not parishioners, was in the meaning of that law a clandestine marriage; and this continued to be the law, down to the time of the passing of the Marriage Act (26 Geo. 2, c. 33, *ante* 847); at least, in 1736, it was so held in the case of *Middleton v. Croft*, (2 Atk. 650, *ante* 660.) so often referred to, and so much relied on in the argument. And the case of *Mattingley v. Martyn*, (Jon. (Sir W.), 257.) was mentioned by Lord *Hardwicke* in support of the part of this judgment, where it was resolved: 'That if any person marry without publication of banns, or licence dispensing with it, they are citable for it in the ecclesiastical court;' and this even in the case of lay persons, so *à fortiori* in the case of the clergy.

"The question then is simply reduced to this, whether the Marriage Act, (4 Geo. 4, c. 76,) by which a clergyman knowingly and wilfully solemnizing marriage without due publication of banns, or licence, is liable to be convicted as a felon, and to be transported for fourteen years, has repealed the canon law, and taken away the ancient jurisdiction of the ecclesiastical court in such matters; and this, undoubtedly, is a very grave and serious question, and deserves great consideration, more especially as there does not, as before observed, appear to have been any actual decision upon it; the only case which is to be found, being that of *Campbell (Clerk) v. Aldrich (Clerk)*, (2 Wils. 79,) which occurred shortly after the Marriage Act (26 Geo. 2); that case was to this effect: 'A clergyman was called upon to answer in the ecclesiastical court, for solemnizing marriage without banns, or licence, and for performing other religious rites without the licence of the ordinary, and a prohibition was served upon the suggestion, that since the Marriage Act, the offence was only cognizable in the temporal courts. The court did not absolutely determine the point, but the prohibition was made absolute as to marrying without banns or licence, the plaintiff having leave to declare in prohibition, in order that the question on the Marriage Act might be more solemnly argued and decided, &c. &c.' I understand, intimating an inclination against the jurisdiction of the ecclesiastical court; not

deciding that point, as nothing further appears to have been done in the case. . . .

"In the case of *Mora v. Mora*, (2 Atk. 157,) in 1741, which was before the Marriage Act, (26 Geo. 2.) Lord Hardwicke said, 'It is very surprising when canons, with respect to marriages, have laid down directions so plainly for the conduct of ecclesiastical officers and clergymen, (which, though they have not the authority of an act of parliament, and consequently are not binding upon laymen, yet certainly are prescriptions to the ecclesiastical courts, and likewise to clergymen,) that there should be such frequent instances of their departing from them, and introducing a practice entirely repugnant to them, *vide* Can. 62, 102, &c. in 1603, all of them extremely plain in their directions to ecclesiastical officers and clergymen; one would think nobody ever read them, neither the officers of the spiritual courts, nor clergymen, or they could not act so diametrically opposite to them.

"No ecclesiastical persons can dispense with a canon, for they are obliged to pursue the directions in them with the utmost exactness, and it is in the power of the crown to do it only.

"What Mr. Charles (the clergyman) swears, I believe is true, that it is very frequent for surrogates to fill up the blanks in licences with the name of any other parish, and this in some measure may justify him, as it is the common method among clergymen; but then this will not excuse with regard to penalties in the canon, which expressly directs, that no clergyman shall presume to marry a person out of the parishes in which the man and woman reside.

"In *Priestley v. Lamb*, (6 Ves. 421,) in which there had been a marriage by banns at the parish church of St. Andrew, Holborn, between a young lady who was at school at Camberwell, and a person who had chambers at Furnival's Inn. The parties left Camberwell on the morning of the marriage, and it did not appear that the lady had actually resided in Holborn; they were afterwards again married at Lambeth, and the clerk of the parish stated in his affidavit, that it is not customary to make any inquiry as to the residence of parties applying to be married. Lord Eldon said: 'By the affidavit of the clerk of the parish of Lambeth, it is disclosed, that they conceive in that parish, that they do their duty to the public and to the individuals, whom they are to marry, never making any inquiry as to the residence of the parties. In the canon law which binds the clergy of this country, from 1328 to 1603, it is laid down, that it is highly criminal to celebrate marriage without a due publication of banns, which must be interpreted a publication of banns by persons having to the best of their power informed themselves, that they publish banns between persons resident in the parish; and very heavy penalties are by that law inflicted upon clergymen celebrating marriage without licence, or a due publication of banns.' He then goes on to mention the penalty by statute, and adds: 'A subsequent clause makes it felony in a clergyman to celebrate marriage without licence or publication

of banns. I do not mean to intimate, that a clergyman believing there was a residence would be guilty within that clause. But upon the principles of the common law, as well as the statute law, laying penalties upon marriage without licence or a due publication of banns, though such a fact should not be within the meaning of that clause, it has the character of an offence within the law of this country. What other sense can be given to the 10th section of the act, which looking at the person named, as this girl is, enacts, that after there has been a marriage *de facto* with publication of banns, no evidence shall be given to disprove the fact of residence in any suit, in which the validity of the marriage comes in question. But for all other purposes it may be the subject of inquiry; and the law of the country would reach it by a criminal information.'

"From what I have seen in this court, alluding to the cases in which Lord Tharlew and Lord Rosalyn ordered the attendance of the clergymen, I know that this subject is carried on with a negligence and carelessness, that draws in gentlemen of good intentions; and I feel, that it may be very difficult in this great town, with all possible diligence, to execute this duty as effectually as the law seems to require, that they should execute it: but where a case has occurred, in which it is clear, that if any one of the parties had done what the law required from all of them, this marriage could not have taken place, I must say, it amounted to a criminality, which I hope will not occur in future.' Observations to the same effect were also made by Lord Eldon, in the cases of *Nicholson v. Squire*, (16 Ves. 260, ante 1234,) and *Warter v. Yorke*, (19 Ibid. 453.) For the several reasons, therefore, which I have stated, I am of opinion, that the original jurisdiction which the ecclesiastical courts possessed and exercised in cases of this description, is not taken away by any of the statutes; that the ordinary is still entitled to proceed to the correction of any of his clergy who may offend against the order of the church, in publishing banns and solemnising matrimony in any other manner than that prescribed by the law; and that if the charges contained in these articles shall be established by evidence, Mr. Wynn is liable to be canonically punished for such offence."

*Judgment of the Bishop of Exeter in
Voysey v. Martin (Clerk).*

In a case in which James Voysey was the complainant, and the Rev. George Martin the respondent, the commissioners under Stat. 3 & 4 Vict. c. 86, having reported that there were *prima facie* grounds for proceedings, and the respondent having submitted under the sixth section of such statute, the Bishop of Exeter, on the 4th of April, 1843, pronounced the following sentence:

"The facts of this case are not disputed. A young man aged eighteen years and six months, dwelling in the parish of Crediton, in his father's house, and a young woman dwelling in the same parish, were married by banns, in the parish church of St. Pancras, in Exeter, by the rector, the Rev. George Martin, who is thus brought under the pe-

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nalty of the 62nd canon, unless it be shewn, that having taken all due pains to inform himself, he married the parties under such deception, as a discrete man, in the fair exercise of his discretion, could not have avoided.

"In looking to the circumstances, under which Mr. Martin was deceived, one preliminary consideration cannot fail to present itself, *vis.*, that the narrow limits and small population of his parish, containing, by the census of 1831, only 379 persons, render due inquiry in his instance, at all times, a matter of more than ordinary facility; and deprive him therefore of any excuse which might have been urged by a minister of one of our larger and more largely peopled parishes. What degree of caution, and what minuteness of inquiry would be deemed necessary in such a case, it is not for me now to define; I know not, indeed, that any precise line can be defined. An honest man, acting *bonâ fide* with the intention of honestly making the inquiry, to secure the object for which the inquiry is enjoined, is not likely to fall short of his duty. Nor was Mr. Martin left by the law without direction as to the time of residence, respecting which he might most properly inquire, or without sufficient means enabling him to make his inquiry effectual. For the Stat. 4 Geo. 4, c. 76, s. 7, provides, that 'no minister shall be obliged to publish banns, unless the persons shall, seven days at least before the time required for the first publication, deliver or cause to be delivered to him a notice in writing of their names, of their house or houses of abode, and of the time during which they have dwelt, inhabited, or lodged in such house or houses.'

"Now the obvious meaning of this provision is, that no parties are to be considered as dwelling in a parish for the purpose of being married by banns, who have not dwelt therein *more than a week* before the first publication, for the notice, which is to be given seven days at least before the publication, ought to state the time during which the parties have previously dwelt within the parish.

"True it is, that a clergyman is not bound to demand such a notice. But if, waving the security, which the statute provides for him, he finds himself, in consequence, to have fallen into a violation of the canon, he has no right to complain, should the penalty of the canon be inflicted.

"In the present case, Mr. Martin was content to act on a notice, containing only the names of the parties, and a certificate under the hand of the keeper of a lodging house, that they were lodgers in his house, without any statement whatever of the time during which they had been lodgers; although this certificate bore date on the very day of the first publication.

"It appears, indeed, that he inquired of the clerk, who delivered the notice and certificate to him, how long the parties had been resident, and was answered 'about six days'; in other words, not long enough to satisfy the manifest intention of the statute.

"Mr. Martin subsequently made inquiry, in person, at the house named in the certificate; a precaution, which, however in itself praiseworthy, was unfortunately rendered

altogether useless by the manner in which he conducted his inquiry, for, the only question asked by him was, whether the parties had lodgings in the house, a question which could hardly elicit any other answer than that which had been already given by the written certificate. Yet, the quality of the house, being a ticket over its door, inscribed, 'lodging for single men,' might well have excited some special caution in any considerate mind.

"It further appears, by the admission of Mr. Martin to the father of the young man, that, before the marriage, he had asked him of his age, and was informed 'eighteen years and six months,' an answer, which also ought to have prevented him, even at the last hour, from completing the indiscretion, of which, however, he had already received more than sufficient warning.

"Such are the main facts. If the case had proceeded to a full hearing, and if anything had appeared to prevent a conviction, the sentence of the canon, heavy as it is, must have been pronounced, '*Suspensio per triennium ipso facto.*'

"Happily, the parties have availed themselves of a provision in the statute 3 & 4 Vict. c. 86, s. 6, and, in the present stage of the inquiry, after the finding by the commission, 'that there is sufficient *prima facie* ground for instituting further proceedings,' they have signified their 'consent, that the bishop shall forthwith, without any further proceedings, pronounce such sentence as he shall think fit.'

"I am thus enabled to exercise a discretion, which otherwise would not have belonged to me, but which—the absence of everything like imputation of sordid motives to the part of Mr. Martin, the great respectability of his general character, his inexperience, and, I fear, I must add, the too prevalent practice of many of his seniors in the ministry, make me rejoice to exercise in his favour.

"Upon the whole, therefore, considering that this is the first case, in which, within our recollection, proceedings have been instituted under this highly penal canon, I trust, that justice will be satisfied by my dealing with it as an occasion for publicly proclaiming the law to my clergy, rather than for enforcing its penalty. Accordingly, I hereby admonish Mr. Martin of his error, and sentence him to pay the sum of ten pounds *nomine expensarum*.

"But I cannot dismiss the case, without expressing my earnest hope that the prosecution will serve as a warning to others whose conduct may hitherto have been too excusable, than his; and that to all, it will be apparent, that the public and private evils, resulting from the encouragement of irregular and clandestine marriages, will give to the country an indisputable right to respect that the leniency of the present statute be not repeated.

"It may be said, as I hear it has been said, that the effect of greater strictness of inquiry on the part of the clergy, will be to induce more frequent resort to the manse house and the registrar's office. Be it so, let those who seek to be caught together with a lie on their mouths, go any whither rather than to the house of God, let them

not claim the benediction of the church on their unhallowed unions, above all, let them not find pandars to their crime in the ministers of Christ and stewards of the mysteries of God."

Extract from a Charge of the Bishop of Gloucester and Bristol, respecting the Marriage of Non-residents.

The Bishop of Gloucester and Bristol, in a charge to the clergy of his lordship's diocese at the visitation in August and September, 1844, commented in the following language upon clandestine marriages. "The other subject upon which I am constrained to renew my exhortations, is that of clandestine marriages. Perhaps I cannot better introduce this matter to your notice, than by repeating the words in which I mentioned it in a charge delivered nine years ago: 'I am under the necessity of mentioning, that several complaints have reached me from various parts of the diocese, of marriages being celebrated by banns in parishes where neither of the parties had been actually resident. This practice is greatly to be deprecated, as opening the door to all the mischiefs of clandestine, and possibly, of incestuous unions. It has the additional bad consequence of casting upon the clergyman in whose parish such marriages take place, the suspicion of negligence, or of some sordid motives, and of occasioning jealousy and misunderstanding among parochial ministers. I believe the real fault to lie in the laxity of the statute itself. But this is a reason for the clergyman to exert greater vigilance and caution against imposition. At any rate, whenever called upon to publish the banns of persons unknown to him as parishioners, he is bound to avail himself of the seven days' notice which the law prescribes, and to ascertain that the residence is not fictitious, but that the parties have been actual and *bonâ fide* inhabitants of the alleged houses for the time professed in the notice.'"

II. CELEBRATING A MARRIAGE BETWEEN TWO PERSONS WITHIN THE PROHIBITED DEGREES OF AFFINITY.

The following judgment was delivered by the Bishop of Gloucester and Bristol against the Rev. G. M. D'Arcy Irvine, for wilfully celebrating an illegal marriage. "In the name of God, Amen. We, James Henry, by Divine permission, Bishop of Gloucester and Bristol, having, pursuant to the provisions of an act of parliament, passed in the 3rd and 4th years of the reign of her present majesty, Queen Victoria, entitled, 'An Act for better enforcing Church Discipline,' appointed certain commissioners for the purpose of making inquiry as to the grounds of a charge brought by the Venerable Thomas Thorpe, B.D., Archdeacon of Bristol, against the Rev. Gorges Marcus D'Arcy Irvine, Clerk, stipendiary curate of the parish of St. Mary Redcliffe, in the city of Bristol, within our diocese and jurisdiction, for having on the 29th day of January, in the present year, 1843, in the church of St. Mary Redcliffe, aforesaid, celebrated an illegal marriage between William Rodgers and Charlotte Durbin, both of the parish of Nailsea, in the

county of Somerset, he the said Gorges Marcus D'Arcy Irvine, knowing at the time, from credible information, that such parties were neither of them resident in the parish of St. Mary Redcliffe, and also that they were within the prohibited degrees of affinity; and we, having received the report of the said commissioners, that after full inquiry made according to the directions of the statute, they are unanimously of opinion that there is sufficient *prima facie* ground for instituting further proceedings against the said Gorges Marcus D'Arcy Irvine; and having ourselves carefully examined and compared the depositions of the witnesses taken before our said commissioners, and having likewise deliberately considered all the matters laid before us by the said Gorges Marcus D'Arcy Irvine in defence of his conduct, and having received the consent in writing of the said Thomas Thorpe and Gorges Marcus D'Arcy Irvine to our pronouncing, without any further proceeding, such sentence in this case as we shall think fit; we do hereby pronounce, declare, and adjudge, that the said Gorges Marcus D'Arcy Irvine is guilty of having knowingly and wilfully committed the offence with which he stands charged; we, therefore, do decree, that the said Rev. Gorges Marcus D'Arcy Irvine be suspended from the discharge and execution of all the functions of his sacred office in the diocese of Gloucester and Bristol, that is to say, from reading the common prayer, preaching the word of God, administering the holy sacraments, and performing all other duties of a clergyman, for the space of one year, such suspension to commence from the time of the publication of these presents. And we do condemn him in the sum of 5*l.* towards defraying the expenses of these proceedings. And we do hereby revoke the two licences severally granted by us to the said Gorges Marcus D'Arcy Irvine, dated respectively the 19th day of July, 1840, and the 3rd day of December, 1840: the one for performing the office of stipendiary curate in the parish church of St. Mary Redcliffe; the other for performing the office of stipendiary chaplain of the bridewell or house of correction of the city and county of Bristol. And we, the said James Henry, Bishop of Gloucester and Bristol, do hereby enjoin the churchwardens of the parish of St. Mary Redcliffe, jointly and severally, to affix, or cause to be affixed, a copy of this our sentence on the principal door of the church of this said parish, within one day after they shall have received these presents, and that they shall deposit a copy of the sentence in the chest belonging to the said parish; and we do hereby direct that these presents, under our hand and episcopal seal, shall be exhibited to the said Gorges Marcus D'Arcy Irvine, a true copy of the same being left with him, and that the original be then deposited, along with all the other proceedings had in this cause, in the registry of our diocesan court of Bristol.

"Given under our hand and episcopal seal this 8th day of June, in the year of our Lord 1843, and in the thirteenth year of our consecration.

"J. H. GLOUCESTER AND BRISTOL."

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III. THE DOCTRINE RELATING TO CONTRACTS OF MARRIAGE, AS CONTRADISTINGUISHED FROM MARRIAGE ITSELF.

The doctrine relating to contracts of marriage, as contradistinguished from marriage itself, has been hitherto involved in great obscurity, but the following judgment of Lord Chief Justice Tindal, in the case of *The Queen v. Millis* (Wr. Err.), and in the case of *The Queen v. Carroll* (Wr. Err.), (Dom. Proc. 7 Julii, 1843,) has seemingly embodied all the ecclesiastical learning of which the question is susceptible.

Lord Chief Justice Tindal: "My lords, the first question which your lordships have proposed to her majesty's judges is the following:—'A. and B. entered into a present contract of marriage *per verba de presenti* in Ireland, in the house and in the presence of a placed and regular minister of the congregation of the protestant dissenters called Presbyterians; A. was a member of the established church of England and Ireland; B. was not a Roman catholic, but either a member of the established church or a protestant dissenter; a religious ceremony of marriage was performed on the occasion by the said minister between the parties according to the usual form of the presbyterian church in Ireland; A. and B., after the said contract and ceremony, cohabited and lived together for two years as man and wife; A. afterwards, and while B. was living, married C. in England;—did A. by the marriage in England commit the crime of bigamy?"

"In order that your lordships should apprehend clearly the grounds of our answer to this question, we think it will be convenient to consider, in the first instance, separately, the general and abstract question, What was the nature and obligatory force of a contract of marriage *per verba de presenti*, by the English common law, previous to the passing of the Marriage Act, 26 George 2? and that we should then consider the same question with reference to the particular conditions and circumstances with which it has been submitted for our opinion.

"My lords, the abstract question we propose first to consider is one involved in much obscurity; and if Serjeant Maynard, the most learned lawyer of his day, was compelled to state, in a debate on the commitment of the Marriage Bill passed by the parliament in the time of the Commonwealth, (see 2d vol. Burton's Diary, 337,) 'that the law lies very loose as to things that are naturally essential to marriages, as to pre-contracts and dissolving marriages;' and if Lord Chief Justice Holt and other eminent judges have since been found to express themselves with considerable uncertainty upon the same subject; it may well become us, the judges of England of the present day, when for nearly a century the whole doctrine relating to contracts of marriage, as contradistinguished from marriage itself, has become nearly a dead letter in our courts, to confess the subject is involved in still deeper obscurity than in the time of our predecessors, and to acknowledge ourselves unable to trace out and

define the boundary between the contract and marriage itself with absolute certainty. Indeed the learning and ingenuity which have been brought to bear on the subject, as well by the judges of her majesty's court of Queen's Bench in Ireland, amongst whom a difference of opinion has prevailed, as by the counsel at your lordships' bar, upon the argument of this case, is a proof that arguments of great weight, and authorities of what is impossible to deny the application to the subject matter of controversy, may be advanced on either side of this disputed proposition.

"In this state of the question, it is only after considerable fluctuation and doubt in the minds of some of my brethren that they have acceded to the opinion which was framed by the majority of the judges upon hearing the argument at your lordships' bar, and that I am now authorised to offer to your lordships as our unanimous opinion, that by the law of England, as it existed at the time of the passing of the Marriage Act, a contract of marriage *per verba de presenti* was a contract indissoluble between the parties themselves, affording to either of the contracting parties, by application to the spiritual court, the power of compelling the solemnisation of an actual marriage; but that such contract never constituted a full and complete marriage in itself, unless made in the presence and with the intervention of a minister in holy orders.

"It will appear, no doubt, upon referring to the different authorities, that at various periods of our history there have been decisions as to the nature and description of the religious solemnities necessary for the completion of a perfect marriage which cannot be reconciled together; but there will be found no authority to contravene the general position, that at all times, by the common law of England, it was essential to the constitution of a full and complete marriage, that there must be some religious solemnity; that both modes of obligation should exist together, the civil and the religious; that, besides the civil contract, that is, the contract *per verba de presenti*, which has always remained the same, there has at all times been also a religious ceremony, which has not always remained the same, but has varied from time to time, according to the variation of the laws of the church; with respect to which ceremony it is to be observed, that whatever at any time has been held by the law of the church to be a sufficient religious ceremony of marriage, the same has at all times satisfied the common law of England in that respect. If, for example, in early times, as appears to have been the case, from the Saxon laws cited in the course of the argument, the presence of a man present was required by the church; and if, at another time, the celebration in a church, and with previous publication of banns, has been declared necessary by the ecclesiastical law; and, lastly, if, since the time of the Reformation, the church held a deacon competent to officiate at a regular marriage ceremony; with each of these modes of solemnisation the courts of common law have given them-

selves no concern, but have altogether acquiesced therein, leaving such matters to the sole jurisdiction of the spiritual court. So that, where the church has held, as it often has done, down to the time of passing the Marriage Act, that a marriage celebrated by a minister in holy orders, but not in a church, or by such minister in a church, but without publication of banns and without licence, to be irregular, and to render the parties liable to ecclesiastical censures, but sufficient, nevertheless, to constitute the religious part of the obligation, and that the marriage was valid, notwithstanding such irregularity, the law of the land has followed the spiritual court in that respect, and held such marriage to be valid. But it will not be found, (which is the main consideration to be attended to,) in any period of our history, either that the church of England has held the religious celebration sufficient to constitute a valid marriage, unless it was performed in the presence of an ordained minister, nor that the common law has held a marriage complete without such celebration.

"My lords, in endeavouring to show the grounds upon which we hold that such is the common law of this realm, I shall first consider the decisions which have taken place in our courts of common law, as to which, it is scarcely necessary to say, that decisions of the courts of common law are at once the best expositors and the surest evidence of the common law itself. I shall next advert to certain statutes passed by the legislature at various periods, tending to throw light upon the obscure subject now under discussion, and which appear to confirm the opinion which we have formed; and, lastly, shall call attention to the doctrine of the king's ecclesiastical law, as established and administered in this country, by which alone, and not by the general canon law of Europe, still less by the civil, are the marriages of the queen's subjects regulated and governed.

"And with respect to the decisions of the courts of law and the other common law authorities, if no case can be referred to directly and distinctly laying it down as law, in so many words, that a contract *per verba de presenti* alone, and without the intervention of a minister in orders, is not sufficient to create a valid and complete marriage, yet such conclusion is necessary from many of the decided cases, and is inconsistent with none, nor in fact could the difficulty to be determined in any of the cases ever have existed, except upon the supposition that some religious ceremony was necessary to the contract, thus leading to the conclusion above laid down, that by the law of England the contract *per verba de presenti* alone, did not constitute a full and complete marriage.

"And in referring to these authorities I do not propose to take up each in succession which has been brought in review before your lordships; it will be sufficient to support the conclusion above stated to call attention to those which are the most important, and more especially to those of earlier date, as deserving the greater weight.

"The earliest case referred to in the argument is the note from Lord Hale's manuscripts, to be found in Coke, Littleton, 33 a., n. 10; that case is, that A. contracts *per verba de presenti* with B., and has issue by her, and afterwards marries C. *in facie ecclesiæ*: B. recovers A. for her husband by sentence of the ordinary, and for not performing the sentence he is excommunicated, and afterwards enfeoffs D., and then marries B. *in facie ecclesiæ*, and dies. B. brings dower against D., and recovers, because the feoffment was *per fraudem mediate* between the sentence and the solemn marriage, 'sed reversatur coram rege et concilio quia predictus A. non fuit seistus,' during the espousals between him and B. Note—'Neither the contract nor the sentence was a marriage.'

"My lords, the *curia regis et concilii*, before which the reversal took place, appears, according to the researches of antiquarians, to have been in the time of Edward the First a tribunal of appeal in cases of difficulty, and to have consisted at that time of the chancellor, the treasurer, and barons of the exchequer, the judges of either bench, and other functionaries, which court of the *concilium regis* was perfectly distinct from the *commune concilium regni*, the probable original of the English parliament.

"Lord Hale speaks largely of this court in his treatise on the jurisdiction of the House of Lords, and various references to and extracts from its proceedings are to be found in the learned Introduction to the *Rotuli Litterarum Clausarum*, lately published by the record commissioners. The judgment, therefore, of such a court of error, is of the highest weight. Lord Hale's observation on the case is, 'that the sentence was not a marriage;' in making which observation he is probably alluding to a question which, about the time he was making his collection of notes, was a matter of contest in Westminster Hall; viz., whether the man and woman were not complete husband and wife by the sentence of the spiritual court, without any other solemnity; as it appears in *Payne's case*, (1 Siderfin, 13, in the year 1660,) that Mr. Attorney-General Noy had affirmed such to be the law, whilst Twisden, Justice, denied it, saying that the marriage must be solemnized before they were complete husband and wife.

"The result, however, of the case above referred to, is, that in the judgment of the court of error there was no complete marriage until after the actual solemnization of the marriage under the sentence of the court; and upon the ground that the husband enfeoffed D. before such solemnization, there was no seisin in him during the marriage, and therefore no dower. But the object at present is, to learn from the case whether, in the opinion of the court, the contract *per verba de presenti* did alone constitute a marriage; and both from the judgment of the court below and of the court of error the conclusion appears inevitable, that each court thought such contract alone did not constitute marriage; for the case sets out with stating, that 'A. contracts with B. *per verba*

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de presenti, and if this contract had alone constituted marriage then was there seisin in the husband during the marriage and before the feoffment to D., and the reason given by each of the courts for their respective judgments would have failed. Observe, also, the difference of language employed in the statement of the facts of the case; the contract *per verba de presenti*; the subsequent statement that A. married B.; the contract; and the subsequent reason by the court of error, that there was no seisin during the espousals. Can the expressions of contract on the one hand, and of marriage and espousals on the other, possibly be considered as synonymous, and referring to the same obligation? And this agrees expressly with Hale's inference from the case, 'that the contract is not a marriage.'

'*Forscroft's case*, (1 Rolle's Abridgment, 359,) which appears to have been in the same year, is next in order. 'R., being infirm, and in his bed, was married to A., by the Bishop of London, privately, in no church or chapel, nor with the celebration of any mass, the said A. being then pregnant by the said R., and afterwards, within twelve weeks after the marriage, the said A. is delivered of a son, and adjudged a bastard, and so the land escheated to the lord by the death of R. without heir.' Now it is to be observed that this case must have been decided upon the usual plea of bastardy in a real action; the writ must have been sent in the usual form by the court of law to the ordinary; the certificate also returned by him in the usual form. Bracton, in book 5, chapter 19, gives various instances of the proceedings in cases of bastardy with the greatest possible minuteness, and, amongst others, that in s. 11 probably would be the form applicable to this particular case; viz., 'an pater suus desponsavit matrem suam;' and it could not have been until after the certificate of the ordinary, affirming or denying the marriage, that the judgment of the court could be given. Let it be conceded that the ordinary certified in this instance the marriage to be void, which, according to the ecclesiastical law, as then in force in England, he ought to have found good, but irregular only, and exposing the parties to ecclesiastical censures, and let it be further conceded that the court of common law acted upon such finding, and gave judgment against the demandant, as indeed it could not do otherwise, still the weight of this authority on the question before us remains the same. Was a contract *per verba de presenti*, without anything more, held at that time to be a complete marriage? is the question. If it was, the ordinary must have returned that R. had married A.; for no doubt has been or can be raised, that when the Bishop of London married the two parties, as stated in the case, he married them *per verba de presenti*. If, therefore, the contract *per verba de presenti* had by the law of England then made a marriage, the parties were actually married; but if the ordinary finds the marriage bad, even where the ceremony was performed by a bishop, because celebrated at an improper place, the

inference appears irresistible, that some religious ceremony was necessary, and that words of present contract alone did not at that time, by the law of England, constitute a marriage.

'*Del Heila's case*, 34 Edward 1, is precisely the same in its leading facts, and in the conclusion at which the court of common law arrives, that a contract *per verba de presenti*, even before the parish point, was not sufficient; but the concluding words of the record are too strong to be passed over in silence:—'Quantum fuit et aliquo spualis in facie ecclesie inter eos celebrata fuerunt postquam predictus Johannes convuluit de predicta infirmitate. Dicitur quod non. Et quia convictum est per omnes istam quod predictus Johannes Del Heila nunquam desponsavit predictam Katharinam in facie ecclesie per quod sequitur quod predictus W. filius Johannis nihil juris clares potest in predictis tenementis sed in misericordia pro falso clamore.'

'The conclusion to be drawn from the comparison of two cases to be found in 1st Rolle's Abridgment, 360, leads to the same inference, that the contract *per verba de presenti* was not a complete marriage in the time of Henry 6. The first is at F., plenum 1. 'A man who hath a wife takes another wife, and hath issue by her; this issue is bastard by both laws, (that is, the common law and the ecclesiastical law,) for the second marriage is void.' On the same page he lays it down, in G., placitum 1, a *divorce causa præcontractus* bastardizes the issue. the same case, in the Year Book, 18th Hen. 6, 34, being cited for both positions. But if the contract alone makes the marriage—if it is itself *ipsum matrimonium*,—where is the necessity for a divorce in the second case to bastardize the issue, which it is admitted is not necessary in the former case. They cannot be reconciled together, except upon the supposition that 'having a wife' and 'taking a wife,' that is, 'actual marriage,' was at that time held to be one thing, and 'a contract of marriage' another, falling short of the marriage itself. The authority of Perkins, section 306, (who from his edition of the Year Books may be placed conveniently amongst the decisions of the courts of law,) is to the same effect. 'If a man seized of land in fee make a contract of matrimony with I. S., and he die before the marriage is solemnized between them, she shall not have dower, for she never was his wife.' Fectum. indeed, goes on to say, in the same edition, 'and it hath been holden in the time of King Henry III. that if a woman had been married in a chamber that she should not have dower by the common law; but the law is contrary at this day.' But, whatever is his opinion of the alteration of the law as to the case of the private marriage, (by which he probably meant the ecclesiastical law as to the solemnities requisite, which in fact had been altered,) still it has no relation to his first position, which is full, complete, and express to the very point now under consideration. His observation amounts to no more than this, that in Henry the Third's time a marriage was held void which in his

day (the reign of Queen Elizabeth) would be held irregular only; and, further, the observation is strong, that Perkins must have meant a different thing by the two phrases, 'contract of matrimony' and 'marrying in the chamber;' and what other difference can be suggested, except that the one was a contract by words only, the other a contract accompanied by a religious ceremony?

"Again the doctrine laid down by Perkins, title Feoffments, placitum 194, (for which he cites the Year Book, 38 Edward 3, 12,) shows the diversity at that time of day between a contract and a marriage. 'If a contract of marriage be between a man and a woman, yet one of them may enfeoff the other, for yet they are not one person in law, inasmuch as if the woman dieth before the marriage solemnized betwixt them, the man unto whom she was contracted shall not have the goods of the wife as her husband, but the wife thereof may make a will without the agreement of him unto whom she was contracted, &c.,' and at the close of the next placitum he says, 'but after the marriage celebrated between a man and a woman the man cannot enfeoff his wife, for then they are as one person in law.' Bracton, in book 2, chapter 9, entitled, 'Si vir uxori donationem facere possit constante matrimonio,' may be thought to leave the matter in some doubt whether such gifts would be good even after the contract, as he says, 'Matrimonium autem accipi possit sive sit publice contractum vel fides data quod separari non possunt; et reversa donationes inter virum et uxorem constante matrimonio valere non debent.' Now, even if it is considered that by the *fides data* Bracton understood a contract *per verba de presenti*, without any solemnity, it is enough to say he could not be writing as a common lawyer (in fact he was a civilian) when he is found to differ from the authority of the Year Books.

"The case of *Bunting v. Lepingwell*, (Moore, 27 and 28 Elizabeth,) is of great weight, and of immediate bearing upon the point in question. Taking the facts from the two reporters, (Moore, 169, and 4 Coke, 29 a.) it appears that Bunting and Agnes Adishall contracted matrimony between them *per verba de presenti tempore*, and afterwards Agnes took to husband Thomas Twede, and cohabited with him, and afterwards Bunting sued Agnes in the court of Audience, and proved the contract, and the sentence was pronounced, 'Quod prædicta Agnes subiret matrimonium cum præfato Bunting, et in super pronuntiatur decretum et declaratum fuit dictum matrimonium fore nullum, &c.,' which marriage between Bunting and Agnes took place according to the sentence, and they had issue one Charles Bunting; and whether Charles Bunting was son and heir was the question for the jury in an action of trespass brought by him, and the court held him legitimate, and no bastard. The argument before the court turned principally on the invalidity of the sentence of the spiritual court, by reason of Twede, the husband *de facto*, not being made a party to the proceedings by which his marriage was declared null; the court, however,

holding themselves bound to give credit to the spiritual court that their proceedings were regular. But the bearing of the case upon the point now under discussion is, whether it establishes a distinction between the contract to marry and 'ipsam matrimonium,' and such seems the necessary inference. This was a trial before the judges of the common law, who called for the assistance of civil lawyers to argue the case before them, but who must be supposed to know themselves what was the common law; and if the contract *per verba de presenti* between Bunting and Agnes had been what the common law had then recognised as an actual marriage, the second marriage would have been held void without any controversy, no doubt would have existed, and no civilian would have been consulted, any more than if it had been a marriage celebrated *in facie ecclesiæ*. It is also not unworthy of remark, that the sentence of the spiritual court, 'Quod prædicta Agnes subiret matrimonium cum præfato Bunting,' proves that not even by the ecclesiastical law, as administered in England, was such contract held to constitute a complete marriage without the intervention of the religious ceremony.

"The case of *Wild v. Chamberlayne*, 2d Shower, page 300, is so far of importance as it affords direct proof that in the opinion of Chief Justice Pemberton on the trial of an issue, 'marriage or no marriage,' words of contract *de presenti tempore*, repeated after a person in orders, was a good marriage, for it was only by importunity of counsel a case was to be made thereof. If such a contract, alone and unaccompanied by a religious ceremony, had been a marriage, surely the case would have been decided on a shorter ground, and the objections, that the parson was an ejected minister, and that the ring was not used at the ceremony, according to the ritual of the church of England, would never have been urged.

"In the case of *Haydon v. Gould*, 1 Sal-keld, 119, Haydon and his wife were Sabbatarians, and married by one of their ministers in a Sabbatarian congregation, using the form of the Common Prayer, except the ring; but the minister was a mere layman, and not in orders; and after administration granted to Haydon, and subsequently repealed, the court of Delegates affirmed the sentence of repeal. The reason given is, 'That Haydon, demanding a right due to him as husband by the ecclesiastical law, must prove himself a husband according to that law to entitle himself in this case.' In this case, the book adds, it is urged that this marriage was not a mere nullity, because by the law of nature it was sufficient; and though the positive law ordains it shall be by a priest, yet that makes such a marriage as this irregular only, but not void; but the court ruled *ut supra*, the reporter adding, that the constant form of pleading marriage is 'per presbyterum sacris ordinibus constitutum.' Perhaps the more correct expression might have been, 'per ministrum sacris ordinibus constitutum;' for, undoubtedly, after the Reformation, a marriage might be as well solemnized by a deacon as a priest.

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But what is the whole result of the case but this, that by the English ecclesiastical law a contract of marriage *per verba de presenti* was not alone sufficient (for such contract there was in fact); but that by the same law, to make the marriage complete, there must be the presence and intervention of the priest? And when it is asked, as it was at your lordships' bar, what had the priest to do, or what had he to say? the answer must be, that he married them, and in doing so he used such form of words as were customary at the time of his performing the ceremony. The words of present contract found in the ritual of the church of England as established by the authority of parliament in the 2d & 3d Edward 6th, cap. 1, was not then for the first time made, but in part altered and in part retained from the former rituals which had been handed down from the greatest antiquity, just as it was declared by the council of Trent, (session 24, c. 1.) when it prescribes certain words to be used by the parish priest when performing the office of matrimony; *vis.*, 'Ego vos in matrimonium conjungo, in nomine Patris et Filii et Spiritus Sancti.' The decree also adds, 'vel aliis utatur verbis, juxta receptam uniuscujusque provincie ritum.'

"The only remaining decision of a court of common law to which it may be necessary to refer, is the case of *The Queen v. Fielding*, upon an indictment for bigamy, 14 State Trials, 1327. The evidence given of the first marriage was, that the parties made a contract *per verba de presenti* in English, in the presence of and following the words of a priest in orders, though he was a priest in the orders of the church of Rome; and Mr. Justice Powell, in summing up the case to the jury, more than once adverts to the fact that the marriage was *by a priest*. 'If you believe Mrs. Villars,' he says, 'there was a marriage by a priest.' There is no reason to infer from this direction to the jury, that if the first marriage in this case had been merely a contract *per verba de presenti*, in the presence of a layman, the offence of bigamy must have been committed, but the inference to be drawn from the summing up of the judge is directly the reverse.

"My lords, this being the state of the decided cases, from the earliest time to the time of Queen Anne, the principal direct authority adduced on the part of the crown is the dictum of Lord Holt, in *Jesson v. Collins*, 2 Salkeld, 437, 'that a contract *per verba de presenti* was a marriage, and this is not releasable,' and the decisions which have subsequently taken place. That case came before the court upon a motion for a prohibition, upon a suggestion that the contract was in fact *per verba de futuro*, for which the party had remedy at common law, and the case was disposed of by the court, and the prohibition refused, upon the ground that the spiritual courts have jurisdiction of all matrimonial causes whatsoever, and that there was no reason to prohibit them, because this may be a future contract for breach of which an action at law will lie. This appears distinctly from the reports of the same case in 6 Modern, 155, and Holt's

Reports, 457. This being the state of the case, Holt, Chief Justice, in speaking to a before the court, used the expression above referred to. It is obvious, in the first place, it was unnecessary to the case before the court; for, whether present words or future words, the prohibition must equally be refused. The observation, therefore, is not entitled to the same weight and authority as if it had been the very point of the case before the court. If by the terms '*quæ matrimonium*,' Lord Holt intended to lay down the position that it was so held by the common law of the land, notwithstanding its unbounded respect which all who have succeeded him have ever felt and still feel to his learning and ability, we cannot assent to his opinion. If, however, the observation was intended with reference to the civil or the canon law of Europe, then it is perfectly correct; and that such was the intention of Lord Holt we think abundantly clear from *Wigmore's case*, which follows the former in the same page of Salkeld, and which was decided three years later than the first. In that case the husband was an anabaptist, and had a licence from the bishop to marry, but married this woman according to the forms of their own religion. *Et per Holt, C. J.*, 'By the canon law a contract *per verba de presenti* is a marriage.'

"In Holt's Reports the expression is precisely the same, 'by the canon law;' and Lord Chief Justice Holt is there made further to say, 'In the case of a dissenter married to a woman by a minister of the congregation who was not in orders, it is said that this marriage was not a nullity, because by the law of nature the contract is binding and sufficient; for though the positive law of man ordains that marriages shall be made by a priest, that law only makes this marriage irregular, and not expressly void; but marriages ought to be solemnized according to the rites of the church of England to entitle the privileges attending legal marriage, as dower, thirds, &c.' It cannot be supposed that Lord Holt would limit the observation to the canon law, as undoubtedly he did in *Wigmore's case*, if it had been unsuitable in the larger and unqualified extent supposed to have been stated by him in the case of *Jesson v. Collins*; and if the latter statement agrees with all the authorities, and the former is not, as we conceive, supported by or consistent with them, we are bound to mix either that there is some error in the reporter, or that he really meant the proposition to be limited to its more restrained sense.

"My lords, this dictum of Lord Chief Justice Holt is of the more importance, because it appears to have been the origin of all the subsequent opinions expressed by different judges to the same effect. When Sir William Scott lays it down as the law recognised by the temporal courts of the kingdom, he cites this dictum of Lord Chief Justice Holt, which he observes (so he is justified in doing by the report in 6 Modern) was agreed to by the whole bench. When Gibbs, Chief Justice, makes the same observation, he expressly relies on the authority

of Sir William Scott, (*Lantour v. Teesdale*, 8 Taunton, 832.) When Lord Kenyon makes a similar observation, probably on the same authority, observe how carefully he guards himself. 'I think,' he says, 'though I do not speak meaning to be bound, that even an agreement between the parties *per verba de presenti* is *ipsum matrimonium*.' (*Reed v. Passer and others*, Peake's Nisi Prius, N. P., 303.) When Lord Ellenborough lays down the same doctrine in *Res v. The Inhabitants of Brompton*, 10 East, 289,—he is giving judgment in a case of a marriage *per verba de presenti* celebrated by a priest, (though whether Roman catholic or protestant, he says does not appear,)—and when he refers to the authority of Holt, chief justice, it is clear he considered Lord Holt to have been speaking of a marriage through the intervention of a priest. It is therefore of very great importance to estimate justly the weight of Lord Holt's observation when contrasted with the large field of authorities which has been opened, upon which authorities I have been longer occupied, because the question whereon we are called to answer depends upon the common law of England, of which the ecclesiastical law forms a part.

"It will be improper, however, to close the discussion of this part of the case without adverting to an argument urged at your lordships' bar, upon which some reliance appears to have been placed, namely, the state of the marriages of quakers, (all doubt as to which marriages is now set at rest by the statute passed in 1835,) and of jews.

"The argument in substance was this, that, as the persons professing the opinions of those respective persuasions celebrated their marriages according to their own peculiar rites, which necessarily excluded the intervention of a person in holy orders, according to the sense which those words are asserted to convey, and as their marriages have been held legal with respect (as it is argued) to all the consequences attending marriage, such as legitimacy, administration, and other civil rights, so the validity of such marriages can only be grounded upon the assumption that a contract of marriage *per verba de presenti* did by law constitute the marriage itself.

"Since the passing of the Marriage Act it has generally been supposed, that the exception contained therein as to the marriages of quakers and jews amounted to a tacit acknowledgment by the legislature that a marriage solemnized with the religious ceremonies which they were respectively known to adopt ought to be considered sufficient; but before the passing of that act, when the question was left perfectly open, we find no case in which it has been held that a marriage between quakers was a legal marriage, on the ground that it was a marriage by a contract *per verba de presenti*; but, on the contrary, the inference is strong, that they were never considered legal. The legislature, in the statute 6th & 7th William the Third, chapter 6th, section 63, enacts, that all quakers and jews, and any other persons who should cohabit and live together as man

and wife, should pay the duty thereby imposed on marriages, and that upon every pretended marriage made by them they should give five days' notice; with an express provision in the 64th section, that nothing in the act contained should be construed 'to make good or effectual in law any such marriage or pretended marriage, but that they should be of the same force and virtue, and no other, as if the act had not been made.' And the case before Lord Hale, to which so much weight was attributed, as conveying his opinion that the marriage was good, appears rather to show his opinion to have been the reverse. He declared, 'that he was not willing, on his own opinion, to make their children bastards, and gave directions to the jury to find it special;' a declaration which plainly intimates that the inclination of his own mind was that the marriage was not good. We cannot, therefore, think that the case of the quakers, although certainly one which it is difficult altogether to dispose of, amounts to such a difficulty as to induce us to alter the opinion founded on the authority of the decided cases.

"And as to the case of the jews, it is well known that in early times they stood in a very peculiar and excepted condition. For many centuries they were treated, not as natural-born subjects, but as foreigners, and scarcely recognised as participating in the civil rights of other subjects of the crown. The ceremony of marriage by their own peculiar forms might therefore be regarded as constituting a legal marriage, without affording any argument as to the nature of a contract of marriage *per verba de presenti* between other subjects. But even in the case of a jewish marriage, it was more than a mere contract; it was a religious ceremony of marriage; and the case of *Lindo v. Bellisario* is so far from being an authority that a mere contract was a good marriage, that the marriage was held void precisely because part of the religious ceremony held necessary by the jewish law was found to have been omitted.

"I proceed now to refer to certain statutes passed by the legislature at different times, from various enactments and expressions in which statutes the inference appears to follow, that a mere contract *per verba de presenti* could not at those several times have been generally held to constitute complete marriage.

"The statute 32d Henry the Eighth, chapter 38, for marriages to stand notwithstanding pre-contracts, in its preamble gives no support to the doctrine, that by the law of England the contract *per verba de presenti* was an actual marriage. It recites the mischief, that after divers marriages have been solemnized and consummated, and fruit of children, 'nevertheless, by an unjust law of the Bishop of Rome, which is that upon pretence of a former contract made and not consummate, the same were divorced and separate,' and then proceeds to enact, that every marriage, being contracted and solemnized in face of the church, and consummated, or with fruit of children, shall be deemed lawful, good, and indissoluble, not-

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withstanding any *pre-contract* not consummate which either party shall have before made.

"The statute 2d and 3d Edward the Sixth, chapter 23, enacts, that, as concerning pre-contracts, 'the former statute should be repealed, and be reduced to the state and order of the king's ecclesiastical laws of this realm,' (an expression of no slight importance, when considered with reference to the force within this kingdom of the general canon law of Europe,) 'which before the making of the said statute were used in this realm, so that, when any cause or contract of marriage is pretended to have been made, it shall be lawful to the king's ecclesiastical judge of that place to hear and examine the said cause, and (having the said contract sufficiently and lawfully proved before him,) to give sentence for matrimony, commanding solemnization, cohabitation,' &c. The language of the legislature in this act does surely imply a marked and acknowledged distinction between contract and matrimony. To refer, next, to the statutes passed relating to the marriages of priests, the 31st Henry the Eighth, chapter 14, punishes with death any priest who shall carnally keep or use any woman 'to whom he is or shall be married, or with whom he hath contracted matrimony,' thus assuming the contract to be one thing, actual matrimony to be another, although visiting both offences with the same measure of punishment.

"The statute 12th Charles the Second, chapter 33, entitled, 'An Act for Confirmation of Marriages,' enacts, 'that all marriages had and solemnized after a certain day before any justice of the peace, shall be adjudged and taken to be of the same and of no other force and effect as if such marriage had been had and solemnized according to the rites and ceremonies established or used in the church or kingdom of England. It is true that act is declared to be passed 'for the preventing and avoiding all doubts and questions touching the same;' but as the act or ordinance referred to contained a form of contract *per verba de presenti* of the most accurate and precise description, and before witnesses, it affords ground to infer that a contract of that nature had not, in the general opinion, the force of an actual marriage; and observe how very strong the inference is from the proviso, 'that issues on the point of bastardy or lawfulness of marriage, depending on these marriages, should be tried by a jury.' Why not let them go to the ecclesiastical court, as before, if by the law of that court the contract *per verba de presenti* was held an actual marriage without any religious ceremony?

"The statute 7th and 8th William the Third, chapter 35, passed to enforce the laws which restrain marriages without licence or banns, had for its object the levying a revenue by the stamps imposed by a former act upon licences of marriages. For this purpose it lays a penalty of 10*l.* by the 4th section, 'on every man so married without licence or publication of banns as aforesaid;' that is, upon reference to the preceding clause, 'married by any parson, vicar,

curate, or other minister as their substitute.' If the legislature had thought a contract *per verba de presenti* before any person not being in holy orders was a valid marriage, it surely would not have left the remedy so defective, but would have enacted that every man married without a licence shall be made liable to the penalty.

"The statute 10 Anne, chap. 19, is an act for raising money for the use of the kingdom; and in section 176 provision is made to prevent the great loss of duties on marriage licences which had been sustained by the frequency of clandestine marriages. The provision is, that every person, vicar, or curate, or other person in holy orders, who shall after a certain day marry any person in any church or chapel, or in any other place whatsoever, without publication of banns, or without licence first had from the proper ordinary, for such marriage, shall forfeit 10*l.* Would this penalty have been limited to the case of marriage by a person in holy orders, if it had been conceived by the framers of the act that a contract *per verba de presenti* alone, without the aid of the priest, had constituted a complete marriage? The inference arising from these acts is not certainly so very strong, but whatever inference can be drawn has a tendency to support the opinion at which we have arrived.

"The various acts of parliament which have been passed from time to time, and which have been referred to in the course of the argument, imposing penalties on the solemnization of marriages by Roman catholic priests in Ireland between protestants, or between a protestant and a Roman catholic, and nullifying such marriages, are founded in good sense, and with a view to attain a definite object, upon the supposition that the presence of a priest is necessary to make the marriage good, and upon that supposition only; but they are a mere dead letter, if the contract *per verba de presenti* without the priest makes the marriage. And if this is no proof, as perhaps it is not, that such was necessarily the law, it is at least a proof that it was the prevailing general opinion, both amongst the people and the government, that by law the presence of the priest was essential to the contract.

"But upon referring, in the last place, to the statute 26 Geo. 2, cap. 33, the act for the better preventing clandestine marriages, it will be found the provisions thereof throw a stronger light upon the subject. If a contract *per verba de presenti* had been considered by the legislature as 'ipsum matrimonium,' one would have expected that all such contracts made after the act came into force, if not made illegal, would at least be declared null and void. There could have been no more effectual mode of suppressing clandestine marriages, but there is no such enactment. The only clause that affects these contracts is the 13th, which enacts only, 'that no suit or proceeding shall be had in any ecclesiastical court in order to compel a celebration of any marriage *in facie ecclesiæ*, by reason of any contract of matrimony whatsoever, whether *per verba de presenti* or *per verba de futuro*, which shall be re-

tered into after the 25th March, 1754.' These contracts *per verba de presenti* are still, therefore, lawful, though they cannot be enforced in an ecclesiastical court. If these contracts did not before, and at the time of passing the act, constitute a valid marriage, but were only the necessary means, the basis, for enforcing the solemnization, there is then no injury in leaving them as they were; but if they ever constituted a valid marriage of themselves, not being made null by the act, so do they still; and then may some great and almost inextricable difficulties occur from the absence of such provision.

"Before the passing of the act, and indeed since, put the case that A. made a contract of marriage *per verba de presenti* with B., and then, in the lifetime of B. marries C. *in facie ecclesiæ*, and that he has children at the same time both by C. and B.; B. dies; are the issues of both legitimate? It is clear from the decisions, that the issue of A. and C. are legitimate; and if the argument on the part of the crown, that the contract with B. makes the marriage, be well founded, the issue of B. is legitimate also. Suppose two sons, born at the same time, one from each mother, a possible event, which is the eldest son and heir? This and many more cases of difficult solution may be put, if the contract *per verba de presenti* was by the English law held to be actual marriage; and from these considerations arises the necessary inference, that it was not; and thus do arguments from the enactments of the legislature combine and agree with the authority of the decided cases, to prove that such never was the law of England.

"My lords, I proceed, in the last place, to endeavour to show, that the law by which the spiritual courts of this kingdom have from the earliest time been governed and regulated is not the general canon law of Europe, imported as a body of law into this kingdom, and governing those courts *proprio vigore*, but, instead thereof, an ecclesiastical law, of which the general canon law is no doubt the basis, but which has been modified and altered from time to time by the ecclesiastical constitutions of our archbishops and bishops, and by the legislature of the realm, and which has been known from early times by the distinguishing title of the king's ecclesiastical law. And if it shall appear, upon reference to this law, that there is no incontrovertible authority to be found therein that marriage was held to be complete before actual celebration by a priest, the absence of such direct authority in the affirmative is sufficient to justify us in drawing the conclusion already formed, that the contract alone is not by the law of England the actual marriage. The result, however, of a somewhat hasty consideration of the authorities upon this question, (for the due research into which we were anxious to have obtained a longer time,) appears to us to be, that no such rule obtained in the spiritual courts in this kingdom.

"It would scarcely have been necessary to have entered upon this part of the discussion, had it not been for the observations made by

Sir William Scott, in the case of *Dalrymple v. Dalrymple*. That very learned judge, after laying down in his deservedly celebrated judgment in that case, that marriage is a contract of natural law and of civil law also, proceeds to observe, 'that when the natural and civil contract was formed, the law of the church, the canon law, considered it had the full essence of matrimony, without the intervention of the priest,' which canon law is then stated by that eminent judge to be 'the known basis of the matrimonial law of Europe.' The observation upon which so much reliance has been placed by the counsel for the crown then follows: 'that the same doctrine is recognised by the temporal courts as the existing rule of the matrimonial law of this country,' although certainly the observation is in some degree qualified by the expression, 'that the common law had scruples in applying the civil rights of dower and community of goods and legitimacy in the cases of these looser species of marriage.'

"My lords, as we have already stated in the opinion we have given, that we do not conceive it to be part of the law of the temporal courts, that 'when the natural and civil contract was formed it had the full essence of matrimony without the intervention of the priest,' it is only proper to state, in the first place, that the entertaining, as we do, a different view of this subject from that eminent judge, does not in any manner whatever break in upon the authority of the decision in the case of *Dalrymple v. Dalrymple*.

"The doctrine of the temporal courts in England had no bearing at all upon a question which was to be decided solely by the law of Scotland, which country, it is well known, differs materially from ours in many of its legal institutions, and in none more pointedly than those which relate to marriage and legitimacy. Again, it was of no importance in that case whether the canon law of Europe was introduced into England as part of the law of the land; the only question necessary for the decision of the case then before the court being, whether such canon law was introduced or not into the law of Scotland. The opinion, therefore, of that eminent person, so far as regards England, was uncalled for and extra-judicial, and upon that ground the question before us must be considered as unfettered by the weight of such great authority, and open to the most free discussion.

"But that the canon law of Europe does not, and never did, as a body of laws, form part of the law of England, has been long settled and established law. Lord Hale defines the extent to which it is limited very accurately. 'The rule,' he says, 'by which they proceed is the canon law, but not in its full latitude, and only so far as it stands uncorrected either by contrary acts of parliament or the common law and custom of England, for there are divers canons made in ancient times and decretals of the popes that never were admitted here in England.' Hale's History of Common Law, cap. 2.

"Indeed, the authorities are so numerous,

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and at the same time so express, that it is not by the Roman canon law that our judges in the spiritual courts decide questions within their jurisdiction, but by the king's ecclesiastical law, that it is sufficient to refer to two as an example of the rest. In *Caudrey's case*, 5 Coke 1, which is entitled 'of the king's ecclesiastical law,' in reporting the third resolution of the judges, Lord Coke says, 'As in temporal causes the king, by the mouth of the judges in his courts of justice, doth judge and determine the same by the temporal laws of England, so in cases ecclesiastical and spiritual, as namely,' (amongst others enumerated,) 'rights of matrimony, the same are to be determined and decided by ecclesiastical judges according to the king's ecclesiastical law of this realm;' and a little further he adds, 'So, albeit the kings of England derived their ecclesiastical laws from others, yet so many as were proved, approved, and allowed here, by and with a general consent, are aptly and rightly called "the king's ecclesiastical laws of England."'

In the next place, Sir John Davies, in his Reports, page 69, '*Le Case de Commendams*,' shows how the canon law was first introduced into England, and fixes the time of such introduction about the year 1290, and lays it down thus: 'Those canons which were received, allowed, and used in England, were made by such allowance and usage part of the king's ecclesiastical laws of England, whereby the interpretation, dispensation, or execution of those canons, having become laws of England, belong solely to the king of England and his magistrates within his dominions;' and in page 72 he adds, 'yet all the ecclesiastical laws of England were not derived and adopted from the court of Rome; for long before the canon law was authorized and published,' (which was after the Norman Conquest, as before shown,) 'the ancient kings of England, viz. Edgar, Athelstane, Alfred, Edward the Confessor, and others, did, with the advice of their clergy within the realm, make divers ordinances for the government of the church of England, and after the Conquest divers provincial synods were held, and many constitutions were made in both the kingdoms of England and Ireland, all which are part of our ecclesiastical laws of this day.'

"We therefore can see no possible ground of objection to the inquiry, whether before the introduction of the canon law any law existed upon the subject of marriage differing from that of the canon law, and not afterwards superseded thereby; and when we find, in the collection of ancient laws and institutes of England published by the commissioners of public records, amongst the laws of Edmund, one which directs that at the nuptials there shall be a mass priest by law, who shall 'with God's blessing bind the union to all posterity,' we can see no more ground to doubt the existence of this law, (which does not now make its appearance for the first time, but was published by Wilkin in the last century,) than any other document of antiquity which has been received as genuine without hesitation.

"The council held at Winchester in the

time of Archbishop Lanfranc, in the year 1076, (see Wilkin's Concilia, 367, and Johnson's Collection,) contains a direct and express authority with a nullifying clause, that a marriage without the benediction of the priest should not be a legitimate marriage, and that other marriages should be deemed fornication. Numerous councils follow, in which are decrees to prevent and punish clandestine marriages, but in no one of which is there any repeal, express or implied, of the rule laid down by the first, viz., that the presence of the priest is necessary to constitute a legitimate marriage; but the time of the marriage by the priest, the place where it is to be celebrated, and other regulations, are prescribed, in order to meet the evil which was then existing. That the marriage, though called clandestine, was still a marriage celebrated by a priest, and is assumed to be, is placed beyond all doubt by the 11th Constitution of Archbishop Stanford, established by the council of London, (see 2 Wilkin's Concilia, 706,) 'De celebrationibus matrimonia clandestina in ecclesiis exterioris vel capellis.' That Constitution recurs in effect, that people left their own places of residence, where the impediments to their marriage were notorious, and their parish priests not disposed to solemnize their marriage, and betook themselves to populous places where they were unknown, in order that 'aliquoties in ecclesiis aliquando in capellis seu oratoriis matrimonia inter ipsos de facto solemnizari procurent.' What is this but a plain assumption, that the marriage so celebrated was celebrated by a priest, for surely none others but persons in holy orders could celebrate them in churches, chapels, or oratories?

"The authority of John de Burgo, a denitatory of the church of England, was much relied on, as a direct proof that a contract *per verba de presentis* was sufficient to constitute complete matrimony, without the presence or intervention of a priest. The materials of his work, bearing the quaint title of *Papilla Oculi*, were compiled in 1385, and the work itself printed at Paris; but afterwards, in the year 1400, an edition was printed in London, 'Omnibus presbyteris precipue Anglicanis summe necessaria.' The work contains, amongst other things, a treatise on the administration of the seven sacraments; and under the head 'De sacramento matrimoniali' occurs the passage relied on by the crown. The author lays it down, 'Of the minister of this sacrament it is to be observed, that no other minister is to be required distinct from the parties contracting, for they themselves for the most part minister this sacrament to themselves, either the one to the other, or each to themselves.' And a little further he adds, 'Secus est, quod ad conferendum huius sacramenti non est requisita ministeria alicuius alicuius, sed quod sacerdos benedictionem quam sacerdos wont to make or utter upon married people, or other prayers uttered by him, are not the form of the sacrament nor of its essence, but something sacramental pertaining to the adorning of the sacrament.' From this passage it is clear, that, whether ab-

lutely necessary or not, it was at least usual and customary at that time to make the contract before the priest. It appears further, from the first words of the following chapter, 'De matrimonio clandestino,' that such course was ordered by the church: 'Inhibitum est contrahere nuptias occulte sed publice coram sacerdote sunt nuptiæ in Domino contrahendæ.' If, therefore, in the passage above cited, the author intends to express thus much only, and no more, *viz.*, that by the contract *per verba de presenti*, made privately between themselves, that mysterious sacrament of which he is speaking has been taken by them which makes the contract indissoluble, and capable of being enforced by either against the other *in facie ecclesiæ*, such doctrine is admitted to be consistent with the ecclesiastical law received in England; but if it is supposed to mean more,—if it is held up as an authority that the marriage is complete for all civil purposes of legitimacy, dower, and other civil rights, then before we accede to the proposition, it is the safer course to discover, if possible, whether the doctrine of the text writer is or is not consistent with the recognised laws and constitutions of the church of England then in force, and with the course and practice of the ecclesiastical courts of England at that time; and in case of a discrepancy between them, to reject the authority of the text writer, and to adhere to that of the recognised law and the practice of the courts; for there is no surer evidence of the law in any particular case than the course and practice of the courts in which such law is administered. We should treat the best of our text writers, Sir William Blackstone, for example, precisely in the same way.

"Now, at the time of the publication of John de Burgo, and of the other work, entitled *Manipulus Curatorum*, cited for the same purpose, there stood, unrepealed by any subsequent constitution of the church, both the Constitution of Lanfranc, before stated, and the subsequent Constitutions of the church against clandestine marriages, the former directly declaring the presence of the priest at the marriage to be necessary to give it validity; the latter implying such necessity. I ask, whether the courts of ecclesiastical law of England would take the law, if the very point in controversy was brought before them, from the text writers of the day, or from the Constitutions of the church? I doubt not, however learned, or in whatever estimation the text writers might be, it would be from the law of the church; and as to the course and practice of the courts of ecclesiastical law in respect to a matrimonial suit to enforce marriage upon a contract *per verba de presenti*, the prayer upon the libel has seen, not to pronounce that the parties are already actually and completely married, but that it may be pronounced 'for the validity, full force, and strength of the said contract of marriage to all effects and intents in law whatsoever; and that the defendant may be compelled to solemnize the said marriage in the face of the church,' (Clerk's Instructor, 326,) just as in *Bunting's case*, before cited, the decree was not that Agnes was married,

but that Agnes 'matrimonium subiret.

"And when reference is made to Oughton, (vol. i. 283,) the same appears more distinctly to be the form of proceedings; and it would be most singular, if the contract *per verba de presenti* was considered by the court as an actual complete marriage, that a provision should be made for the court to inhibit the party, '*pendente lite*, from contracting matrimony, or procuring matrimony to be solemnized.' If the court held the first marriage to be entirely complete, surely the statute of James, which had then been passed more than a century, and which made the second solemnization a felony, would have been a surer protection than the inhibition of the court. But the necessary inference is, that the court could not have so held the effect of the contract; and it follows, therefore, that the authority of the passages above cited cannot be safely relied on, against the Constitutions of the church and the practice of the spiritual court.

"We now pass to the consideration of the particular circumstances involved in the first question proposed by your lordships, which supposes this marriage to have taken place in the house and in the presence of a placed and regular minister of the congregation of protestant dissenters called Presbyterians.

"As we have already stated our opinion, that to make the marriage a complete marriage, it must be solemnized in the presence of a minister in holy orders, it is only necessary to look back to the time when that law first obtained in England, to enable us to answer that question without difficulty.

"At the early period when such law arose, and down to a comparatively recent period, the expression priest, curate, minister, deacon, and person in holy orders, which are the words met with in the different Constitutions and councils and authorities bearing on the point, could point to those persons only who had received episcopal ordination; there were no others known at all; all but they were laymen; and unless some act of the legislature has interposed its authority, and given the protestant dissenting minister in Ireland the same power for this purpose as the persons in holy orders did before possess, we think the entering into the contract in his presence cannot, in the legal sense of the word, be held to be entering into it in the presence of a person 'in holy orders.' Now no statute has been brought forward, except the 21st and 22d Geo. 3, cap. 25 (Irish), but the operation of that statute is limited to matrimonial contracts or marriages between protestant dissenters, and solemnized by protestant dissenting ministers or teachers; and as your lordships' question goes on to state, that one of the contracting parties in this case is not a protestant dissenter, but a member of the established church of England and Ireland, it follows that the case does not fall within that statute, and that it must be decided as if that statute had never been passed.

"My lords, the two subsequent conditions or circumstances contained in your lordships' question can obviously make no difference. The form of the religious ceremony cannot,

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upon any principle or upon any authority, compensate for the want of the presence of the proper minister, assuming such presence to be necessary; nor can the circumstance of subsequent cohabitation carry the validity of the marriage higher than the original force of its obligation."

"The main and principal point, however, of your lordships' first question still remains to be answered; *vis.*, whether, after such a contract entered into between A. and B., whether A. by marrying C. in England whilst B. is still living, commits the crime of bigamy.

"And after the full discussion of the general question, and our opinion already declared, that the first contract does not amount to a marriage by the common law, it is hardly necessary to say, that we hold the offence of bigamy has not been committed. Indeed, independently altogether of the answer we have given to that abstract question, and admitting, for the sake of argument, that the law had held a contract *per verba de presentia* to be a marriage, yet looking to the statute upon which this indictment is framed, we should have thought, upon the just interpretation of the words of that statute, the offence of bigamy could not be made out by evidence of such a marriage as this. The words are, 'If any person, being married, shall marry any other person during the life of the first husband or wife;' words which are almost the very same as those in the original statute of James the First. Now the words 'being married,' in the first clause, and the words 'marry any other person,' in the second, must of necessity point at and denote marriage of the same kind and obligation. If, therefore, a marriage *per verba de presentia*, without any ceremony, is good for the first marriage, it is good also for the second; but it never could be supposed that the legislature intended to visit with capital punishment, (for the offence would be capital if the plea of clergy could be counterpleaded,) the man who had in each instance entered into a contract *per verba de presentia*, and nothing more. Waiving, however, that consideration, it is enough to state to your lordships, as the answer to the first question, that in our opinion A. did not, under the circumstances therein stated, commit the crime of bigamy.

"My lords, we have so fully and pointedly answered the second question proposed by your lordships, in stating the grounds of our first answer, that it is unnecessary to trouble you with any further observation thereon, except, that as the statute of 58 Geo. 3, chapter 81, has enacted that no suit shall be had to compel the celebration of such a contract in any ecclesiastical court in Ireland, we think this question also should be answered in the negative.

"In conclusion, I would only observe, that although I am authorized to state our opinion on the questions proposed to us is unanimous, yet that my learned brethren are not to be held responsible for the reasoning upon which I have endeavoured to establish the validity of that opinion." [Vide post. Stat. 6 & 7 Vict. c. 39.]

IV. REFUSING BURIAL; AND IMPROPERLY PERFORMING THE BURIAL SERVICE.

"Convenient warning having been given him thereof before."

In *Titchmarsh v. Chapman*, (3 Eccles. Notes of Cases,) Sir H. Jenner *Post* observed: "This is a cause of office promoted by Mr. Thomas Titchmarsh against the Rev. William Herbert Chapman, for refusing to bury the corpse of an infant parishioner brought to the churchyard, convenient notice having been given to him for that purpose. It should be observed, at the outset, that this is not a proceeding under the general ecclesiastical law, but under the 68th Canon of 1603, and that the penalty which that canon imposes for the offence is suspension for three months from the ministry; it is, therefore, a particular offence under a particular canon, which fixes the penalty.

"The substance of the charge against Mr. Chapman is, that he expressly declared his determination not to bury the corpse of this child, if brought to the churchyard for burial, and that, in pursuance of such declared determination, he did, on the 26th May, 1841, contrary to his duty, refuse to bury the corpse then brought to the churchyard, 'convenient warning having been given him thereof before,' which are the words of the canon, the deceased infant having been baptized according to the form generally observed amongst the class of protestant dissenters called Independents, namely, with water, in the name of the Father, and of the Son, and of the Holy Ghost, by a minister, preacher, or teacher of that class, he (Mr. Chapman) having been informed of the fact of such baptism, and expressly assigning as the pretext or ground for refusing to bury the corpse. It appears, therefore, that the charge is confined to what took place on the 26th May, 1841, for no other day is mentioned in the articles, except in the heading, in order that it should agree with the citation, which recites, that Mr. Chapman had a second time refused to bury this corpse, the first refusal being on the 17th February, 1840. But the charge of refusing in 1840 is dropped in the articles, and necessarily so, because, as the decree was not returned till 11th May, 1843, and the first alleged refusal was on the 17th February, 1840, more than two years had elapsed from the time of the offence, which exceeds the limits prescribed by the statute, (the Church Discipline Act,) under which these proceedings are now carried on, for the commencement of proceedings for such an offence. The charge, therefore, is simply confined to what occurred on the 26th May, 1841, and to any antecedent circumstances leading up to that occurrence, and any communications between Mr. Chapman and the father or relations of the child previous thereto.

"Now the *onus probandi* in this case lies on the party promoting the office of the judge; the accused is not bound to offer any plea beyond the general issue of 'not guilty,' or, in the language of these courts, to give a negative or an affirmative issue to the articles. In this case a negative issue

has been given, and Mr. Chapman thereby throws upon the other party the burthen of making out his case by such evidence as it is in his power to produce. And it may be further observed, that in a criminal proceeding, and this is a criminal proceeding, the court will presume nothing; the facts must be proved by legal evidence, whether parol or documentary, and the court must pronounce its sentence *secundum allegata et probata*.

"The questions for the court to inquire into (according to the words of the canon) are these: Did Mr. Chapman, on the 26th May, 1841, refuse to bury the corpse of this infant, brought to the church or churchyard for burial, such infant not having been denounced excommunicate, *majori excommunicatione*, or within another exception specified in the rubric, (more immediately applicable to this case,) namely, not being 'unbaptized;' and was convenient warning given him thereof before?

"First, was the corpse of the child brought to the churchyard to be buried? On this point the proof is full and conclusive; no objection has been raised to it, so that it is unnecessary for the court to refer to this part of the evidence, except to observe that it appears to have been at half-past six in the afternoon that the corpse was brought to the churchyard and deposited in the porch of the church.

"Secondly, did Mr. Chapman refuse to bury the corpse so brought for burial? On this point, likewise, the evidence is full and conclusive.

"Thirdly, did this child come within either of the exceptions contained in the canon or rubric: that is, was the child denounced excommunicate, or was it unbaptized? The evidence of Mr. Moase sets the only real question on this point at rest; for he proves that this child, in February, 1840, was baptised by him with water, in the name of the Father, and of the Son, and of the Holy Ghost, and, therefore, according to the doctrine of the law as declared by this court, affirmed by the judicial committee of the Privy Council, (the appellate court,) in the case of *Martin v. Escott*, it was a valid baptism, entitling the body of this child to have the burial service read over it; the child was not 'unbaptized,' within the meaning of the rubric. And I think, also, that it appears from the evidence of Mr. Moase, that in February, 1840, he did himself inform Mr. Chapman that the child had been so baptised, and this will go to satisfy the article which pleads that Mr. Chapman was sufficiently apprised of the baptism of the child, the court being at liberty to go back to that date to see whether Mr. Chapman was apprised of the fact, that the child had been baptised with water, in the name of the Father, and of the Son, and of the Holy Ghost.

"I think, therefore, that on these three questions the court is satisfied; namely, that the corpse of the child was brought to the churchyard for burial, that Mr. Chapman did refuse to bury it, and that it was not unbaptized.

"Still there remains another head of inquiry, and, in my view, not an unimportant one, and that is, the question of notice. The canon not only describes the canonical offence, but requires that the minister shall have convenient warning given to him before. These words do not appear to me to be unimportant; on the contrary, I think them extremely material. But it has been contended in the argument, that these words form no part of the body of the canon; that they are in a parenthesis, and are to be considered, for the purpose of this inquiry, as surplusage. Now it appears to me, on the contrary, that the words were advisedly inserted in the canon, whether in a parenthesis or between commas, is immaterial; that they are part of the canon, and that, if they are not complied with, the penalty does not attach. It cannot be said that, even if the words were omitted, there ought not to be some qualification of the canon. It cannot be contended, that a minister of the church of England could be punished for refusing to bury a corpse brought to the churchyard, unless he had some previous information that it would be so brought; and therefore the words of the canon itself necessarily import some qualification. Then, if the canon, without these words, would require some previous notice, can it be said, that the words 'convenient warning being given him thereof,' introduced into the canon, are, in the construction of it, to be left altogether out of the consideration of the court, as mere surplusage? Is it to be said, that no notice is necessary; that the bringing of the corpse into the churchyard is a sufficient notice; that a minister is punishable for not having at the moment gone forth and performed the burial service on the occasion? That some qualification of the canon is necessary must be apparent from this consideration, that the mere fact of a corpse being brought to the churchyard cannot be a sufficient notice of itself, because the minister might be engaged in other duties; there might be other services to be performed at the very time, which would render the sudden performance of the service for the dead inconvenient and even impracticable. But the canon itself renders it unnecessary to pursue this head of inquiry further, for it requires previous notice to be given, and whether the words are inserted in a parenthesis or in the body of the canon, they cannot be taken to be without some meaning attached to them, and as the canon is highly penal in itself, the party proceeded against is entitled to any benefit he can derive from a defect in any part of the proof. Unless all the circumstances specified in the canon concur, no canonical offence is proved to have been committed by Mr. Chapman.

"An observation has been made upon the difference between the Latin canon and the English canon; it is said, that in the one the word is '*competens*,' in the other 'convenient.' But if there be any distinction between '*competens*' and 'convenient,' it appears to me that this not a proceeding upon the Latin canon, but upon the English canon, which is set forth in the articles, and in this case was

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must look at the words of the English canon, which directs that the minister shall have 'convenient warning.'

"Now the words themselves appear to me to be extremely important, as defining the manner and the time of the notice. What are the words? 'Convenient warning being given him thereof before.' A warning is not sufficient of itself; it must be a convenient warning; that is, with reference to the circumstances of time, place, and the occupations of the minister, who might be so engaged in the performance of other services as to render a warning, under the circumstances, not a convenient warning. But he is to have convenient warning 'thereof.' It has been argued, that in this case the warning was sufficient, because the corpse was brought into the church porch, and left there, and that this was the same as if notice had been left at the minister's house; that the minister of the parish having information that the body had been brought to the churchyard, and deposited in the porch, it was equivalent to a notice being left at his house. What is the meaning of the word 'thereof?' To what does it refer? It cannot be contended, that by a corpse being brought to the churchyard, notice 'thereof' is given; it may be notice of the fact of the corpse having been brought to the church or churchyard; but the warning 'thereof,' as I understand the canon, is of the intention to bring a corpse to the churchyard for burial; because, otherwise, it is impossible that the minister could observe the direction in the rubric, to meet the corpse at the entrance of the churchyard, and precede it to the church or to the grave, repeating certain sentences appointed in the service for the burial of the dead. I conceive, therefore, that 'convenient warning thereof' means, of the intention to bring the corpse to the churchyard, and not of the corpse having been actually brought there.

"Then, when is the notice to be given? 'Before.' Before what? Before the minister is to bury the corpse; or before the corpse is brought to the churchyard? The latter is the next antecedent. I think it is quite impossible for words to be more precise than those in this canon. Cases may arise in which a warning, convenient in one case, may not be so in another. The warning must, therefore, be given 'before,' that is, before the act is to be performed, that preparation may be made for the interment of the corpse, and that the minister may be prepared for the due performance of his duty, one of which is, meeting the corpse at the entrance of the churchyard or the church. And for what reason is this prior notice required? First, to secure the attendance of the clergyman to perform the duty. If it so happened, in this case, that Mr. Chapman was at home at half-past six in the afternoon, and it was not inconvenient to him to perform the ceremony at that time, it might have been very inconvenient, and the party proceeded against, under a penal statute, has a right to object to the promoter of the office, that he has not proved a previous warning. It may so happen, that no grave had

been prepared, and no preparations made for the interment, for there is nothing in the evidence to show that any preparations were made for the interment of this child, and Mr. Chapman is entitled to take advantage of any deficiency in the proof. It has been argued, that he must have been aware of the circumstance, as he had provided himself with a witness; but I am of opinion, that the canon must be followed out in all its parts, and if the proof falls short in any one of the circumstances, a canonical offence is not proved.

"But was the promoter taken by surprise on this head? Does not the article itself shew the construction of the canon, and what was necessary to be proved? The 3d article expressly pleads, that Mr. Chapman refused to bury the corpse then brought to the churchyard, 'convenient warning having been given him thereof before;' and this is set forth in the decree itself, and in the heading of the articles. It is pleaded in that article, that Mr. Chapman expressly declared his determination not to bury the corpse before it was brought to the churchyard, and that implies, that a notice had been given, that the corpse would be brought for burial. So that it is clear, on the face of the articles and of the decree, that the construction of the canon, in the opinion of the promoter's legal advisers, is the same as that which the court has put upon it; and, therefore, the party knew what he had to prove, and took upon himself the onus of proving, that Mr. Chapman had convenient warning.

"This leads the court to a consideration of the evidence, and what does it amount to? Is there any proof of any notice till the corpse had been actually left in the porch, when John Rumbold (the father) went to inform Mr. Chapman? All the witnesses deny the giving of any such notice. Mr. Moase, the adviser of Rumbold, expressly says, that he had no communication with Mr. Chapman on that day. Rumbold says he gave no notice to him, and Hopkins, another witness, states, that he gave no notice that the body was to be brought to the churchyard. This being the result of the evidence, the requisite of the canon, that convenient warning thereof should be given before to Mr. Chapman, has not been proved, and, if so, can it be said that a canonical offence, under the canon, has been proved?

"It may be proper to refer to the evidence of the witnesses. Hopkins, the first witness, says:

"Knowing that Mr. Chapman had refused to bury the corpse, and that it was to be offered to him again for burial this day, the 26th May, 1841, I went with other persons to witness what passed. Mr. Chapman was not in the churchyard to meet the corpse, and it was deposited in the porch of the church whilst Mr. Rumbold went to the vicarage to ask for Mr. Chapman. I saw him enter the house, and presently he returned, and asked me to go into the house, as a witness to what passed between Mr. Chapman and him. I went with him, and in the parlour found Mr. Chapman and a Mr. Seabrook, clerk to a solicitor at Rey-

ton. Mr. Chapman then said, that he wished some one to be present to be a witness to what passed, for fear of any misunderstanding.

"It has been argued, upon this part of the evidence, that Mr. Chapman must have had some notice, otherwise he would not have provided himself with a witness to prevent misunderstanding. Supposing this to be the real construction of the evidence, I cannot think that the court is at liberty to hold that there had been convenient warning beforehand upon an inference such as this. How did it happen that Mr. Chapman provided himself with a witness? How does it appear that Mr. Seabrook was not there for other business? Being present, and Rambold having come to request him to bury his child, Mr. Chapman might say, 'Will you be a witness to what passes, to prevent misunderstanding?' But to argue from this that Mr. Chapman must have had some information of the intention to bring the child, and had provided Mr. Seabrook for the purpose of being a witness, would be pressing this evidence too far. Nothing was more easy to prove than the notice, if any such was given, and am I to go to such a latitude of construction of this evidence as to infer from it that there had been notice given, of which there is no proof whatever, because Mr. Seabrook was present on the occasion?"

"The witness goes on:

"Mr. Rambold said, 'I wish you to bury my child; to perform your office; I mean, to read the prayers of the church; and I will pay your demands, whatever they are.' The poor man hesitated in what he said, but he repeated the same request to Mr. Chapman to bury his child, in different words, several times. Mr. Chapman refused each time; he said, he declined to do it. He positively refused each time. I do not know what warning Mr. Chapman had of the intention to bring the corpse for burial, but he positively and formally refused to bury it. I do not know whether any notice was given to Mr. Chapman that the corpse would be brought for interment on either occasion."

"Rambold, the next witness, states:

"On the 26th of May, 1841, Mr. Chapman refused to bury the corpse of my infant. I took the corpse into the churchyard on that day, at half-past six in the evening, the time which Mr. Moase wrote to me to bring the child to be buried. When I had taken the child into the churchyard, not finding Mr. Chapman there, I went to his house, which is close by, adjoining to the churchyard. I saw him there, and asked him to come and bury my child. He asked me what I wanted of him. I said I wanted him to bury my child; to read the prayers over him, and I would pay his demand. He answered, 'I still refuse to do so.'"

"This may have reference to what took place in February, 1840, when he specifically assigned reasons for not burying the child, as having been baptized by a dissenting minister; and the words may have meant, 'I still refuse for the reasons I assigned on the former occasion.' Whether this was the first refusal on the 26th May, or followed

after the first communication between them, STAT. 3 & 4 it may be not easy to determine; and the words 'I still refuse,' may have reference to a refusal to Rambold to bury his child, in a communication between him and Rambold before Hopkins came in. The witness says:

"I repeated my request several times, offering to pay his demand; but he answered, 'I have nothing more to say; I still refuse to do so.' I left the house when I found he would not do what I asked, and took the child back, and it is not buried yet. I do not know what warning Mr. Chapman had of my intention to bring the child for burial. Mr. Moase managed that, and he gave me notice when I was to come over to take the child for burial. Ten of my children had been previously buried in the churchyard of Bassingbourn, and two or three, if not more, by Mr. Chapman; my wife, who died in child-bed, was buried there by Mr. Chapman."

"I think that this is a fair and reasonable ground why he should have wished that his child should be interred there, to rest in the same place with the other persons of his family, and, therefore, nothing arises against him because he brought his child to be interred in the churchyard rather than in a dissenters' burial-ground; and it is not necessary for the court to advert to that objection. He goes on to say:

"I do not recollect that I informed Mr. Chapman, on the 26th May, 1841, that my child had been baptized; he did not ask me the question on that occasion; but he was aware that the child had been baptized by Mr. Moase, for I told him so on the first occasion on which I asked him to bury the child. On the second occasion, in May, 1841, he did not assign that as a reason for refusing to bury the child; he only said, 'I still decline to do so,' or some such words."

"And he goes on, in answer to the interrogatory, to say, that he was present at the baptism of his child; that Mr. Moase performed the ceremony, in the name of the Holy Trinity, with water, on the 14th February, 1840. He is interrogated as to whether the word 'baptize' was used; but it is unnecessary for the court to pursue that part of the case, as it is not upon this point that the final sentence of the court will be given. He is interrogated also as to his being a dissenter, as to the extent of ground in the dissenters' cemetery, and as to the prices paid for interment there. But I think it is most clear, from the evidence of this witness, that he gave no notice, and knew of no notice being given, as all was done under the direction of Mr. Moase."

"Now Mr. Moase has been examined, and he describes himself as a dissenter of the class called Independents, and minister of the Independent chapel. He says he had a communication with Mr. Chapman respecting the interment of this child, but not on the 26th May, 1841; it was in the year 1840. He says: 'I do not recollect seeing him on that day; I certainly had no communication with him. I saw the corpse pass my house on the way to the churchyard, but I did not accompany it. I do not myself know per-

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sonally what warning Mr. Chapman had that the corpse would be brought to the churchyard for interment.' He goes on to state on interrogatory, that he was present at the baptism of the child, and performed the ceremony; that the words he used were, 'This child, whose name is Jane, I baptize in the name of the Father, of the Son, and of the Holy Ghost;' and that the form of sprinkling the infant with water was used. He says he applied to the bishop, in consequence of Mr. Chapman's refusal to bury the child; but this has nothing to do with the question before the court. Then he goes on to answer certain questions as to his religious opinions, and as to certain expressions he made use of, which the court is not called upon to refer to, and, in fact, this is the whole of the evidence applicable to the notice.

"Now, what is the effect of this evidence? All the material facts are proved, except (in the words of the canon) that 'convenient warning was given to Mr. Chapman thereof before.' Not a single person who has been examined can depose that any notice was given to Mr. Chapman before the corpse was deposited in the porch of the church. I am of opinion, according to my construction of the words of the canon, that no canonical offence is committed, unless convenient warning has been given before of the intention to bring the corpse for burial; that it is a matter not only of convenience, but of decency, that such notice should be given beforehand; and if a minister, after due notice, refuses to perform the ceremony, he will be fully aware of the consequences of refusal under this penal statute. The proof is left short in what the court considers a material part of the charge, and, therefore, it is impossible for the court to pronounce that Mr. Chapman has incurred the penalty of the statute.

"This would be the opinion of the court upon the facts in evidence, and after hearing the argument, without reference to any thing which has occurred in courts of common law; because the ecclesiastical court has cognisance of cases relating to the performance of divine service, the burial of the dead, and every other part of the church ritual. But, supposing that a penalty had been imposed by statute, worded as this canon is, and the penalty was to be recovered at common law, I much question whether such penalty could be recovered against Mr. Chapman; indeed, I think the cases cited by Dr. Harding, show that it could not be recovered.

"The first case is that of *Clovelly v. Cardinall*, (1 Sid. 34.) which was an action on the case against a minister for refusing to administer the sacrament on two Sundays, and the verdict of the jury assessed the damages, (which were laid at 40*l.*.) and on motion for arrest of judgment, it was contended that he had not given due notice, and the court held that, as the plaintiff had declared for the non-administration of the sacrament on two Sundays, and as he had not proved that, upon the second refusal, he had requested the person to administer the sacrament to

him, judgment must be arrested. Notice had been given on the first occasion, but not upon the second.

"Another case is that of *Davis v. Black*, (1 A. & E. N. S. 900.) which was also an action on the case against a minister for refusing to perform the marriage service between two persons by licence, notice having been given him of the licence. The jury found a verdict for the plaintiff, and on arrest of judgment, Lord Denman said: 'There is no great danger in saying that an action can hardly be maintained against an officer not required by law to perform the duty at any particular time, without allegation of malice, or of the time at which he refused being a reasonable time for the performance. Allowing fully that the action is maintainable on principle, the declaration is essentially defective. Hardly any of the objections can be got over. One is clearly fatal. At the time when the clergyman is supposed to have acted wrongfully, it does not appear that he had notice that both the parties were willing to be married. It is alleged that, at the time of the grievance, they were in fact willing; but it is not averred that the woman joined in the request. This is quite fatal, for you charge the minister with having improperly refused to marry, and yet the whole declaration might be proved, although he had no reason to believe the woman to be willing. It would be going far beyond all limits within which we allow defective declarations to be cured by verdicts, if we suffered this. Nothing can be supplied beyond that of which the proof is necessarily involved in the proof of what is alleged.' The circumstances are not the same as in the present case; but it shews how strict the court was in requiring, before an action for damages, that the minister should have had notice in full form. In the argument it was said that, 'there may be other reasonable cause for a clergyman not performing the duty; he may, for instance, be engaged at the time in the performance of another clerical office, as in reading divine service in church: reasonable notice should have been averred, in order that he might make proper arrangements as to time.' Why, here was the same necessity for proper arrangements as to time for receiving the body and interring it. So, I say, if Mr. Rambold, or any person acting in his behalf, had gone to Mr. Chapman, and said, 'My child is lying dead at home; I propose to bring the corpse for interment at such a time,' and that was a convenient time, and if Mr. Chapman had not named a more convenient time, and the other party had given him notice of the particular time of half-past six in the afternoon of the 26th May, and the corpse had been brought to the churchyard at that time, and Mr. Chapman had refused to bury it, then the penalty annexed to the offence by the canon would have been incurred, as there would have been a reasonable notice, and a refusal to perform the duty, and if the case was not shewn to be inconvenient, this would have satisfied the terms of the canon. And this is in conformity with the obvious and common sense view of the case, that persons

are not to select for themselves a time for the performance of the service without notice to the clergyman, that is, notice of the intention, not notice of the corpse having been actually brought to the churchyard. I think, in this case, that notice was necessary, and if the promotor has failed to show that it was given, the offence under the canon is not proved to have been committed.

"Under these circumstances, I am of opinion, therefore, that there is a material defect in the proof of the facts alleged in the articles, and the deficiency applies to that which is not only a matter of convenience but of decency and order; and although Mr. Chapman may have had other reasons for refusing to perform the office, the court is not to decide upon conjecture, but upon proof. It is proved that the corpse was brought to the churchyard, and that Mr. Chapman refused to bury it, but gave no reason; he said, 'I still refuse,' but assigned no reason upon this occasion, and the party proceeded against him under a particular canon, not under the general ecclesiastical law, the canon imposing a particular penalty for a particular offence, which must be proved in all its parts. I am of opinion that I must pronounce, and I do pronounce, that the promotor has failed in proof of the articles, and consequently I dismiss Mr. Chapman from the suit, and from all further observance of justice in this cause, and I dismiss him with his costs."

[The Editor has been indebted to the learned reporter of the "Ecclesiastical Notes of Cases," for the foregoing judgment; and he avails himself of the present opportunity to acknowledge, the valuable assistance he has invariably derived from consulting and citing such reports.]

Omitting the words "as our hope is this our brother doth."—*Judgment of the Bishop of Exeter, in re Todd (Clerk).*

A complaint having been made to the Lord Bishop of Exeter, on the part of the family of the late B. H. Lyne, Esquire, of Liskeard, that the Rev. J. F. Todd, vicar of that parish, in reading the burial service at the funeral of the deceased, at the parish church of Liskeard, had omitted part of one of the prayers of the service; a commission was issued by his lordship under the Church Discipline Act, and the commissioners, after hearing the accusation against Mr. Todd and his defence thereto, found, that, in their opinion, there was sufficient *prima facie* ground for instituting further proceedings. In consequence of which Mr. Todd gave his consent, that without such further proceedings the Right Rev. Prelate might pronounce sentence upon him. His lordship therefore proceeded to the chapter house, and delivered his sentence in these words:

"This is a proceeding instituted against the Rev. James Frederick Todd, vicar of Liskeard, by the brother of Mr. Benjamin Hart Lyne, late of that parish, deceased, for that in the burial of the deceased Mr. Todd purposely omitted the following very important words of one of the prayers in the office of burial: 'as our hope is this our brother doth.'

"A commission was issued to five clergymen of the diocese, (among whom was the vicar-general, the dean, and two archdeacons,) to inquire, whether there was a sufficient *prima facie* case to demand further proceedings. The commissioners having made their return in due form, 'that there is sufficient *prima facie* ground for instituting further proceedings;' and Mr. Todd having submitted himself to the judgment of his bishop, thereby acknowledging the offence charged, it remains for me to pronounce judgment accordingly.

"In looking to the nature of the offence thus acknowledged, it is impossible to shut our eyes to the too manifest intent with which the words above cited were omitted. It is plain and undeniable that they were omitted because the minister did not choose to give expression to the pious and charitable hope of the church, that the deceased christian brother resteth in our Lord Jesus Christ, who is the Resurrection and the Life; and in whom unless he resteth, so as to be 'found in him' at the last day, he hath perished everlastingly.

"This pious and charitable hope of the church, I say, Mr. Todd knowingly and with premeditation refused to express; thereby intimating that it was not to be entertained in respect to the deceased, whose corpse he was then burying. And, if there could otherwise be a doubt whether such an intimation was designed, that doubt would be removed by the matter alleged, whether in justification, or in excuse of the omission. Mr. Todd, it seems, had been informed, on what he considered unquestionable authority, that the deceased had died in a state of intoxication; in other words, in sin. That information, indeed, he admits that he subsequently found to have been erroneous; and because it was erroneous, because the deceased did not die in a state of intoxication, he has ingenuously and fully declared his sorrow for the pain which has been inflicted on the surviving relatives by his unhappy condemnation of the state of the soul of the deceased.

"This retraction, and the sorrow expressed by him, are creditable to his candour; but they are very far indeed from removing (in whatever degree they can be admitted as an extenuation of) his offence. For, ignorance of the fact, or rather belief, through ignorance, of an unreal fact, though that ignorance have been the sole cause of the offence, cannot be allowed to excuse, if the fact itself, so believed through ignorance, be such as would, if real, not justify the conduct into which belief of it may have misled the party. Now such is the case in the present instance. Even if the deceased had died in a state of intoxication, however his minister may have lamented it, however it may have impaired the hope of his being admitted to rest in Christ, yet it ought not, on just consideration of the terms of the christian covenant, to have extinguished that hope, much less to have induced him to proclaim, or even to suggest, the extinction of it.

"God, when he vouchsafes to regenerate by

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sonally what warning Mr. Chapman had that the corpse would be brought to the churchyard for interment.' He goes on to state on interrogatory, that he was present at the baptism of the child, and performed the ceremony; that the words he used were, 'This child, whose name is Jane, I baptize in the name of the Father, of the Son, and of the Holy Ghost;' and that the form of sprinkling the infant with water was used. He says he applied to the bishop, in consequence of Mr. Chapman's refusal to bury the child; but this has nothing to do with the question before the court. Then he goes on to answer certain questions as to his religious opinions, and as to certain expressions he made use of, which the court is not called upon to refer to, and, in fact, this is the whole of the evidence applicable to the notice.

"Now, what is the effect of this evidence? All the material facts are proved, except (in the words of the canon) that 'convenient warning was given to Mr. Chapman thereof.' Not a single person who has been examined can depose that any notice was given to Mr. Chapman before the corpse was deposited in the porch of the church. I am of opinion, according to my construction of the words of the canon, that no canonical offence is committed, unless convenient warning has been given before of the intention to bring the corpse for burial; that it is a matter not only of convenience, but of decency, that such notice should be given beforehand; and if a minister, after due notice, refuses to perform the ceremony, he will be fully aware of the consequences of refusal under this penal statute. The proof is left short in what the court considers a material part of the charge, and, therefore, it is impossible for the court to pronounce that Mr. Chapman has incurred the penalty of the statute.

"This would be the opinion of the court upon the facts in evidence, and after hearing the argument, without reference to any thing which has occurred in courts of common law; because the ecclesiastical court has cognizance of cases relating to the performance of divine service, the burial of the dead, and every other part of the church ritual. But, supposing that a penalty had been imposed by statute, worded as this canon is, and the penalty was to be recovered at common law, I much question whether such penalty could be recovered against Mr. Chapman; indeed, I think the cases cited by Dr. Harding, show that it could not be recovered.

"The first case is that of *Clovel v. Cardinell*, (1 Sid. 34,) which was an action on the case against a minister for refusing to administer the sacrament on two Sundays, and the verdict of the jury assessed the damages, (which were laid at 40*l.*), and on motion for arrest of judgment, it was contended that he had not given due notice, and the court held that, as the plaintiff had declared for the non-administration of the sacrament on two Sundays, and as he had not proved that, upon the second refusal, he had requested the person to administer the sacrament to

him, judgment was had been given on upon the second.

"Another case (1 A. & E. N. S.) action on the case fusing to perform between two persons' been given him of found a verdict for rest of judgment, L. is no great danger can hardly be main not required by law any particular time, malice, or of the ti being a reasonable ti Allowing fully that able on principle, ti tially defective. Ha tions can be got over. At the time when the to have acted wrongfu that he had notice that willing to be married. the time of the grievan willing; but it is not a joined in the request, for you charge the min properly refused to mar: declaration might be, had no reason to believ willing. It would be g limits within which we clarations to be cured by fered this. Nothing can that of which the proof volved in the proof of wh circumstances are not th present case; but it sh court was in requiring, b damages, that the ministe notice in full form. In th said that, 'there may be cause for a clergyman no duty; he may, for instance the time in the performanc ical office, as in reading church: reasonable notice averred, in order that he n arrangements as to time.' the same necessity for prop as to time for receiving the ring it. So, I say, if Mr. person acting in his behalf, Chapman, and said, 'My cl at home; I propose to brin interment at such a time,' convenient time, and if M not named a more conven other party had given him t ticular time of half-past six of the 26th May, and the brought to the churchyard a Mr. Chapman had refused t the penalty annexed to the canon would have been inc would have been a reasonable refusal to perform the duty, was not shewn to be inconveni have satisfied the terms of the this is in conformity with the common sense view of the cas

to select for themselves a time for performance of the service without notice to the sexton, that is, notice of the death, and not notice of the corpse having been brought to the churchyard. I think, therefore, that notice was necessary, and that the sexton has failed to show that it was the offence under the canon is not to have been committed.

Under these circumstances, I am of opinion, therefore, that there is a material defect in some of the facts alleged in the articles, and the deficiency applies to that which is only a matter of convenience but of no good order; and although Mr. Chapman have had other reasons for refusing to go to the office, the court is not to assume a conjecture, but upon proof. It is that the corpse was brought to the stand, and that Mr. Chapman refused to go, but gave no reason; he said, "I have," but assigned no reason upon this point, and the party proceeded against him under a particular canon, not under one of ecclesiastical law, the canon imposing the penalty for a particular offence, which must be proved in all its parts. I am of opinion that I must pronounce, and I do so, that the promotor has failed in the articles, and consequently I discharge Mr. Chapman from the suit, and from the observance of justice in this cause, and dismiss him with his costs."

Editor has been indebted to the reporter of the "Economic Notes" for the foregoing judgment; and himself of the present opportunity to judge, the valuable assistance is partially derived from consulting and his reports.

"... the words "as our hope is thus our
we doth."—Judgment of the Bishop
Carter, in re Toot Carr.

complaint having been made to the
 Bishop of Exeter, on the part of the
 late R. B. Lyne, Esquire, of
 the Rev. J. F. Todd, vicar of
 in reading the burial service at
 of the deceased, at the parish
 of Leonard, and omitted part of one
 verses of the service; a commission
 being his lordship under the Church
 of Act, and the commissioners, after
 the accusation against Mr. Todd and
 the vicar, found, that, in their
 case, was sufficient ground for
 requiring further proceedings.
 and when Mr. Todd gave his
 answer, he was further proceed-
 ed on. His grace then pronounced
 the sentence. His grace therefore
 to the vicar, and delivered
 these words:

... Mr. Tolson ...
... Mr. Tolson ...
... Mr. Tolson ...
... Mr. Tolson ...
... Mr. Tolson ...

[illegible][illegible][illegible]

This retraction, and the answer expressed by him, are evidence — as we have seen — that he was sincerely moving; in whatever respect he admitted an extension of his feelings or ignorance of the fact, or of its effect, through ignorance, of some sort, although that ignorance have been one cause of the offence, cannot it follow, because, if the fact itself, in relation to ignorance, be such as would justify the conduct into which said offence may have misled the party? Now even in the case in the present instance. Even if the deceased had died in a state of misapprehension, however his minister may have intended to comfort him, and to give him hope of his being admitted to rest in Christ, yet it might not, on just consideration of the terms of the christian covenant, to have encouraged him to hope, much less to have induced the extinction of it.

"God will be true."

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liturgy; particularly, as it came under notice, in this matter of the new liturgy upon the Restoration, when Prayer was revised. It was made to render it satisfactory to church itself, and to those who were in the church, particularly to the king; and for that purpose it was altered at the Savoy; but the king had an entire new liturgy drawn up, which, in the conference broke down, and the old one prevailed. The Liturgy was then re-ordered by the house of convocation; and the king; it was presented to him, and he passed an act confirmed 14th Charles 2, being passed upon the substance confirmed to this day, and no alteration may have been since the ratification Act, or by any other authority, or the directions of the king's Prayer, form a part of the law of the land. Now that law is binding upon the burial service to be performed on those who are unbaptized. It is not a matter of excuse, (as seems to have been argued,) whether after the burial service, the minister, thus complicitly enjoins him to administer baptism in the specified manner, whether this is in the name of the Holy Ghost, by whom he is pleaded to have recourse to the regulations did die unbaptized of the rubric. If the minister was his duty, and not to perform the rite on those who are unbaptized, and if, by a refusal to receive them, he contained no exception, nor by any subsequent action.

The meaning of the construction must be considered the law, and in their conformity with the law; examining whether they be assented to the law; either by consent or contrary.

The sort of the word used in sense, and understood, obviously, a person not initiated into common parlance, that is, in the language of the common idiom, that this person belongs to the form of another person B. In the form of the person C. was born of the presence was baptized among the Calvinists another person

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baptism, vouchsafes also to give forgiveness of all sins to those who continue in the state in which they have been placed by baptism. Presumptuous and unrepented sin does, indeed, forfeit that state; but, thanks be to God, not sins of infirmity, and whether in the case of death under intoxication, the sin was presumptuous and unrepented, or a sin of infirmity, consistent with a living, though, it may be, languid, faith, it is not for man to pronounce.

"To hold the contrary, to assert for the priesthood a right to judge in every case of the final condition of the deceased, would be to claim the power of the keys, in a degree to which Papal Rome never dared to aspire, and which this reformed church, while it maintains the just authority of its priests for edification, not for destruction, hath always most strongly repudiated. Where would such a tyranny, if once endured, be content to stop? By the same right, if it were a right, by which this clergyman took upon him to decide that this deceased died in a state of intoxication, and excluded him, therefore, or seemed to have excluded him, from the hope of a Christian, he and every other clergyman might assume to judge of every other deceased, whether he died in any other sin, and was to be denounced, in the last solemn office over his mortal remains, as cut off from the body of Christ, and from the blessed inheritance of all who die in the Lord.

"I have deemed it necessary to make these remarks, not because I consider Mr. Todd as having intended to claim for himself so enormous and unchristian an authority in all cases, nor because I believe him in the present case to have exceeded a temporary and pardonable misapprehension of his right and duty as one intrusted with 'the care of the souls of his parishioners,' but because this is the first case which has been brought before me of such an offence; and because I deem it necessary, in the very first instance, to point out the grave and most mischievous consequences to which the offence has a manifest tendency to lead.

"Being, however, the first case, it may, I trust, without danger of misleading others, be dealt with leniently; and I rejoice that Mr. Todd, by submitting to my judgment in this stage of the proceedings, has enabled me thus to deal with him. I consider myself as dealing leniently, much more leniently than I should feel myself at liberty to deal with any similar case in future, when I pronounce my judgment, that the Rev. James Frederick Todd be suspended for the space of fourteen days, to be computed from the time of publishing the suspension in the parish church of Liskeard, from all discharge of his clerical functions, and execution of the duties thereof; that is to say, from preaching the word of God, administering the sacraments, and celebrating all other duties and offices in the parish church and parish of Liskeard, and elsewhere in the diocese of Exeter. And I hereby direct the said suspension to be duly published on Sunday, the 4th day of August next, previously to the commencement of divine service. And,

moreover, I hereby condemn the said Rev. James Frederick Todd in the costs of the said proceedings."

V. BAPTISM BY PERSONS ALLEGED TO BE HERETICS OR SCHISMATICS.

Judgment of Sir John Nicholl in Kemp v. Wickes.

In the office of the judge promoted by *Kemp v. Wickes*, (3 Phill. 264.) Sir John Nicholl observed: "This suit is brought against the Reverend John Wight Wickes, described as the rector of Wardly-cum-Belton, for refusing to bury the infant child of two of his parishioners. The usual proceedings have been had in the institution of this suit; and articles are now offered, detailing the circumstances of the charge proposed to be proved. The admission of these articles is opposed, not upon the form of the pleading, but upon the entire law of the case: it being contended, that if the facts are all true, still the clergyman has acted properly, and has been guilty of no offence. . . .

"The articles plead, in the first place, the incumbency of Mr. Wickes. In the second article the 68th Canon is recited, which directs, 'that no minister shall refuse or delay to christen any child, according to the form of the Book of Common Prayer, that is brought to the church to him upon Sundays or holy-days to be christened; or to bury any corpse that is brought to the church or churchyard, (convenient warning being given him thereof before,) in such manner and form as is prescribed in the Book of Common Prayer; and if he shall refuse to christen the one or bury the other, except the party deceased were denounced excommunicated *majori excommunicatione* for some grievous and notorious crime, and no man able to testify of his repentance, he shall be suspended by the bishop of the diocese from his ministry for the space of three months.'

"The articles then go on to plead, 'that Mr. Wickes did in August, 1808, refuse to bury Hannah Swinger, the infant daughter of John Swinger and Mary Swinger his wife, of the parish of Wardly-cum-Belton aforesaid, then brought to the said church or churchyard, convenient warning having been given: that Hannah Swinger died within the parish of Wardly-cum-Belton, and being the daughter of the said John Swinger and Mary Swinger his wife, who are protestant dissenters from the church of England of the class or denomination of Calvinistic Independents, had been first baptized according to the form of baptism generally observed among that class of dissenters, that is to say, with water, and in the name of the Father, and of the Son, and of the Holy Ghost, by the Reverend George Gell, a minister, preacher, or teacher, in all respects duly qualified according to law, and of the same class of protestant dissenters; and that of that fact of baptism Mr. Wickes was sufficiently apprised, upon application being made for the burial of the infant in the churchyard of the said parish, in manner and form as is prescribed in the Book of

Common Prayer: but he assigned the same,' that is, the form of baptism, 'expressly as the ground of his not complying with the said application.' Here, then, it is pleaded, and it is undertaken to be proved, and at present in this respect the articles must be taken to be true, that Mr. Wickes did not doubt on the question of fact that the infant had been so baptized, but he refused upon the ground of law, namely, that he was not bound to bury a person of that description. The remaining articles are in the usual form; they are not material to be stated for the purpose of considering the question that is now to be decided.

"In these articles it is pleaded, that the minister was required by regular warning to bury this infant in the form prescribed by the Book of Common Prayer, and by the canon. The canon, not made merely, (as has been thrown out,) for the protection of the clergy, but made for their discipline also, and to enforce the performance of their duty, prohibits the refusal of burial in all cases except in the case of excommunicated persons, and punishes such refusal; and perhaps the learned counsel who spoke last is correct in saying, that by the general description, 'persons,' is here to be understood Christian persons; and therefore that, where application was made for the burial of any persons who might not be considered as Christians, they did not come within the description of the canon. The rubric, however, which is that part of the Book of Common Prayer that contains directions for the performance of the different offices, adds two other exceptions expressly. The rubric before the office of burial is in this form: 'Here is to be noted, that the office ensuing is not to be used for any that die unbaptized, or excommunicate, or have laid violent hands upon themselves.' And, by the old law, burial was refused to persons of the same description, and indeed of some other descriptions; persons who had fallen in duels, and some others, were interdicted from receiving Christian burial: but here the rubric does expressly state, 'that the office is not to be used for persons unbaptized or excommunicated, or who have laid violent hands upon themselves.'

"These directions, contained in the rubric, are clearly of binding obligation and authority. Questions indeed have been raised respecting the Canons of 1603, which were never confirmed by parliament, whether they do, in certain instances, and *proprio vigore*, bind the laity: but the Book of Common Prayer, and therefore the rubric contained in the Book of Common Prayer, has been confirmed by parliament. Anciently, and before the Reformation, various liturgies were used in this country; and it should seem, as if each bishop might in his own particular diocese direct the form in which the public service was to be performed: but after the Reformation, in the reigns of Edward the Sixth and Queen Elizabeth, acts of uniformity passed, and those acts of uniformity established a particular liturgy to be used throughout the kingdom. King James the First made some

alteration in the Liturgy; particularly, as it will be necessary to notice, in this matter of baptism. Immediately upon the Restoration, the Book of Common Prayer was revised. An attempt was then made to render it satisfactory, both to the church itself, and to those who dissented from the church, particularly to the Presbyterians; and for that purpose conferences were held at the Savoy: but the other party requiring an entire new liturgy on an entire new plan, the conference broke up without success. The Liturgy was then revised by the two houses of convocation; it was approved by the king; it was presented to the parliament, and an act passed confirming it in the 13th and 14th Charles 2, being the last act which has passed upon the subject; and so it stands confirmed to this day, except so far as any alteration may have been produced by the Toleration Act, or by any subsequent statutes.

"The rubric, then, or the directions of the Book of Common Prayer, form a part of the statute law of the land. Now that law in the rubric forbids the burial service to be used for persons who die unbaptized. It is not matter of option; it is not matter of expediency and benevolence, (as seems to have been represented in argument,) whether a clergyman shall administer the burial service, or shall refuse it; for the rubric, thus confirmed by the statute, expressly enjoins him not to perform the office in the specified cases; and the question is, whether this infant, baptized with water in the name of the Father, the Son, and the Holy Ghost, by a dissenting minister, who is pleaded to have qualified himself according to the regulations of the Toleration Act, did die unbaptized within the true meaning of the rubric. If the child died unbaptized, the minister was not only justified, but it was his duty, and he was enjoined by law, not to perform the service. If the child did not die unbaptized, then he has violated the canon, by a refusal neither justified by any exception contained in the canon itself expressly, nor by any subsequent law. . . .

"To ascertain the true meaning of the law, the ordinary rules of construction must be resorted to; first, by considering the words in their plain meaning and in their general sense, unconnected with the law; and, in the next place, by examining whether any special meaning can be affixed to the words, when connected with the law; either in its context or in its history.

"The plain simple import of the word unbaptized, in its general sense, and unconnected with the rubric, is, obviously, a person not baptized at all, not initiated into the Christian church. In common parlance, as it is sometimes expressed, that is, in the ordinary mode of speech and in the common use of language, it may be said, that this person A. was baptized according to the form of the Romish church; that another person B. was baptized according to the form of the Greek church; that another person C. was baptized according to the form of the presbyterian church; that another was baptized according to the form used among the Calvinistic independents; and that another person

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was baptized according to the form used by the church of England: but it could not be said of any of those persons, that they were unbaptized; each had been admitted into the Christian church in a particular form; but the ceremony of baptism would not have remained unadministered, provided the essence of baptism, according to what has generally been received among Christians as the essence of baptism, had taken place.

"Such being the general meaning of the word in its ordinary application and use, and standing unconnected with this particular law, is there anything in the law itself, in its context, that varies or limits its meaning? The context is, that the office shall not be used for persons who die unbaptized or excommunicate, or that lay violent hands upon themselves. What, then, is the description of persons excluded from burial that is put in association with these unbaptized persons? Excommunicated persons and suicides.

"Now excommunication, in the meaning of the law of the English church, is not merely an expulsion from the church of England, but from the Christian church generally. The ecclesiastical law excommunicates papists. The ecclesiastical law excommunicates presbyterians. Dissenters of all descriptions from the church of England are liable to excommunication. But what is meant by the church of England by the term of excommunication can be best explained by the Articles of that church. By the 33d Article it is expressly stated, 'That person which by open denunciation of the church is rightly cut off from the unity of the church and excommunicated, ought to be taken of the whole multitude of the faithful, as an heathen and publican until he be openly reconciled by penance, and received into the church by a judge that hath authority thereunto;' that is, he is no longer to be considered as a Christian, no longer to be considered as a member of the Christian church universal, but he is to be considered 'as an heathen and a publican,' for those are the words of the Article.

"It has been said, that in this country a foreign excommunication could not be noticed, and that a foreign country could not notice an excommunication by this country; and certainly that is true, for no laws can be made binding and compulsory beyond the country over which the authority making the law extends. The Articles of Religion, though confirmed by act of parliament, only extend to this country, and to the subjects of this country. The discipline of the church, and its punishment by excommunication, can therefore only extend to this country; but all his majesty's subjects, whether of the church of England, or whether dissenting from that church, either as papists or as any other description of dissenters, are bound to consider an excommunicated person as an heathen and a publican, be the person himself of the church of England, or be he of any other class or sect. This is the first description of persons put in association with persons unbaptized.

"The next description is that of suicides: they are supposed to die in the commission of mortal sin, and in open contempt of their

Saviour and of his precepts; to have renounced Christianity; to have unchristianized themselves; that is the view which the law takes of the persons who are self-murderers.

"Then, taking the context of the law, putting unbaptized persons in association with excommunicated persons, and with suicides, both of whom are considered as no longer Christians, it leads to the same construction as the general import of the words; namely, that burial is to be refused to those who are not Christians at all, and not to those who are baptized according to the forms of any particular church. . . .

"The general law is, that burial is to be refused to no person. This is the law, not only of the English church; it is the law, not only of all Christian churches; but it seems to be the law of common humanity; and the limitation of such a law must be considered *strictissimi juris*. . . .

"The law of the church of England, and its history, are to be deduced from the ancient general canon law; from the particular Constitutions made in this country to regulate the English church; from our own Canon, from the Rubric, and from any acts of parliament that may have passed upon the subject; and the whole may be illustrated, also, by the writings of eminent persons.

"Now if the first head be inquired into, (the ancient canon law,) it will appear that, from the earliest times, the use of water with the invocation of the name of the Father, of the Son, and of the Holy Ghost, was held to be the essence of baptism; that baptism, so administered, even by a layman or a woman, was valid; and that a person, who had been so baptized, was not to be baptized again.

"It may not be improper just to refer to the passages of Scripture, which have been referred to by the church itself as the foundation of its law in this respect: they are these. First, the words of our Saviour, 'Unless a man be born again of water, and of the spirit, he cannot enter into the kingdom of God.' Hence the church, (without presuming to decide whether a person unbaptized might not be saved through God's mercy, yet) has held, that baptism was so strongly enjoined as a matter of indispensable necessity, that rather than omit it altogether, the ceremony was to be performed even by a layman. The words of our Saviour after his resurrection, 'Go and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost,' have been held to require the invocation of the Holy Trinity, as the essential form of words necessary to baptism. The passage in the Epistle to the Ephesians, 'One Lord, one faith, one baptism,' has been held by the church to prohibit a second baptism; or, as the learned Hooker has expressed it, 'Iteration of baptism once given has always been thought a manifest contempt of that ancient apostolic aphorism, "One Lord, one faith, one baptism."'" It is here, however, to be observed, that the court is not entering into any question of theological controversy; it is merely endeavouring to trace and to ascertain the fact,—what has been held by the

church to be the law. The court has only to administer the law as it finds it; it is not to presume to enter into any speculations upon its propriety.

"Now, conformable to what has been already stated will be found the text of the canon law. The passages in that law are almost innumerable. Many have been cited by the counsel. In the third part of the decree *De consecratione*, and in the fourth distinction, *De baptismi sacramento*, there are a great number of paragraphs to this effect; and it may be sufficient just to state the titles of the different paragraphs or sections of that Distinction. For instance, the nineteenth paragraph states, 'nemo nisi sacerdos baptizare presumat;' certainly directing, that regular baptism is to be administered by the priest; or perhaps it may be more properly said, public baptism. The 21st section is: 'Etiam laici necessitate cogente baptizare possunt;' 'in cases of urgency laymen may baptize.' The 23rd, 'Non reiteratur baptismus quod a pagano ministratur;' 'if baptism has been administered by a pagan, it is not to be iterated;' so cautious was the ancient church, that there should be no re-baptism. The 25th, 'Sicut per bonum ita per malum ministrum sequè baptismus ministratur.'

"The character of the person who administered, therefore, was of no effect in the validity of baptism. The 26th is to the same effect, but rather more explanatory: 'Non merita ministrorum, sed virtus Christi, in baptismate operatur.' The 28th, 'Non reiteratur baptismus quod in nomine Sanctæ Trinitatis ministratur;' and it goes on to illustrate by an example, 'Si qui apud illos hæreticos baptizati sunt, qui in Sanctæ Trinitatis confessione baptizant, et veniant ad nos, recipiantur quidem ut baptizati, ne Sanctæ Trinitatis invocatio vel confessio annulletur.' This, therefore, points out, that the essence was the invocation of the Holy Trinity. The baptism of any heretics, (and the church deemed all dissenters to be of that description,) that of any dissenters, who made use of the name of the Holy Trinity in baptism, was to be received, lest the invocation of the Holy Trinity should be rendered and considered as of no effect. The 32nd, 'Non reiteratur baptismus quod in fide Sanctæ Trinitatis ab hæreticis præstatur;' that, therefore, is to the same effect as the former section. The 36th is, 'Valet baptismus, etsi per laicos ministratur;' and that section again explains the principle upon which the church acted, 'Sanctum est baptismus per seipsum quod datum est in nomine Patris, Filii, et Spiritûs Sancti.' There are many other passages to the same effect, confirming all the foregoing; and it is perfectly clear that, according to the general canon law, though regular baptism was by a bishop or priest, yet, if administered by a laic, or by a heretic or schismatic, it was valid baptism; and so valid, that it was not to be repeated.

"The next branch of the law of our church, and which reached down to the time of the Reformation, was the law which is to be found in the Legatine and Provincial Constitutions; the former being laws made in

this country under the sanction of the Pope's legates, Otho, legate of Gregory the Ninth, and Othobon, legate of Clement the Fourth. The latter, the provincial constitutions, were those made in convocation under several archbishops. The whole of these have been collected by the very eminent English canonist, Lyndwood; who has written a very learned commentary or gloss. upon them, which is also of high authority in all courts administering the ecclesiastical law of this country. These constitutions are precisely to the same effect as the former. Regular baptism was to be administered by a priest, and in the church, and at certain stated times of the year: but in cases of urgency a layman might administer baptism in private houses, rather than it should not be administered at all. If a layman interposed without necessity in the office he was punishable; but still the baptism was valid, and by no means to be repeated.

"In the Constitution of Otho, 'De Baptismo et Formâ Baptizandi,' which will be found in Lyndwood, p. 10 of the Legatine Constitutions, it is among other things directed, that priests shall particularly instruct their parishioners in the form of baptizing: of course shewing that lay baptism was allowed; that it was recommended, rather than that no baptism at all should take place: otherwise it could not have been proper and necessary for the priests to have instructed their parishioners in the form. The Constitution of Othobon, to be found in Lyndwood, p. 80, confirms and approves of this former constitution, and enjoins precisely the same thing. The Provincial Constitutions of Archbishop Peccham particularly enjoin, that after baptism by a layman it is not to be iterated. The passage will be found in Lyndwood, 41: 'Caveant sacerdotes ne baptismum legitimè factum audeant iterare;' and Lyndwood, in his Gloss. upon the word 'Baptismus,' says, 'Sive per laicum sive per clericum etiam per paganus in casu necessitatis;' so that it is good, 'whether by a layman, or a clergyman, nay, even in case of necessity, by a pagan;' and in his Gloss. upon the words 'Legitimè factum,' he says, two things are essential to it, 'duo sunt necessaria, verbum et elementum aque;' and in describing what is meant by 'verbum,' he explains the form of the words to be those which have been always used, 'I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost.' In a further Constitution of Archbishop Peccham, to be found in p. 244, it is again strongly enjoined not to baptize a second time persons who have been baptized by laymen or by women; and he speaks rather strongly of those priests who do so baptize, terming them 'stolidi sacerdotes:' and the constitution concludes, 'Quod si sacerdos rationabiliter dubitet an parvulus in formâ debitâ baptizatus sit, dicat, Si baptizatus es, ego non rebaptizo te; si nondum baptizatus es, ego baptizo te in nomine Patris, et Filii, et Spiritûs Sancti.' Lyndwood here again cautiously explains the words 'in formâ debitâ,' as he had before, to mean by the use of the element water, and by the use of the words of the invocation of

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the Holy Trinity; and that it was 'in formal debit⁴, though by a layman.

"Now these passages shew, not only that those baptisms were held to be valid, but they shew how extremely cautious the church was, that baptism should not be repeated. These references to the ancient law will also serve to explain and illustrate any matter, which could be considered as doubtful in the construction of the more modern law of the rubric. It therefore seems to admit of no doubt, that by the law of the English church, as well deduced from the general canon law, as from its own particular constitutions, down to the time of the Reformation, lay baptism was allowed and practised. It was regular, and even prescribed, in cases of necessity: it was so complete and valid, that it was by no means to be repeated. It also clearly appears that, in order to ascertain its validity, no inquiry was necessary to be made into the existing urgency under which it was administered; but only into what was declared to be the essence, whether it had been administered by water, and in the form of the invocation; for, if those forms were used, the baptism by a layman was complete and valid.

"So the matter stood at the time of the Reformation: and that period is an important one; for, if lay baptism had been considered as one of the errors of the Romish church, it would have been corrected at the time when all the Christian world had their attention pointed to those particular errors. But the fact is otherwise, for the use of lay baptism was manifestly continued by the English reformed church. Liturgies were framed, and acts of uniformity passed by parliament, in the reigns of Edward the Sixth, and of Queen Elizabeth. In those the rubrics run thus: 'Let those that be present call upon God for his grace, and say the Lord's Prayer if the time will suffer: and then one of them shall name the child, and dip him in the water, or pour the water upon him, saying these words, "I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost."' Here is no mention whatever of a priest or lawful minister, as the person who is to officiate upon the occasion: it is directed to be done by 'those who are present,' or one of them, without singling out or particularizing what the person is to be who is to administer this sacrament. And the better opinion seems to be, that all private baptism was by laymen antecedent to the time of King James: that it was only public baptism in the church which was to be administered by a priest; and that, wherever there was the sort of urgency and necessity which prevented the child being brought to the church, and required the child to be baptized at home, the baptism was to be administered by any person without requiring the attendance of the priest. The same rubric, although it enjoins the people not to baptize their children at home except in cases of necessity; yet, lest the necessity should arise, expressly directs the pastors to instruct their parishioners in the form of doing it. Hence it is evident, that subsequent to the Reformation the English

reformed church itself did allow the practice of lay baptism.

"So the practice stood from the Reformation till the time of King James the First; except that in the year 1575, among some articles agreed upon at that time in convocation, there appears to have been one, (the 12th article,) which states, 'That to resolve doubts by whom private baptism is to be administered, it is directed that in future it shall be administered by a minister only, and that private persons shall not intermeddle therewith.' This article rather appears not to have been published and circulated. It remained in manuscript. It had no authority, not appearing to have been even confirmed by the crown. There could have been no doubt upon the rubric of Edward the Sixth, coupled with what was the old law, so far as respected the validity of lay baptism. And the bishops certainly had not authority to alter the law; they had only authority to explain matters which were doubtful; and the doubt seems to have been, not whether lay baptism was valid, but whether it was regular and orderly. Up to that time, wherever private baptism was allowed, there was nothing to be found in the ancient canons, the constitutions of the church, or the rubric, that required the minister as a person at all necessary to be present for the orderly administration of such private baptism: it was not even to be inferred that it would be more regular, for the minister is not mentioned; on the contrary, in cases where private baptism was necessary, (and it was only allowed in cases of necessity,) the people were to be instructed how to perform it themselves. . . .

"King James the First (who considered himself a great divine) disapproved of the practice of lay baptism. Soon after his accession, conferences were held at Hampton Court, with the clergy, for the purpose of revising and reconsidering the Liturgy, and particularly this article of private baptism. The king expressed strongly his disapprobation of lay baptism; and seemed now inclined to no baptism at all than that the office should be performed by a laic, but his divines (most of them prelates of very great eminence) differed from him in respect to preferring the total omission of baptism to its being administered by a layman. It was, however, agreed so far to alter the rubric, as to direct that private baptism should be administered by a lawful minister: but whoever reads the account which has been preserved of these conferences will see that neither the king nor the bishops maintained that baptism, if *de facto* performed by a laic, was invalid. . . .

"Private baptism by laymen had always been held valid, and almost enjoined as regular. The rubric having now introduced the order, that it shall be administered by the lawful minister,—what would be the obvious construction of this alteration? That in the regular and ordinary and decent administration of private baptism, it became the duty of the lawful minister to perform the office. But if the old law was meant to be completely changed; if it had been intended to invalidate the old law in this respect, and

that all other baptism, except that by a lawful minister, should be considered as absolutely null and void; the new law would most expressly and distinctly have declared it.

"It is obvious, that the person performing the baptism was not essential by the rubric; and in this respect the rubric exactly conformed to the old law, for the baptism remained valid, and was not to be repeated; and even to what King James said at the conference just before this rubric was approved, that he utterly disliked all re-baptization.

"After tracing the law through the several stages of its history, it appears impossible to entertain a reasonable doubt, that the church did at all times, (whatever might have been the opinions of particular individuals upon this point, as there will be difference of opinion among individuals upon all points—that the church itself did at all times,) hold baptism by water in the name of the Father, and of the Son, and of the Holy Ghost, to be valid baptism, though not administered by a priest who had been episcopally ordained—or rather, to state it more generally, though administered by a layman or any other person. If that be so, if that is the construction of baptism by the church of England, then the refusal of burial to a person 'unbaptized,' that term simply being used, cannot mean that it should be refused to persons who have not been baptized by a lawful minister in the form of the Book of Common Prayer; since the church itself, holds persons not to be unbaptized, (because it holds them to be validly baptized,) who have been baptized with water, and the invocation by any other person, and in any other form.

"There were many laws, both of church and state, requiring conformity to the church, creating disabilities, imposing penalties, and denouncing excommunications upon all non-conformity. Now, supposing that during the existence of these disabilities it could be maintained, that in point of law no act of non-conformists could be recognised in a court of justice, and therefore that a baptism administered by such persons could not be noticed at all, either by the church or by the courts administering the law of the church, yet could it be maintained now, that such a baptism was to be considered as a mere nullity? If such could have been considered as the view of the law before the Toleration Act, (*cap* 633, n. (2).) yet that act would change the whole shape of the thing; that act removed the disabilities, it allowed protestant dissenters publicly to exercise their worship in their own way under certain regulations, it legalized their ministers, it protected them against prosecutions for non-conformity.

"Upon the whole of the case, and for the reasons assigned, the court is of opinion, that the minister, in refusing to bury this child in the manner pleaded in the articles, has acted illegally."

Judgment of Lord Brougham in Escott v. Mastin.

In *Escott v. Mastin*, (1 Eccles. Notes of

Cases, 552,) which was an appeal from the Arches court of Canterbury, (2 Curt. 692,) in a cause of office promoted by an inhabitant of the parish of Gedney, Lincolnshire, against the Rev. Thomas Sweet Escott, vicar of that parish, for refusing to bury the corpse of the infant daughter of a parishioner, on the ground that, as the deceased had been *baptized by a Wesleyan minister, who was unordained*, the rite or form of baptism performed by him was to all intents and purposes null and void, and in the rubric of the Book of Common Prayer, in the Order for the Burial of the Dead, it is enjoined, that such office is not to be used for any that die 'unbaptized,' which was the alleged condition of the infant to whom burial had been refused. The judge in the court below held the offence to be established, and sentenced the defendant to be suspended for three calendar months, condemning him in the costs. From this sentence Mr. Escott appealed.

Upon such facts, Lord Brougham, after overruling an objection which had been taken to three of the witnesses, observed, "The ground is thus cleared for examining the main question between the parties; and this resolves itself into the construction of the rubric to the Burial Service. The 68th Canon is clear and distinct, attaching the penalty of suspension to a refusal of that office in any case except one, that of a person having been 'denounced *excommunicate majori excommunicatione*, for some grievous and notorious crime, and no man able to testify of his repentance.' But the Act of Uniformity, (Stat. 13 & 14 Car. 2, c. 4.) having incorporated, as part of its provisions, the Office for the Burial of the Dead, and the rubric for that office forbidding the use of it for 'any that die unbaptized,' it will be a sufficient defence to the charge, under the 68th Canon, if the child died unbaptized. The whole question, therefore, is reduced to this: does baptism, by a person not in holy orders, possess the character of that sacrament according to the laws of the church; in other words, can any one, other than a person episcopally ordained, baptize so that the ceremony may be effectual as baptismal, though the performing it may be irregular and even censurable? Is the solemnity performed by a layman, sprinkling with water, in the name of the Trinity, valid as baptism in the view of the church, although the church may greatly disapprove of such lay interference without necessity, as she disapproves even of an ordained person performing the ceremony in a private house without necessity, and yet never scruples to recognise the rite so performed, as valid and effectual? Nothing turns upon any suggestion of heresy or schism; the alleged disqualification is the want of holy orders in the person administering the solemnity, and it is as unqualified, and not as heretical and schismatical—heretic without or schismatic within the pale of the church—that any one's competency to administer it is denied.

"The 68th Canon being that upon which this proceeding is grounded, it is necessary to consider what the law was at the date of

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the canon, the year 1603. Without distinctly ascertaining this, we cannot satisfactorily determine what change the rubric of 1661, adopted into the 13 & 14 Car. 2, c. 4, made, and in what state it left the law on this head; because it is very possible that the same enactment of a statute, or the same direction in a rubric, bearing one meaning, may receive one construction when it deals for the first time with a given subject-matter, and have another meaning and construction when it deals with a matter that has already been made the subject of enactment or direction; and this is most specially the case where the posterior enactment or direction deals with the matter, without making any reference to the prior enactment or direction. Still more is it necessary to note the original state of the law, when it is the common law that comes in question, as well as the statute.

"The Book of Common Prayer was adopted and prescribed by the statute of 2 & 3 Edw. 6, c. 1, and more fully by 5 & 6 Edw. 6, c. 1, which 1 Eliz. c. 2, revived, after it had been repealed by 1 Mar. s. 2, c. 2; and it was further prescribed and enforced by the same act of Elizabeth, and by another made 8 Eliz. c. 1, s. 3. It is certain, then, that the Liturgy established during the interval between the first and the last of these statutes, that is, between 1548 and 1565, was in force by statutory authority down to the year 1603, (sometimes called 1603, and sometimes 1604, which is owing to the style, the date, if I recollect, being January,) when the canons in question were made, no alteration whatever having been effected during the interval. It is equally certain that no authority existed to make any alteration, inconsistent with statutory provisions, during that interval; and this consideration seems to dispose of the question which has been argued, both below and here, upon the Canon of 1575. That canon is to be taken either as professing to make an alteration of the rubric which the statute had sanctioned, in which case it can have no force, or as declaratory of the sense of the rubric; but neither would any such declaration be binding, because the legislature having adopted the rubric, and made it parcel of a statute, no other authority than a declaratory act can give it a new meaning; add to which, that the plain intendment of the rubric appears to have been adhered to, after and notwithstanding the Canon of 1575, and not the sense which that canon seems to give the rubric, and which we must indeed admit that canon purports to give it. The Canon of 1575 appears never to have excited any attention, and if it ever received the royal assent, (which is doubtful,) it certainly was not cited on either side during the controversy on the subject of baptism at the Hampton Court Conferences.

"We are, therefore, to see what the rubric prescribed at and prior to 1603, this being the statutory provision then in force; and adopting the common law prevailing for 1400 years over Christian Europe. In the first place, no prohibition of the burial service for unbaptized persons, or indeed for any class of persons, is to be found in the Liturgies of

Edward and of Elizabeth. The exception of unbaptized persons and suicides first occurs in the rubric of 1661, and consequently first received the force of law from the Uniformity Act of 1662, after the Restoration. The statutes of Edward 6 and Elizabeth recognised the right of every person to burial with the church service, and the 69th Canon, enforcing this civil statutory right, only excepted persons excommunicate and impenitent. Unbaptized persons, therefore, persons baptized in no way whatever, would have had the right of burial according to the service of the church, if they were not excluded by those portions of the service which appear to regard Christians alone. Those portions would probably exclude persons not Christians; but if an unbaptized person could be regarded as a Christian, then would he not be excluded prior to the rubric and statute of 1661 and 1662.

"But, secondly, and what is much new material to our present inquiry, it is clear that the rubric, and consequently the statute down to 1603, and indeed to 1662, the date of the Uniformity Act, authorized by baptism, and placed it on the same footing with clerical baptism, in point of efficacy. The rubric, after setting forth that baptism ought to be administered publicly, and on Sundays and holidays, in order to approach as near as might be to the practice of the primitive church, which confined it to Easter and Whit Sunday, nevertheless adds, that, if necessity require, children may at all times be baptized at home. A further warning is required to be given to the people against baptizing privately, 'without great cause and necessity' and this rubric is retained in the subsequent forms of prayer, down to the present time. The rubrics of Edward and Elizabeth then proceed to lay down the rules for administering the baptismal sacrament when it is privately performed, and herein those rubrics materially differ from the subsequent ones of 1603 and 1661. They require 'them that be present to say the Lord's Prayer, if the new will suffer;' and the rubrics add, 'then one of them,' that is, any one of them that be present, 'shall name the child, and dip him in water, or pour water upon him, saying these words, "N., I baptize thee in the name of the Father, and of the Son, and of the Holy Ghost, Amen."' We may observe, in passing, that there is contemplated a great hurry in the ceremony because the expression is, 'if the time will suffer.' This of itself indicates that the circumstances are, or at least may be, such as to prevent the sending or the waiting for a minister. The rubric goes on to declare the sufficiency of baptism so performed: 'And let them not doubt but that the child so baptized is lawfully and sufficiently baptized, and ought not to be baptized again in the church.' Nevertheless, the expediency is not lost afterwards bringing the child to the church, and there presenting him to the minister, that it may be ascertained whether or not the ceremony had been lawfully performed. For this purpose, six questions are to be asked of them that bring the child: Who baptized it? Who was present? Whether they

called on God for his grace? With what matter the child was baptised? With what words? And, Whether they think he was lawfully and perfectly baptised? If the answer to these questions prove that 'all things were done as they ought to be,' then the minister is to say, 'I certify you that in this case ye, (not you the minister, but ye the people,) have done well and according to due order,' and he declares the child to have been received into the number of the children of God, 'by the law of regeneration in baptism;' that is, by the sacrament previously administered in private. If, however, they which bring the child 'make an uncertain answer, and say they cannot tell what they thought, said, or did, in that great fear and trouble of mind, as oftentimes it chanceth,' then the child is to be baptised publicly, but, as it were, conditionally or provisionally, with this reserve, that the minister shall say, 'If thou be not baptised already.' This portion of the rubric is demonstrative, if the former part left any doubt, that the presence of a minister at the private ceremony was not contemplated; for if it were, what they thought, or said, or did, would be immaterial; and what the minister said and did would have formed the only subject of inquiry; not to mention, that no fear or trouble of mind, at the time of the ceremony, could prevent those who bring the child from recollecting whether there had been a minister present or not. Indeed, the question would have been differently framed, had the presence of a minister been as essential as the water and the words. It would have been asked, not merely, 'by whom, and in whose presence,' but, 'was he baptised by a minister?' There can, therefore, be no doubt whatever, that, by these earlier rubrics, the baptism is deemed valid if performed with water, and in the name of the Trinity, though by lay persons. Assuming, then, that there is no minister present, the rubric declares the baptism to be without any doubt lawfully and sufficiently administered, though in private.

"The same doctrine was held, and the practice formed upon it, in the Roman catholic church, from a very early period. It prevailed from the beginning of the third century, and though it formed the subject of controversy between the Eastern and Western churches during the succeeding period, it had become universally admitted by both in the time of St. Austin, who flourished in the latter part of the fourth century. In England, as elsewhere, it was held valid. The Constitutions of Archbishop Peccham, in Lyndwood's collection, bearing date 1281, though severely denouncing a layman who shall intrude himself into the office without necessity, yet declare the baptism valid which is celebrated by laymen, and state that it is not to be repeated. Whoever did so intrude, was denounced as guilty of 'mortal sin;' nevertheless, his act was pronounced to be valid and sufficient, and that it was not necessary that the ceremony should be repeated. Now, in all these positions, the necessity can make no kind of difference, unless in excusing the intrusion. If the rite can only

be administered by clerical hands, if it be wholly void when administered by a layman, no necessity can give it validity. The consecration of the elements, for the purpose of giving the eucharist to a dying person, may be as much a matter of urgent necessity as the baptism of an infant in extremities; but, neither in the Roman catholic, nor in the reformed church, was it ever supposed that any extremity could dispense with the interposition of a priest, and enable laymen to administer the sacrament of the Lord's supper.

"The position, therefore, being undeniable, that, previous to the year 1603, and at the time the 68th Canon was made, lay baptism, though discountenanced, and even forbidden, unless in case of necessity, was yet valid if performed; and this being the common law, not the law made by statute and rubric, but by statute and rubric plainly recognised and adopted, we are to see if any change was made in that law as it thus stood.

"In the Burial Service, the rubric of 1603 made no change; but that of 1661 forbade the Burial Service in cases of suicide, excommunication, and persons unbaptised. A right formerly existing was thus taken away, at least in some cases. This makes it fit that we construe the word 'unbaptised,' strictly, or which is the same thing, that we give a large construction to 'baptised;' and, after the change in the Burial Service, it becomes the more necessary to see that there is a clear and undoubted change in the rubric relating to baptism, before we admit the baptism to be invalid which was held valid, even when the rubric of the Burial Service had not as yet taken away the rite from all who were unbaptised.

"The rubric of 1603, instead of directing 'those present' in the case of private baptism, as the former rubrics had done, directs 'the lawful minister,' to say the prayer, if time permit, and to dip or sprinkle the child, and repeat the words. The rubric of 1661 explains what shall be intended by 'lawful minister,' substituting for that expression the words, 'minister of the parish, or, in his absence, other lawful minister that can be procured.' It then prescribes a prayer to be used by the minister, which prayer is not to be found either in the Liturgies of Edward the Sixth and Elizabeth, or in that of 1603. We may pass over the rubric of 1603, both because its substance is more completely contained in that of 1661, and because, until 1662, there was no statutory authority for any change of the law which had been established at the date of 1603 (or 1604), when the canon in question was made, even if it had been quite clear that the rubric of that date had changed the former rubrics. But, as in 1662, the present Uniformity Act of 13 & 14 Car. 2, c. 4, was passed, and gave force and effect to the rubric of that date, it becomes necessary to see whether or not that rubric changed the former ones, those of Edward and Elizabeth.

"Now it does not appear that any such change was effected as the case of the present appellant must assume, in order to prevail. The words are plainly directory, and do not

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amount to an imperative alteration of the rule then subsisting. If lay baptism was valid before the new rubric of 1661, there is nothing in that rubric to invalidate it. Generally speaking, where any thing is established by statutory provisions, the enactment of a new provision must clearly indicate an intention to abrogate the old; else both will be understood to stand together, if they may. But, more especially, where the common law is to be changed, and, most especially, the common law which a statutory provision had recognised and enforced, the intention of any new enactment to abrogate it must be plain, to exclude a construction by which both may stand together. This principle, which is plainly founded in reason and common sense, has been largely sanctioned by authority. The distinction which Lord Coke takes in one place between affirmative and negative words, giving more effect to the latter, (*Co. Litt.* 115 a.) has sometimes been denied, at least doubted; (*W. Jones*, 270; *Loveless's case*, before the Windsor Forest court, in 1632, in which there is a *dictum* of Lord Chief Justice Richardson;) Mr. Hargrave thinks, upon a misapprehension, (*note*, 154.) But the rule which is laid down in 2nd Inst. 200, has been adopted by all the authorities, that 'a statute made in the affirmative, without any negative expressed or implied, doth not take away the common law.' So Comyns' Dig. (Parliament. R. 23,) and he cites the case *de jure ecclesiastico*, (5 Rep. 5, 6,) which lays down the rule in terms. The case decides, that the penalty attached by the Uniformity Act of Elizabeth, for not reading the Common Prayer, on the second offence, does not take away the same common law penalty on the first offence. Now here the former law being this, 'Let lay baptism be valid, but let ministers only perform the rite, unless in case of great necessity;' and the new law being, 'Let lawful ministers baptise;' it must be taken as an addition to, and not a substitution for, the former, unless the intention plainly appear to make it substitutionary and not cumulative. The proof is on those who would make it substitutionary and abrogatory. But the circumstances and the context seem, on the contrary, to shew that the intention was to make the new rubric cumulative, and to leave the validity of lay baptism unaltered. The private baptism is expressly confined to cases of 'great cause and necessity,' and the want of time is expressly referred to, as being great enough possibly to prevent saying the Lord's Prayer. How then can it be expected, that time should be given to send for the minister of the parish, and, if he be absent, to procure some other minister? Doubtless, it is required that a minister shall perform the ceremony if he can be procured; but the possibility of there being none must be understood to have been contemplated. Again, it is directed that if any lawful minister, other than the minister of the parish, performed the ceremony, then the minister of the parish, when the child is brought to him, shall examine how the ceremony had been performed. The questions prescribed by the former rubrics are materi-

ally changed;—two are left out—that respecting calling for grace, and that respecting their opinion of the ceremony having been completed. But an important preamble is inserted, before the question as to the matter and the words: 'Because some things essential to this sacrament may happen to be omitted, through fear or haste, in such times of extremity, therefore, I demand further, "With what matter and with what words was this child baptized?"' Now it is remarkable, that the essentials here spoken of are the water and the reference to the Trinity; nothing whatever is said of the minister being essential. The questions as to who baptized, and who were present, are given without any preamble at all, indicating that the water and the invocation of the Trinity are essentials, while the presence of a minister is only expedient; a matter to be inquired into for the purpose of correction or censure if it was omitted without necessity; but as essential, as those things wherein consist the very rite itself, the water and the words. The water and the words are afterwards again stated to be 'essential parts of baptism' in the rubric which provides for the case of a doubtful baptism, sometimes called conditional. If it were assumed, that in every case a lawful minister was necessary, and that there could be no baptism without his presence, the only necessary question to be answered by those who brought the child would be, whether such minister officiated or not, for it might be assumed that he used the matter and the words prescribed, inasmuch as he would be punishable if he did not. The whole direction as to conditional baptism is very material to be regarded, and no part more so than the last rubric relating to it. If the answers are uncertain, the baptism is to be made, but provisionally or conditionally. What kind of uncertainty is contemplated? If a minister had been essential, surely any uncertainty as to who performed the ceremony would have been specified as a ground of conditional baptism. But nothing of the kind is to be found in the rubric of 1603 and 1661, any more than in those of Edward and Elizabeth. Nay, the uncertainty is more specifically confined to the water and the words in the later than in the earlier rubrics: 'If it cannot appear that the child was baptized with water, in the name of the Father, and of the Son, and of the Holy Ghost, which,' adds the rubric, 'are essential parts of baptism,' then—and then only—is the child to be baptized conditionally.

"The question directed to be put, as to who baptized the child, clearly proves nothing as to the necessity of a minister, for another question immediately follows, which refers to a matter that must, on all hands, be admitted to be anything rather than essential, namely, 'Who were present at the ceremony?' And if it be said that this might be asked, not as a substantive question, the answer to which is essentially necessary, but as a question, the answer to which may tend to facilitate other inquiries, and to exclude other answers; in the same way it may be said, that the answer to the first question

'Who baptised the child?' may be used simply for the purpose of explanation as to the really essential matters, the water and the words.

"The changes made in the rubric, touching uncertain and conditional baptism, are mainly relied upon to show that the rubrics of 1603 and 1661 invalidated lay baptism; and certainly those changes afford the only countenance lent to the negative argument. But they are wholly insufficient to work an abrogation of the former law. The omission of the question, 'Whether they (the people) called for grace and succour in that necessity?' is said to show that the people were no longer to officiate, but only the minister, who had no occasion for that succour. Yet besides that this seems a very gratuitous position, the persons present were inquired of, and they surely were not material. The question, as to the opinion of the party bringing the child, is also omitted; but it is not omitted in the rubric of 1603, which, nevertheless, is supposed to negative the validity of lay baptism as much as the rubric of 1661. Perhaps the most material change in this part of the service is in the certificate, which is no longer that 'Ye have done well,' but that 'All is well done.' But this, though in the direction of the argument against and lending colour to it, is manifestly too slender a foundation on which to ground any inference. We must always bear in mind, that it was the intention of those who framed the new rubric to discountenance all baptism except by a minister, and to assume, as far as possible, that it should by a minister be performed, and the omission of whatever was not quite necessary, and whatever needlessly contemplated a lay administration of the rite, was a natural consequence of this design. But if it had been the intention of those who framed the rubric to declare lay baptism ineffectual, some express declaration to that effect would have been introduced.

"It is unnecessary to give instances of the difference between positive directions, nay express prohibitions, and such prohibitions as make the thing forbidden to all intents and purposes void. If it were necessary to point out instances of that distinction, the kindred subject of the marriage rite affords one too remarkable to be passed over. There is hardly any country where some solemnity is not required by the directions of the law; there are many in which a departure from the order prescribed by the law is strictly forbidden, and under penalties; but in most protestant countries the irregular marriage is valid, and in catholic countries also, up to a comparatively recent date, that of the council of Trent, though it might be censurable, it was valid, without the interposition of a priest, and without any ecclesiastical solemnity whatever. England, before the Marriage Act, 26 Geo. 3, c. 33, commonly called Lord Hardwicke's Act, affords one instance of this; Scotland to this day affords another; nay, the existing Marriage Act, 4 Geo. 4, c. 76, presents us with an instance still more remarkable, and bearing more closely upon our present argument, for some of the marriages,

to prevent which was the main object of this as of the former act, are allowed by this latter act to be valid, and are only valid because they fall not by express declaration within the 22nd section, which certainly confines the invalidity to the cases specified in that section. But if it be said that baptism is a sacrament, which marriage is not, let it be remembered that, in the Romish church, marriage too was a sacrament, and retained its character as such, though performed without the intervention of a priest, or any solemnity of the church. *Dalrymple v. Dalrymple*, 2 Hagg. 64, and the three authorities there cited.

"The opinions and practice of the church, from the date of the canon, 1603, down to that of the Uniformity Act of Charles the Second, and afterwards till near the end of Queen Anne's reign, appear to have been clear upon this head. The validity of lay baptism, notwithstanding the change in the rubric, was not questioned until about 1712, when the controversy arose, and some eminent divines took part against its validity. It is unnecessary to examine the authorities in detail. We may observe, that there seems no comparison between the number and the weight of those who espoused the opposite sides of the question. There are very few indeed who can be said to give a clear and explicit opinion against the validity, while those who maintain it lay down the doctrine with the most perfect distinctness. The substance of the conclusions to which they come, and the testimony which they bear to the practice, may be well given in the words of a writer no less renowned for his learning and judgment than his eloquence. 'Sith the church of God,' says the judicious Hooker, (*Ecclesiastical Polity*, b. 5, s. 62,) 'hath hitherto always constantly maintained that to re-baptize them which are known to have received true baptism, is unlawful; that if baptism seriously be administered in the same element and with the same form of words which Christ's Institution teacheth, there is no other defect in the world that can make it frustrate, or deprive it of the nature of a true sacrament; and lastly, that baptism is only then to be re-administered when the first delivery thereof is void in regard to the fore-alleged imperfections, and no other,' that is, the words and the matter; 'shall we now, in the case of baptism, which, having, both for matter and form, the substance of Christ's Institution, is by a fourth sort of men,' (he had mentioned, with more or less censure, the errors of some in the primitive church, of the Donatists and of the Anabaptists,) 'voided for the only defect of ecclesiastical authority in the minister, think it enough that they blow away the force thereof with the bare strength of their very breath, by saying, "We take such baptism to be no more the sacrament of baptism than any other ordinary bathing to be a sacrament?"' And he then goes on to shew how 'many things may be upheld, being done, although in part done otherwise than positive rigour and strictness did require.'

"The clear and unqualified opinion upon

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the point, and *post litem motam*, of the two metropolitans and fourteen other prelates, has also been properly referred to, and is no doubt of great weight. But the question is not to be decided by a reference to the opinions, however respectable, of individuals eminent for their learning, or distinguished by their station in the church; and these authorities are chiefly valuable as bearing testimony to the fact, that the construction of the rubrics of 1603 and 1661 was acted upon, which construction assumed no change to have taken place in the former law, the common law of all Christendom, before the reformation of the Anglican church; and both before and after that happy event, the law of the same church, up to the date of the canons of 1603,—a law which was recognised by the statutes of Edward and Elizabeth, and which, as nothing but express enactment could abrogate, so we might the rather expect to find contemporaneous usage confirm, when no abrogation had been effected.

"Nor is it necessary that we should strengthen the conclusions to which a strict construction of the law has led, by pointing out the inconsistent or even absurd consequences which would follow from an opposite doctrine. If only a lawful minister can baptize, then, as it is also contended, that this description only applies to those who are regularly and episcopally ordained, it will follow, that none can be capable of clerical functions who have not themselves been baptized by ministers so ordained; and hence some of the greatest lights of the church have held her highest offices unbaptized—have administered that sacrament invalidly, and have had no right to the offices of the church at their interment: a doctrine which would lead, and inevitably, to the inference that Bishop Butler and Archbishop Secker were never baptized; that the latter, in baptizing George the Third, acted without authority, and that both were disentitled to the burial service, as unbaptized persons, is at least well calculated to make us pause before we admit it to be the law of the land, and of the church.

"But it is not less fitted to excite doubts of its soundness before examination, when we reflect that another inevitable consequence would also flow from its admission,—the exclusion from the church's pale of all dissenters, and of all foreigners who have been baptized otherwise than by ministers of episcopal ordination. No *lex loci* is set up, or can be pretended to work any exception in their favour. The rubric, if it applies to any, applies to them, and unless they shall have been rebaptized, they can neither be ordained, should they embrace our tenets, nor buried with the rites of our church, should they depart this life within our territory. All these topics, however, are superfluous, when the question has been sifted upon its true merits, and brought to the test of a more rigorous examination, as was done both in the present case by the court below, and in the former instance before the late learned and able judge of the Arches court, Sir John Nicholl.

"The case of *Kemp v. Wicker*, (3 Phill.

264.) in 1809, was in every respect, as regards the facts, similar to the present. It underwent a full discussion; the only difference was in the course pursued by the defendant in his pleadings, which was more commendable than that adopted in this case; and the learned judge pronounced an elaborate judgment upon the point now before the court, as to the merits, neither of the preliminary objections having been taken. That judgment does not appear to have given any dissatisfaction in the profession; on the contrary, it is believed to have carried along with it the opinion of lawyers in both the courts christian and the courts of common law. We can hardly avoid attaching great weight to a decision pronounced by such an authority, so long acquiesced in, so little objected to, and, generally speaking, so much respected, although no decision has hitherto been given on the same question in any court of the last resort.

"It is impossible to mention this judgment of Sir John Nicholl, without adverting to the indecorous terms in which it has been assailed by some reverend persons, who have taken a part in the controversy, and whose zeal, honest no doubt, and conscientious, has outstripped their knowledge, and is so overmatched their charity. If those feelings had only found a vent in vague charges against the decision, as full of 'ignorance and error,' and even 'impiety,' this matter have been passed over, as the effusion of a temper heated beyond the bounds of reason with the violence unhappily incident to theological warfare. But an imputation upon the venerable judge, of 'misquoting' the canon of 1575, and that 'with the grossest mis-statements,' cannot be so easily passed over; and it is fit that we deny entirely the justice of the charge. He gives the summary of the article, and his abridgement of it, and suppresses no part at all material to the argument. Some of his accusers have made a much greater alteration of his text in getting his judgment; yet he would have been more just, at least more charitable, had he lived to see this attack and this citation, than to charge its authors with 'the grossest mis-statements.'

"The court below justly held that, if the penalty of the canon had been incurred, no discretion is left in awarding its infliction. It appears to us, also, that the costs were properly directed to be paid. The appellant had taken a course which was wholly unnecessary for raising the question of his baptism, upon which alone his defence was rested, as far as the merits were concerned, or for raising the preliminary objection to the promovee's rights. Both the one and the other of these points were distinctly raised upon the articles, and might have been disposed of by meeting that allegation alone, and disposed of at a comparatively trifling expense. In *Kemp v. Wicker*, (*Ibid.*) that better course was pursued. The articles, there as here, had detailed the circumstances offered to be proved, and the defendant at once opposed the admission of them, contending that, be the facts all true as alleged, he had acted lawfully, and was guilty of no offence.

This might have been just as easily done in the present case; but it has not been done; on the contrary, a proceeding has been resorted to greatly increasing both the delay and expense, and wholly unnecessary for raising the only questions intended to be discussed between the parties.

"The sentence appealed from must, therefore, be affirmed, in all its parts, and the appellant must further pay the costs of this appeal.

"The strange misapprehensions, which have been entertained by some worthy men touching the nature and grounds of this proceeding, and the force of the sentence that has closed it, seem to impose upon us the duty of stating in what the offence consists, and what authority the courts christian exercise respecting it. The notion has been ventilated, that the court in this case assumes to direct clergymen as to their spiritual duties, and to bind them, (as it has been termed,) by ordering what they shall do in future. It has been also suggested by high ecclesiastical authority, (a reverend prelate so stated in 1826,) in reference to the decision of 1809, that they who think the sentence contrary to the rubric, may conscientiously submit to the law as interpreted by the judge, or may not less 'conscientiously refuse to read the service, if prepared to risk the expense of prosecution, and make the ultimate appeal.' Now, let it be once for all understood, that the court has never in these cases assumed any such office as that of dictating to, or directing, or even warning, clergymen touching the discharge of their duties. Nor has it interfered, nor does it in any way occupy itself, with the spiritual portion of their sacred office. But the law has required clergymen to do certain things, under a certain penalty, which it has annexed to disobedience; and the same law has required the judge to enforce that penalty, when his office is promoted by a competent party; and he (the judge) is left without any choice whether he shall or shall not exercise his judicial functions. Nor let it be imagined that any one's conscience is thus forced. Whoever conscientiously disagrees with the court in the construction put upon the rubric, may, if he also conscientiously thinks that he cannot yield obedience to the law as delivered by the court, give up an office to which the law has annexed duties that his conscience forbids him to perform. The case of such clergymen is not peculiar. Persons in a judicial station have, and very recently, felt scruples about administering oaths in the discharge of their magisterial functions. What course did they pursue to seek relief for their conscience, without violating their duty as good citizens? They did not complain that their conscience was forced; they did not retain the emoluments of a station of which their conscience forbade them to discharge the duties; they sacrificed their interests to their duty, and gave way to those who could honestly fill the place, and honestly hold the office, by performing its appointed functions."

Extract from a Charge of the Bishop of Exeter, respecting the Judgment in Escott v. Mastin.

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A variety of opinions exist, as to the effect of the foregoing judgment; and the following extract from the Bishop of Exeter's charge delivered to the clergy of the diocese of Exeter, at his lordship's triennial visitation in June, July, August, and September, 1842, will illustrate the opinions which prevail among a large body of the clergy, respecting some of the doctrines propounded in *Escott v. Mastin* by the judicial committee of the Privy Council, and the dissatisfaction which exists, that doctrinal questions of faith should receive adjudication from members of the legal profession, without the authority of co-adjutors selected from the episcopal bench.

"In a cause, which has recently excited more than ordinary interest throughout the land, by reason of the great theological and spiritual questions which were mixed up in it, final judgment was given by an ex-lord chancellor, an ex-lord chief justice of the court of Common Pleas, a pulsome judge of the same court, and the judge of the high court of Admiralty—four men of high character and very high attainments, but not exactly such, as any one man in the realm would have selected, to ventilate the questions, which they, whether necessarily or unnecessarily, connected with the point they had to decide.

"Of that judgment, you will not suspect me of any inclination to speak with disrespect; for it does, in truth, confirm and sanction the view, which I have been in the habit of stating to those among you, who have, from time to time, applied to me for a solution of their doubts, in respect to the burial of infants baptized by Wesleyans. But the extraneous matters, on which the learned judges thought fit to put forth their opinions, are of too grave importance to the church, to be carelessly heard, or lightly passed over: and this alone is a sufficient reason for a bishop saying something on them to his clergy. Moreover, I apprehend, that the effect of the judgment itself is commonly very much misconceived; and therefore it is desirable that you should be informed what it really is. It amounted to no more than this, that 'a minister may not refuse to bury, with the office of the church, the corpse of an infant baptized by a layman.'

"As the court stated, 'nothing turned upon any suggestion of heresy or schism; the alleged disqualification was the want of holy orders in the person ministering.'

"Now, this consideration must very much mitigate any alarm, which the judgment, before it was understood, may have excited within the church—as well as abate somewhat of the tone of triumph, with which it is said to have been hailed out of the church. In the case decided, the deceased infant had been baptized by a Wesleyan teacher; of whom it was not said, in the allegation of the defendant, that he was either heretic or schismatic. Of course, therefore, the court regarded him as neither one nor the other. Had schism been pleaded, as affect-

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ing the efficacy of the baptism, the court must have noticed it. Whether such a plea would have altered the judgment, it would be presumptuous in me to conjecture. It is enough to say, that the judgment left this very important point just where it was. It only decided, I repeat, that a minister is bound to bury an *infant*, who had been baptized by a *layman*. It did not so much as decide, that he is bound to bury an *adult*, who, having been so baptized, had never sought to have the deficiencies of his baptism duly supplied. This point would still remain undecided, even though the layman administering baptism, without authority, were himself a member of the church.

"But much graver questions remain. What is the effect of baptism administered *out of the church*, that is, by heretics or schismatics? Though *sufficient to render rebaptization unlawful, does it confer all that baptism in the church confers?* I speak not now of the spiritual grace of that blessed sacrament, though much, very much, here presses on our thoughts; but I speak not now of this most interesting point—it is somewhat foreign to our subject, which is confined to external privileges. Does the baptism of *adults* by heretics or schismatics give to the baptized—does *such* baptism, even of *infants*, give to them, *when the age of infancy shall be past*, admission into the catholic church, a title to its communion, participation in its privileges? If it does not, what is necessary to supply its deficiencies?"

"These are questions which must, I apprehend, be seriously considered, and satisfactorily answered, before any sober judge will venture to decide, that a minister is bound to use the office of burial over the body of one baptized by a heretic or schismatic, who shall have continued to live, and died, an adult out of communion with the church. Yet the possibility of any such questions seems scarcely to have presented itself to either of the two courts, which pronounced the judgment in the late case. If it had, they must have abstained from using words, somewhat larger than the occasion called for; words, which may mislead the unwary into a belief, that they have decided questions, which do, in truth, remain untouched; in particular, they would not have intimated, that, if unlawful baptism is valid so far as to make rebaptization unlawful, it is fully and completely valid to all effects whatever.

"But as such a conclusion can be drawn only from their *reasoning*, not from the judgment, it is fairly open to controversy. I, therefore, scruple not to affirm, that, should such ever be the decision of any court, it will be contrary (I do not say to the ecclesiastical law of this land, for of that it would be presumptuous in me to speak thus confidently, but) to the uniform doctrine of the primitive fathers, to the decrees of councils, to the whole stream of authorities respecting the effect of heretical and schismatical baptism, including the most eminent of those writers, on whom both courts relied for the soundness of their own *dicta* on this point.

"I will mention only one, but one who, in such a matter, is *indecisive*—I mean the incomparably learned *Bingham*. I refer to him the more readily, because he has never been esteemed too high a churchman.—He is cited both by the learned judge of the Arches, and by the court above, as an authority for the *validity of unlawful baptism*. And, without all doubt, he asserts its validity. But does he assert its *sufficiency*? So far from it, that, although he was one of those who in the great controversy, which took place a hundred and thirty years ago—that very controversy to which both courts referred as of much importance to their reasoning—though *Bingham* was among those who then maintained the *validity of schismatical baptism against Lawrence, East, Waterland*, and others, yet he admitted, or rather he abjured, by a most elaborate research into the history of all ages of the church, that such baptism, though valid as far as to preclude rebaptization, had yet very great deficiencies; that it gives not spiritual grace, nor remission of sins; nay, that it *does not give* (what is more to our immediate purpose) *actual admission into the church*, nor an *actual right to church privileges*, though it gives a *right to claim admission into the church*, and to its privileges, on submitting to the due course for having its deficiencies supplied,—which was by imposition of hands, and invocation of the Holy Spirit, upon repentance, and return to the catholic church. He further says, 'The rules and the practice of the church of England for these last two hundred years' he wrote a hundred and thirty years ago, 'are clear: no rule was made that such as were not baptized by a lawful minister should be rebaptized; but they were required to receive the bishop's confirmation, and then were admitted to the Eucharist and the privilege of Christian burial, neither of which were allowed to unbaptized persons.' [Schol. Hist. Lay Baptism, P. ii. Ep. Ded. oct. p. cxlv.] I include these last words in my citation, lest I be accused of keeping back something which may sound, at first hearing, unfavourable to my argument. They have, in truth, nothing to do with it; having been introduced by *Bingham* in confirmation of his own judgment, on the other part of the question, the *validity of schismatical baptism*. His reasoning is, that imposition of hands in the church being held to be both necessary, and sufficient, to supply the deficiencies of such baptism, and to admit to the Eucharist and to Christian burial, to which unbaptized persons could not be admitted, it is plain the persons who have received such baptism are *not unbaptized*.]

"When such is the language of the highest authority which can be produced, I think I shall not be going too far in saying that the point really decided has left the pretence of heretics and schismatics to confer, by their baptism, a right of burial by the members of the church, very questionable at the utmost, if indeed questionable.

"True it is, that the court of Arches did propound, and in very decided terms, an opinion the very contrary to this conclusion.

of Bingham's. It said, '*Nothing can be more clear, from the whole history of the church, from its very early ages, or at least from the time when St. Augustine flourished in the fourth and fifth centuries, down to the time of the Reformation, and from that time down to the year 1712, than that the baptism of persons who were baptized by any person, other than a lawful minister, was considered to be valid and sufficient.*' [*Martin v. Beckett*, 2 Curt. 777.] This is strong language: we might have supposed that the last word had dropped *per incuriam*, had it not been immediately repeated, once and again, in such a manner, as to shew that it was used purposely and advisedly; for thus the court proceeds: 'And if it was valid and sufficient at that time, it is equally valid and sufficient now.'

"Here, then, we have the court and our great ecclesiastical antiquarian diametrically opposed to each other, on a matter peculiarly belonging to the learning of the latter. In such a case, we should not be deemed deficient in due respect to the court, if we rather deferred to the authority of Bingham; even though it were left a question merely of authority. But the court has not left it entirely thus. It has cited St. Augustine, and the conference at Lambeth in 1712, in testimony of the accuracy of its own statement.

"I will meet its statement respecting St. Augustine with a citation from that father even where he is speaking as favourably as possible of unlawful baptism: '*Nequaquam dubitarem habere eos baptismum, qui ubicumque et a quibuscunque illud verbis evangelicis consecratum, sine sua simulatione, et cum aliqua fide accepissent: quanquam eis ad salutem spirituales non prodesset, si caritate caruissent, qua Catholicæ inserentur ecclesiæ.*' [Aug. de Bapt. l. vii. 53.]

"Now this shows undeniably, that baptism by unlawful ministers, is *not*, in the judgment of St. Augustine, *sufficient of itself*, either to confer spiritual grace, or to insert into the catholic church. It also shews that, even in his time, it was a question of great doubt, whether such baptism was indeed so far valid, that it ought not to be repeated. He says, that the question had not been so decided by the church: but that, if he were present in any council, in which it were considered, such would be his judgment.

"So much for St. Augustine, the early authority of the court of Arches for its opinion, that 'Baptism by any person other than a lawful minister was considered,' not only 'valid,' but also '*sufficient.*'

"I will now look to its modern authority for the same statement, the conference at Lambeth of 1712. That conference put forth a declaration, signed by the Archbishop of Canterbury and many of the bishops, 'That, in conformity with the judgments and practice of the catholic church, and of the church of England in particular, such persons as have been already baptized in or with water, in the name of the Father, Son, and Holy Ghost, *ought not to be baptized again.*'

"Such is the declaration of 1712—on the face of it, very far short of the statement of the court of Arches. It declares that bap-

tism, however unlawfully ministered, is valid, so that it ought not to be repeated; but it says not one word about its *sufficiency*. Have we any evidence to shew the judgment of this same conference on this latter point, the *sufficiency* of unlawful baptism? Yes, a most undeniable one, which I proceed to adduce.

"Bingham, only two years after the conference, published the second part of his '*Scholastic History of Lay Baptism,*' and dedicated it to *Trelawney*, bishop of Winchester. In the epistle dedicatory we read the following passage:

"Your lordship did not so much as know what subject I was upon, till it was finished; nor did I perfectly know your lordship's sentiments upon the point, till you were pleased to honour me with a letter of thanks for my book, and tell me that you exceedingly approved of it; and particularly that part of it, which treats of the *deficiency of heretical and schismatical baptisms, and of the obligation those, who are so baptized, lie under to return to the unity of the church, in order to have the defects of their baptism supplied by imposition of hands in confirmation*: which was the usual way of supplying such defects, according to the general rule and practice of the ancient church. Your lordship was pleased also to acquaint me, with what I did not understand before, that *all the bishops of both provinces were unanimously of the same opinion which I had defended*, and thought there were other ways of supplying a faulty baptism, than by rebaptisation, if given in due form by a layman: and though your lordship did not consent to subscribe the resolution, which was then intended to be drawn up, yet it was not because you dissented from them in the main of the determination, but because you thought it more proper to have added the words "*in cases of necessity*;" which are cases less liable to exception, whose deficiency, whatever it be, may most certainly be rectified by confirmation." [Bingham, part ii. Schol. Hist. Lay Bapt. Ep. Ded. p. cxlvii. oct.]

"So much for the statement of the court of Arches respecting the judgment of the conference of 1712, that 'Baptism by other than a lawful minister is both valid and *sufficient.*'

"The higher court, while it speaks with great respect of the judgment of that conference, states it, however, to be 'chiefly valuable, as bearing testimony to the fact, that the construction of the rubrics of 1603 and 1661 was acted upon; which construction assumed no change to have taken place in the former law, the *common law of all Christendom* before the Reformation; a law which was recognised by the statutes of Edward and Elizabeth, and which nothing but express enactment could abrogate.

"*This, therefore, is the law, on which the court founds its judgment.*

"Let us see what it states this law to be; 'The statutes of Edward VI. and Elizabeth,' it says, 'recognised the right of *every person* to burial with the church service; not even excepting excommunicates.

"Now, with unfeigned reluctance, which

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nothing but a sense of duty could overcome, I humbly submit, that those statutes do not recognise that power which the court here affirms; and for this plain reason, that 'the former law—the common law of all Christendom, before the Reformation'—in other words the canon law, which, in *this particular*, was everywhere received, and, especially, in this country, was the very contrary to what the court represents it to have been. Instead of giving to 'every person a right to burial with the church service,' it expressly forbade such burial of any who died not in the communion, and in the peace of the church: 'Quibus non communicamus vivis, nec mortuis communicamus.' It went further; it commands, that, if the bodies of any of these had been so buried, they should be disinterred, and cast out of the church burial-ground. Nay, it pronounced excommunication *ipso facto* against every one, who, in contempt of the keys of the church, should dare to bury persons of this sort in churches or cemeteries. [Extra l. 3, t. 28, c. 12. 'Sacris est canonibus institutum, ut quibus non communicamus vivis, non communicemus defunctis, et ut earent ecclesiastica sepultura, qui prius erant ab ecclesiastica unitate præcisi, nec nisi in articulo mortis ecclesie reconciliati fuerint. Unde, si contingat interdum, quod vel excommunicatorum corpora, per violentiam aliquorum, vel alio casu, in cæmeterio tumultentur, si ab aliorum corporibus discerni poterunt, exhumari debent, et procul ab ecclesiastica sepultura jactari.'

"[Pursuant to the second part of this law, there is, in Archbishop Winchelsey's Register, (Winch. 296 b.,) an express order 'to dig up an excommunicate, who had been buried in the churchyard.' Gibson, 450.

"[And no historical fact is more certain than that the bones of Wicliff were judicially disinterred and cast out.]

"Having thus stated what I believe to be really the canon law on this subject—adopted in England, and therefore part of our common law—I turn again to the court's statement of the right which, 'by the common law of all Christendom before the Reformation, and recognised by the statutes of Edward VI. and Elisabeth,' every person, not excepting excommunicates, had in 1603, when the canon was made,—a right to burial with the service of the church. If there could otherwise be a doubt whether this be the court's meaning, that doubt is removed by what it afterwards says of 'the rubric of 1661, which forbade the burial service in cases of suicide, excommunicates, and persons unbaptised. *A right formerly existing was thus taken away, at least in some cases;*' [vide *Escott v. Mastin*, 2 Curt. 692.] the cases therein specified.

"Now, in the face of the court's *dictum* on this subject, (fortunately it was no more than a *dictum*.) I venture to repeat my denial, that the statutes to which it refers, the 2 & 3 Edw. 6, c. 1, and 5 & 6 Edw. 6, c. 1, and 1 Elis. c. 2, and 8 Elis. c. 1, recognise any such universal right; and for the reason which I have already given, that those statutes say nothing in derogation, much less in abrogation, of the received canon law,

which, as the court says, was 'the common law of all Christendom.'

"But I must go further; I must contend that the statute law of England, in 1663, did itself forbid the burial service of the church to be performed over the corpse of an excommunicate.

"I refer to a statute of Elisabeth, which the court did not think it necessary to notice, though by its very title it might seem to invite notice in such an inquiry; I mean the 13th Elisabeth, c. 12, entitled, 'An Act for Ministers to be of sound Religion,'—the statute, which established the 'Articles of Religion of the Church of England;' and which, because it established them, is made by the Act of Union with Scotland to be an essential part of the treaty of union, and a fundamental law of the land.

"Now of these Articles, thus made to be an especial part of our statute law, the 13rd, entitled, 'Of Excommunicate Persons, how they are to be avoided,' runs as follows: 'That person, which by open denunciation of the church is rightly cut off from the unity of the church and excommunicate, ought to be taken of the whole multitude of the faithful as an *heathen* and publican.' Unless, therefore, a *heathen* is entitled to burial with the service of the church, which no one yet has had the hardihood to affirm, neither is an excommunicate.

"So much for the law, common and statute, applicable to this point. That both the one and the other are contrary to the statement of the court, may be the less satisfactory to the very eminent persons who composed it, if an opinion be correct, which I scruple not to submit, that, supposing the law were what they have stated it to be, the judgment pronounced by them, irreversible as it is in effect, might not be altogether sustainable in reason.

"For if 'every person,' not even excepting excommunicates, had, as the court states, a 'statutory right to burial with the service of the church,' it follows that the 68th Canon, on which the late suit was founded, *taking away that right* in the case of excommunicates, must be *ipso facto* void: for I need hardly say that a canon purporting to extinguish a right created or recognised by the law of the land, is not worth the paper on which it is printed. But, if this be so, how can a criminal proceeding be founded on such a canon?

"The only way to escape the consequences herein suggested, seems to be, the putting a construction on the canon, which is not very obvious, nor very satisfactory, especially when the purpose must be the sustaining of a criminal prosecution. Could it, then, *for this purpose*, be maintained, that when the canon says, 'No minister shall refuse to bury any corpse that is brought to the church; and if he shall refuse to bury such corpse, *except the party deceased were denounced excommunicate, majori excommunicatione;*' could it, I ask, be maintained, *for the sole purpose of sustaining a criminal prosecution*, that this exception is not meant to deny the right of the excommunicate to burial, but only to exempt the minister from canonical punishment, if he set that right at naught?

"Happily, the canon needs no such strained construction. In its natural and unforced meaning, it is, as we have seen, in perfect accordance with both the common and the statute law, as that law existed when the canon was made.

"Happily, too, the judgment is not only irreversible, but may, we doubt not, be shewn to be sound; though the particular line of argument pursued by the court be not such as commands unqualified assent. [I venture to submit, that a baptized infant, even though baptized in a schismatical or heretical congregation, being entitled to reception into the church, and to all its privileges, whensoever he shall seek imposition of hands, and do what else the church may require,—if he die, before he come to years of reason, ought to be regarded like all other infants dying in infancy; that justice, as well as charity, bids us presume of such infant, that, if he had been permitted to live, he would have done what his duty required—and, therefore, that he is to be dealt with accordingly.

"[I once entertained strong doubts respecting those infants, who are baptized by persons *heretical in the fundamental article of the Trinity*,—thinking that, as such persons do not believe in the divinity of the Father, and of the Son, and of the Holy Ghost, their baptism cannot be deemed baptism in that holy name. I answered accordingly one or two of my clergy, who applied to me for solution of their own doubts on this point. I think it necessary, therefore, thus to declare, that further consideration, and the balance of the authorities of the early church, have brought me to a different mind.

"[I say, 'the balance of authorities;'—for, undoubtedly, that side of the question, which numbers St. Athanasius and St. Hilary among its advocates, cannot be said to be without grave authority. But not only the greater number of Fathers, but the canons of councils,—viz. II. Constantinople, Arles, Laodicea, Trullo—make the balance incline strongly to the other side. The 8th canon of the council of Nice was differently interpreted, according to the different views of those who interpreted it.

"[St. Augustine briefly states his view of the matter to be, that the church does not, and ought not to, rebaptize those who have been baptized, with the words of our Lord's institution, by any heretics whomsoever; because such baptism is not properly the baptism of him who ministers, but Christ's. See Bingham, Schol. Hist. &c. p. 1, c. 1, s. 20.]

"The exception in the canon must yet detain us for a few moments; for, if I mistake not, it will be found to have a very important bearing on the main question.

"It appears to me to show very plainly the description of persons to whom alone the indefinite phrase '*any corpse which shall be brought*' must be understood to apply—namely, those, and only those, who may, for sufficient reasons, incur sentence of excommunication—in other words, *members of the church*; for these, and only these, can be *excommunicated*—the censures of the church having scope and direction only *within the church* and over its own members.

"This just principle, which always guided the ancient catholic church in all its discipline, and is, indeed, of the very essence of that discipline, was particularly illustrated in its dealing with those who had been baptized in heresy or schism. When any of them, being brought to the knowledge of the truth, sought reconciliation with the church, they were not required to go through the same stages of penance, as the canons required of penitents in the church; 'But they seem,' says Bingham, [Ecc. Ant. xix. c. 2, s. 7,] 'to have been reconciled in a more compendious way, more suited to their state and condition, as *strangers and foreigners, now just entering within the pale of the church*.'

"Surely, this same principle may, and ought to, be taken as the true rule of interpreting the canons of our own church; for it flows from, and realises, the express injunction of Holy Scripture, that we 'judge not them that are without,' but leave them 'to their own Master,' to whom 'they stand or fall.'

"And here, speaking of 'the pale of the church,' I am sorry to be obliged to remark on one unhappy sentence, which is stated, in the report, to have fallen from the higher court in delivering its judgment; for it went the whole length of subverting the most approved, and, until so denied, we should have thought the most undeniable, principle respecting schismatics—'Heretic without, or *schismatic within the pale of the church*'—is given as the language of the court.

"That so portentous, and, considering the authority to which it is ascribed, so mischievous a description of schismatic, would not, even in the most incautious moment, be really uttered in such a place, we have some special right to hope, because it is expressly contradicted by the very law which the court administers in the last resort. The view taken of schism by the canon law, is, that *so far as any are schismatics, so far they are out of the church*. It is thus expressed by Lyndwood, of whom the learned judge of the Arches tells us that 'he is the standard authority on all points of the canon law which may arise in the administration of justice in these courts:' '*Schisma est recessus ab ecclesia, vel in parte, vel in toto*.' Again, '*Schisma est illicita divisio per inobedientiam ab unitate ecclesie facta*.' Lyndwood, 284.

"I have been compelled to notice this strange *dictum*, because it has actually been cited to me by one of my clergy (who had published certain notions concerning schism, which called for my animadversion) as 'the view taken by the highest ecclesiastical court of the land, the judicial committee of Privy Council. 'In the luminous judgment delivered by this august tribunal,' said he, 'the distinction is clearly taken between a heretic and a schismatic; a "heretic" is one "without," a "schismatic" is one "within" the church.' [That in a large and improper sense of the word church, including all whom God hath called by the revelation of his truth from the unbelieving world, a schismatic may be said to be within it, no one will

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selves, we cannot admit them to communion in religious offices with us. Is there in this any real hardship to them? or any real want of charity in us?

"Let us see, in the instance of burial, to what it amounts.

"Heretics and schismatics have the same right of interment in the parochial burial grounds as we have. [This seems to have been ruled in *Res v. Taylor*, Willes 537, : 'The doctrine there laid down,' as v the court of Arches in the late s, that the common law right of the churchyard belonged to r; but that the manner in was to be performed, was rital court, and there *Escott*, 2 Curt. 766-7.]

their own meeting-houses, burial they choose. If they office of the church, they are quite erty to use it; only they must not use in our churches, or in the churchyard. This is the amount of the grievance, and simply to state it is to expose its frivolity.

"But they will not be satisfied unless the ministers of the church perform the office, and treat them as members of our communion. Why is this? Why are they anxious for the services of ministers, whose ministry they either deny or usurp? or rather, both usurp and deny? Or, why do they claim to be admitted to the privileges of a community, which they do not value sufficiently to seek to belong to it?

"The real truth is plain. Their only grievance is, that the church exists; and so long as it shall continue to exist, its existence will be, must be, felt a reproach by those who have abandoned it.

"But we are told, that, whatever be the merits of the question, the laws of the church itself require its ministers to perform these offices to dissenters, and they have a right to enforce obedience to those laws.

"That the laws of the church do indeed require this, may be found not quite so clear as they choose to represent; and to prove it will need something more authoritative than a mere *dictum*, (if there have been such *dictum*), even of the highest court. But, if the laws of the church do, indeed, require its members to perform its offices to those who are not of its communion, can we doubt that this is caused by those laws having been made at a time when such a thing as tolerated heresy or schism was not even thought of?

"In the short interval which elapsed between the passing of the first Toleration Act and the discontinuance of the sittings of convocation, none of the claims which are now harassing the church were ever put forward, or even contemplated; else, we cannot doubt that due provision would have been then made, to meet the new state of things, and to prevent a law, which was liberally and wisely designed as a relief to conscientious dissenters, from being abused, as an engine for the persecution of the church.

"In short, the offices of the church having been devised for members of the church, the church ought to have the power of declaring who are *not* its members, and, therefore, who

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whom it is manifestly unfitted—to persons,
that is, whom the church cannot recognise as
having died in communion with it, or as
capable of its blessing?

"No man who respects the principles, or the practice, of the church of Christ, from and through all antiquity, will hesitate how this question must be answered. 'This office of burial,' says *Bingham*, 'belonged only to the *fideles*, or *communicants*; that is, such as died either in the full communion of the church, or else, if they were excommunicate, were yet in a disposition to communicate by accepting, and submitting to, the rules of penance and discipline in the church.' [Eccl. Ant. B. xxiii. c. 3, s. 23.]

"In truth, such a claim as we are said to be threatened with, on the misunderstood authority of the late judgment, is simply this—that the church, and the church *only*, shall cease to have a peculiar communion of its own; shall cease to have its own rules for its own guidance; shall cease to have any special marks whereby to distinguish itself; shall cease to perform any special offices to its own members.

"For, our offices, be it borne in mind, are designed for persons belonging to a certain body, united together by certain terms of communion. Why are we to be compelled to disregard the appropriate nature of these offices, and to abandon these terms of communion, at the bidding of those who may mistake our having such distinctions? They are not prevented from forming themselves into a separate society, having their own offices, their own terms of communion. We only say, that, if they do so separate them-

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have not a right to participation in its offices. To withhold this power, whenever its necessity shall be felt, would not be easily reconcilable with the first article of the *Magna Charta* of olden times, nor with the plainest obligation of the *Magna Charta* of more modern days, the Coronation Oath. But how can such a power be adequately exercised except by the church assembled in synod?

"In asking for such a power, we wish not, I repeat, 'to judge them that are without.' We only claim to pronounce that they are without—out of our church, of which we believe and proclaim that it is the visible church of Christ in this land. We quarrel not with others, though we think them heretics, or schismatics, and though, as such, we refuse to them communion with us in the offices of religion; but we quarrel not with them if they choose to say the same each of his own separate congregation.

"The court, in delivering the late judgment in *Martin v. Escott*, thought proper to 'point out the inconsistent and even absurd consequences which would follow from the opposite doctrine to its own.'

"Now I, too, may be permitted to point out the consequences, (due respect forbids my calling them inconsistent or absurd,) which would follow from some *dicta* of the court, if they should ever be exalted to the authority of judgments.

"For instance, if, as was said, (happily not ruled,) by the court, it be the duty of the minister to use the office of burial over 'every corpse which shall be brought to the church or churchyard,' it should seem to be equally the duty of those who bring it, to permit the office to be used. And yet it is quite conceivable that this may not always be very satisfactory. For, be it remembered, there are other persons not in communion with the church, besides that description of dissenters who promoted the late suit. Now, let me put a case, it shall be not an extreme case, but one actually proposed by the court itself, that of 'foreigners who have been baptized otherwise than by ministers of episcopal ordination.' The court pointed out as one of the 'inconsistent and even absurd consequences' of the defendant's plea, that 'such foreigners could not be buried with the rites of our church, should they depart this life within our territory.' It happens, that many such foreigners from one particular country, as well as many of our own countrymen who are in communion with them, die amongst us every year—I mean *presbyterians of the Kirk of Scotland*.

"Now, let us suppose the corpse of one of these presbyterians, Scotch, or Irish, or English, to be brought to the churchyard of any parish in England. 'If the minister delay burying in the manner and form prescribed in the Book of Common Prayer,' he will be suspended, should the court's *dictum* ever be ruled to be the law. If the minister plead his conscience, the plea will be either sneered at, or frowned down. Knowing this, he submits, and quietly begins the ceremony.

"Meanwhile, those who bring the corpse insist on 'immediately interring it without any ceremony;' for such is the order 'con-

cerning burial of the dead' in the 'directory for public worship,' set forth by 'public authority in the church of Scotland.' They, too, will plead conscience; they will cry aloud against the abomination of 'a preconcerted form of prayer' being imposed upon them, in the exercise of their common-law right of depositing the remains of their deceased brother in the parish churchyard; and as they are not in the habit of submitting, we need not fear, but that some very good reason will soon be found why they shall be submitted to.

"Here I would leave the matter, were it not for one particular of the speech made in delivering the judgment of the court above, which has, I understand, given some uneasiness to the clergy, and excited some surprise in others.

"That speech has derived more than ordinary importance from its having been previously written, and, as is understood, having received the sanction of all the learned members of the court. In stating this I wish to be considered as stating it with the sincerest feeling of respect for the wisdom and justice which dictated so cautious a proceeding.

"But, then, this caution only gave the stronger effect to all the observations in the speech, however irrelevant some of them may have been; however transcending the authority even of the high tribunal from which they emanated.

"In the conclusion, the court thought it necessary to propose, that clergymen, if they shall ever feel their consciences violated by any requisition of the law, will have no right to complain; they may do as laymen have done; they may resign their offices, and 'give way to those who could honestly hold them by performing their appointed functions.'

"Now, in putting forth this declaration, the court seems to me, (I must not be afraid of avowing it,) to have a little overstepped the line of its own duty, to have a little misunderstood the nature of the matter it was speaking of.

"The cure of souls, even though it be endowed, is not a mere salaried office, where may be resigned at pleasure. It is a station of high and holy responsibility, from which we are not at liberty to withdraw ourselves, merely because the world's law shall be found at variance with our duty. Should such a state of things ever arise, (I do not contemplate it as in the lowest degree probable; nor should I think it decent to suppose it even possible, were not the supposition thus forced upon us from so high a place,) but should such a state of things ever arise, we will complain, (for, thank God! the clergy, like all other subjects in this free land, may complain,) of the state of the law, which would thus make obedience to it incompatible with obedience to that higher law, which we are commissioned and commanded by God to execute; and we will urge our complaint in the firm but temperate tone which becomes us, not doubting that we shall obtain from a just legislature due attention and redress. Should the result be otherwise, (I have no fear that it ever will, but should it be other-

wise,) the state will deal with us as it may deem fit; but we, my reverend brethren, will not renounce, we will adhere to our posts, calmly, meekly, faithfully, resolutely, in the fear of God, and not of man."

The Bishop of Exeter, in permitting the editor to publish this extract from his charge, has furnished him with the following important fact, in confirmation of the view taken by his lordship of the judgment of the church of England on the *insufficiency of baptism by heretics or schismatics* to entitle the parties so baptised to church communion, and the privileges consequent thereupon.

It appears from Cardwell, (Synod 776,) that on the very first meeting of convocation, after the resolution of the bishops respecting the *validity of baptism* (with the proper matter and form), by whomsoever administered, so as to make re-baptisation unfit, the queen (doubtless on the application of the bishops), in her "Letter to the Convocation about Business for them," on the 17th March, 1714, specially included among "the matters proper for the consideration of the said convocation," these which follow:

"The preparing a form for admitting converts from the church of Rome, and such as shall renounce other errors.

"For restoring those who have relapsed."

It appears further (Ibid. 796-804), that such forms were prepared and adopted by convocation on June 18, and were prevented from becoming canons of the church only by the death of Queen Anne. But though they thus missed obtaining the binding force of law, they nevertheless express the judgment of the church in 1714. They stand, in short, on a stronger footing of authority than the "Form for consecrating Churches and Churchyards," which having been prepared by the upper house in 1715, was not brought to maturity, when the prorogation of the Synod in 1717 put an end to all its deliberations.

Now in the forms which were passed by convocation in 1714 (as stated above), for "admitting converts," it is expressed, that the congregation are "met together for the reconciling of a penitent (lately of the church of Rome, or lately of the separation) to the established church of England, as to a true and sacred part of Christ's holy catholic church."

It is plain, therefore, that until they should be so reconciled, such persons were *not considered by our church as members of the holy catholic church*, and, of consequence, as *not entitled to the privileges of such members*, one of which is, *burial with the rites of the church*.

In the course of the service, the penitent (if from the separation), having made profession of his "allowing and approving the orders of bishops, priests, and deacons," and if he have been "a teacher in some separate congregation," further allowing and approving those orders, "as what have been in the church of Christ from the time of the apostles," having also promised "conformity

to the Liturgy of the church of England," &c. receives absolution, and is "received" by the bishop, or priest (appointed by the bishop), "*into the holy communion of the church of England, in the name of the Father, and of the Son, and of the Holy Ghost.*"

And the penitent is likewise charged to be confirmed at the next opportunity.

The Bishop of Exeter has at the same time adduced the following attestation to the truth of a principle laid down in his lordship's charge, that *the language of the offices in the Liturgy proceeds on the assumption, that they are applicable to members of the church, and to them only.*

At the Savoy Conference in 1661, which was in effect the review of the Book of Common Prayer, just before it was established by the Act of Uniformity, the non-conformist ministers put forth this as one of their proposals:

"XV. That whereas *throughout the several offices* the phrase is such as presumes all persons (*within the communion of the church*) to be regenerated, converted, and in an actual state of grace, &c. We desire, that this may be reformed." Cardwell, Conf. 308.

The bishops, in their answer, admitted that such is the import of the words, saying, "The church in her prayers useth no more offensive phrase than St. Paul uses when he writes to the Corinthians, Galatians, and others, calling them in general the churches of God, sanctified in Christ Jesus, by vocation saints, &c.; and our prayers, and the phrase of them, surely, supposes no more, than that they are saints by calling, sanctified in Christ Jesus, by their baptism *admitted into Christ's congregation*, and so to be reckoned members of that society, till either they shall separate themselves by wilful schism, or be separated by legal excommunication." Ibid. 343.

Now this may be considered as the interpretation of the Liturgy by the very authority which last sanctioned and enjoined it.

Judgment of Sir Herbert Jenner Fust, in the Office of the Judge promoted by Nurse v. Henalowe.

Nurse v. Henalowe, (3 Eccles. Notes of Cases, 272,) was a similar proceeding to that of *Beckett v. Martin*, against the Rev. William Henry Henalowe, perpetual curate of the parish of Wormegay (or Wormgay), in the county of Norfolk, for refusing, on the 3rd of March, 1844, to bury the corpse of Sarah Bowden, a parishioner, who had been baptised by a minister of a congregation of primitive methodists. This case was brought by letters of request from the Bishop of Norwich under the Church Discipline Act. The reverend defendant, who conducted his case in person, at first gave a negative issue, denying the articles generally; but afterwards retracted the denial, and gave an affirmative issue, thereby admitting the facts pleaded in the articles.

Sir Herbert Jenner Fust: "In this case, the court, however it may lament the situation in which the reverend gentleman has placed himself, must pronounce its sentence

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in the terms of the canon—for it is a proceeding not under the general ecclesiastical law, but under the 68th Canon, which gives the court no discretion, as to diminishing or increasing the punishment. The canon directs that, if a clergyman shall refuse to bury a corpse brought to the churchyard, convenient notice having been given to him, he shall be suspended from his ministry for three months: and there is no reason, which I can collect from the case, to alter the opinion of the court, as to the necessity of inflicting this punishment upon Mr. Henslowe. I must state, that a long protest in arrest of judgment was delivered to me by the registrar, as from Mr. Henslowe; that I have read that protest, and I am sorry to say, that it goes into a history of which the court cannot take any notice, referring to persons not before the court, and imputing malevolent motives. It has nothing to do with the question. This is not a case of discretion, for the canon (which is the statute of the court) has itself affixed the punishment to the offence when proved. Now, it is proved, that the corpse of this child was brought to the churchyard, after sufficient notice, and that Mr. Henslowe was informed of the fact, and refused to bury it. Under these circumstances, the court is bound to pronounce the sentence; and although it laments that a case of this kind should be brought to its notice, and that a clergyman should place himself in such a situation, the court cannot relieve him; and it would be wise on the part of clergymen to recollect that, in every case of this kind, where an opposition to the claim of a legal right by a large body of persons in the country is made, and that opposition is unsuccessful, (as it almost always must be in these cases,) they afford an additional triumph to persons who are seeking the downfall of the established church;—an additional source of triumph is afforded on all such occasions, where an unsuccessful opposition is made to the claim of a legal right.

"Under the circumstances, I must pronounce that Mr. Henslowe has incurred the penalty affixed by the canon, the party promoting the office of the judge having established his case; and, consequently, unless Mr. Henslowe has anything to allege by way of defence, I must suspend him for three months, and condemn him in the costs. I can hear nothing as to the protest, which contains matter utterly irrelevant."

Mr. Henslowe: "I wish to explain myself. The end of the law is to elicit truth and to establish justice; but the truth has not been elicited, nor justice established, in my case." [Sir Herbert Jenner Fust: "You have admitted the facts."] "I did so because I was intimidated on account of the costs." [Sir Herbert Jenner Fust: "I cannot hear you on that point: the articles were admitted, and you gave an affirmative issue to them, thereby admitting the facts: that is sufficient. If you proceed in this manner, I will not hear you, and I will direct the registrar to record the judgment of the court."] "I complain of the proceedings." [Sir Herbert Jenner Fust: "It is too late

to complain of the proceedings: you have admitted the facts."] "I admitted the facts, because I was sensible there was a pre-termination—"

Sir Herbert Jenner Fust: "I cannot hear this. Let the Rev. William Henry Henslowe be suspended from his ministry for the space of three months; and I further condemn him in the costs of the proceedings."

Judgment of Sir Herbert Jenner Fust, in Titchemarsh v. Chapman.

In the office of the judge promoted by *Titchemarsh v. Chapman*, (3 Curt. 840.) it was held, that a child baptized with water in the name of the Holy Trinity, by a person alleged to be in heresy or schism with the church of England, is not unbaptized within the meaning of the rubric for the burial service, in the Book of Common Prayer; Sir Herbert Jenner Fust observing: "The question before the court in the present case, respects the admissibility of an allegation, which is offered on behalf of the Rev. W. H. Chapman, the party cited in this cause, who is a cause of office, for refusing to bury the corpse of a child brought to the churchyard, of which he is the vicar, and of whose interment due notice is alleged to have been given.

"The question comes before this court by virtue of letters of request from the bishop of the diocese of Ely, within whose diocese the party cited holds preferment. The citation in the cause was returned on the fourth session of Easter term in the last year, and an appearance was given to that citation, but under protest; that protest was extended in acts of court, for the reasons therein set forth, and pressed in argument; the court was of opinion, that the protest could not be sustained, and accordingly overruled it; a prohibition was then applied for and refused, upon which an absolute appearance was given for the party cited; a libel setting forth the charge against the party cited, was brought in and admitted; a negative issue was given to the articles; witnesses were examined, and publication prayed; and the allegation is now offered by way of defence to the charge brought against this reverend gentleman.

"The substance of the defence is, that this child was unbaptized within the true meaning of that term, as used in the rubric for the burial service, it being alleged in the articles, and not denied, that the child was baptized by a minister of that class of protestant dissenters termed *Independentists*, according to the form used by them, that is, with water, in the name of the Father, the Son, and the Holy Ghost; and it is pleaded on behalf of the Rev. Mr. Chapman, that such baptism is schismatical and heretical, and such as not to entitle the corpse of this child to have the burial service read over it.

"I had hoped, that after the late case of *Martin v. Escott*, (2 Curt. 692,) after the sentence in this court, and the affirmance of that sentence in the superior court, the question was set at rest, and that no further resistance would have been offered to what was declared, both by this court and

by the court above, to be the law on this question. This court is bound, upon proper application made, to enforce the law; this court has no discretion whether or not it will entertain a suit of this description, which is clearly within its jurisdiction, neither can it refuse to proceed to pronounce sentence when the suit is before it.

"It is now contended, that this question is not concluded by what took place in *Mastin v. Escott*; and it is said, that it was only decided in that case, that an infant, who had been baptised by a Wesleyan minister, in the name of the Trinity, was not unbaptised; and that the rubric which declares, that the burial service shall not be read over persons who die unbaptised, did not apply to such case. Certainly, in *Mastin v. Escott*, nothing did turn on the suggestion of heresy or schism; the defect in the baptism, as there alleged, was the want of holy orders in the person who had performed that ceremony. In the present case this question has been directly raised; it is distinctly averred, that this baptism was, and is, heretical, having been performed by a person not qualified to administer the rite of baptism. The court may here say, that in *Mastin v. Escott*, both in this court and in the superior court, the question was stated to be confined to this point, whether baptism could be duly administered by a Wesleyan minister; nothing turned on the question of heresy or schism; the case was so stated by the learned lord who delivered the judgment of the court above. The distinction does arise in the present case, and the question is directly raised, whether or no baptism of this description, pleaded to be heretical and schismatical, is invalid baptism, so as to take this case out of that decision in *Mastin v. Escott*. Now, although it is perfectly true there has been no absolute decision on the point, for it has not as yet been distinctly raised, and courts of law never determine more than the question raised before them; yet undoubtedly the greater part of the argument in *Mastin v. Escott* turned on the question, whether schismatical or heretical baptism was or was not valid; it was part of the object of the party there cited, to show that the baptism in that case was heretical and schismatical, and not simply lay baptism, and the arguments were founded principally on its being heretical and schismatical; and, although, as I have said, it was not necessary in that case to decide, whether schismatical and heretical baptism was valid, or invalid, the arguments were principally directed to that point. It is not, however, necessary to enter into the arguments which were so elaborately urged on the court in that case; I have stated that they principally turned on this point; reference was made to the different opinions entertained in the primitive church as to the validity of such baptism: the authority of Tertullian was cited in support of that baptism, and the opinions of St. Cyprian, Firmilian, and writers in the second and third centuries, in opposition to it. Again, reference was made to the council of Arles, to the opinion of St. Austin,

and to the general opinion in favour of that proposition; also to the opinions of the Eastern and Western churches, and to the practice down to the time of the Reformation, and thence to the present time.

"The strength of the arguments certainly turned on the point, whether schismatical or heretical baptism was or was not valid. It does appear to me, therefore, that this present question is reduced to a narrow compass, and I say so at the present time, because I find, in the seventh article of this allegation, that the validity of lay baptism seems hardly to be brought in question. Now, the seventh article is to this effect: 'That by the practice and usage of the primitive church, and the laws, canons, and constitutions of the church of England, any persons, whether infants or adults, baptized in the name of the Father, and the Son, and the Holy Ghost, by heretics, could not be admitted into the church, or allowed to partake of her privileges, until they had by themselves, or by their sponsors, sought for such admission, according to the form directed by the church, although it might not be essential to reiterate the sacrament of baptism.' This article does appear to me to admit the whole question of the validity of lay baptism; all that it says is this, that, by the canons and constitutions of the church of England, persons so baptized could not be admitted into the church, until by themselves or their sponsors they had sought for such admission, according to the form prescribed by the church. It therefore seems to me, that it would be utterly superfluous to enter into a discussion of the authorities, cited on the one side and on the other, for the sole purpose of determining, whether this baptism is valid or not, when it is not contended, that this baptism is invalid in itself. It is not said, that such baptism is null and void, so that the question is, whether baptism, so conferred, entitles the party recipient to have the burial service of the church read over his corpse, when it is duly brought to the churchyard for interment. The court, therefore, is relieved from the necessity of entering into that first discussion. Now, although this case has remained long undetermined, [that has arisen from inevitable circumstances, (the indisposition of the judge,) and not from any doubt which the court has entertained with respect to the law of this case; and it being not now questioned, that baptism, by heretics or laymen, is a valid baptism, and need not to be reiterated, (indeed, one of the authorities cited by the learned counsel who support this allegation, went to shew that such baptism need not be repeated;) and this surely was acknowledging it to be valid in itself; and if so, even although received at the hands of persons who disbelieve in the doctrine of the Trinity, the recipient cannot be said to die unbaptised.

"There cannot then be any doubt in the mind of the court, as to what must be the fate of this case, when, as I have shewn, the baptism itself is admitted to be valid; and the only doubt I feel, is, whether this allegation ought not to be admitted for the purpose of allowing the question to go up to the

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Privy Council, in order to be discussed before the highest tribunal. This court would be very much inclined to pursue the course which it adopted in the case of *Martin v. Escott*, namely, to admit the allegation, for the purpose of enabling the parties, if so inclined, to take the opinion of the superior court. But if the parties wish to take a higher opinion upon the admissibility of this allegation, they can apply for leave to appeal from its rejection; for, that it must be rejected, is the opinion to which the court has arrived. The court would be unwilling to exercise the discretion reposed in it by the act of the 3 & 4 Vict. (c. 86, s. 13), by refusing leave to appeal, because I apprehend, if the court were to reject this allegation, and refuse leave to appeal, the rejection would be final.

"In a case, which is supposed to involve a most important question between protestant dissenters and members of the established church, the court would be unwilling to exercise that discretion by refusing leave to appeal.

"I will now state the grounds upon which I have come to the determination to reject this allegation. The whole question seems to me to have been determined, in *Martin v. Escott*, in favour of the validity of this baptism; because, if baptism conferred by a heretic is so far a valid baptism, that it need not be repeated, then the whole case seems to come to this, that being a valid baptism, the child cannot be said to have died *unbaptized*. It is clear, that a child baptized by a layman is not unbaptized within the meaning of the rubric for the burial service, and if so, I cannot understand what is the distinction between the two cases. If once it be admitted, that this baptism is so far valid that it need not be repeated, I confess I cannot see the reason why, in the one case, the child is to receive the offices of the church, and to have the burial service read over it, and in the other case, should not be so entitled. Neither child can be said to die *unbaptized*, and it is only where the person is unbaptized, that the service for the dead is not to be read over the body. Both lay and heretical baptism are contrary to the orders of the church, but both are valid, and if valid, entitle the recipients, in either case, to the privileges conferred by valid baptism, whatever those privileges may be. In both cases the child would seem to be, in the words of the rubric, *sufficiently* baptized,—and I use the word '*sufficiently*' advisedly, and in the sense in which it is used in the rubric. It was not a word for the first time introduced in the former case by this court; the word will be found in the first rubric, (Edward 6, A.D. 1549,) and the word has been continued and used in the rubric for the present form of baptism. In both instances, it is declared, that a child so baptized, (in the case of a layman, it has been already decided, and, as I consider, by a heretic also,) is *sufficiently* baptized, according to the use made of that word in the rubric, to which meaning the act is confined in this case.

"To what extent such baptism goes is not for this court to determine; whether it does

or does not confer spiritual grace, the court does not offer any opinion upon; all which the court declares, is, that the child was not *unbaptized*, need not be baptized again, and, if not unbaptized, that the minister was not justified in refusing to read the burial service over it. It has been contended, that there are other means besides baptism by which this child must be qualified to be admitted into the body of the church, and admitted to partake of the privileges of the church. What these other means are, I have not yet heard; I suppose the imposition of hands by the bishop at confirmation. I inquired during the argument, and I could not find that there were any means by which this child could be admitted into the church of England except by confirmation by the bishop after it had arrived at years of discretion; and I now assume, that this is the ceremony which is requisite to entitle it to that right. How, then, does this baptism differ from the most solemn and formal mode of baptism? No child can be admitted to partake of the holy communion until it has been confirmed; so child can be presented to the bishop to be confirmed until he or she has arrived at years of discretion, and is able to say the creed, the ten commandments, and answer the questions of the catechism of the church; it is not said a child can do this that the bishop is to confirm it. No recipient of the most regular baptism is admitted to partake of the holy communion until confirmed, or desirous of being confirmed. Then, this baptism being so far valid that it need not be repeated, the very child, if it had arrived at years of discretion, would have been entitled to come to partake of that rite, qualified by conforming to the orders of the church. It is also quite clear, that no person is entitled to have the order of confirmation administered to him, unless previously baptized; the mere imposition of hands will avail nothing without previous baptism. There is nothing to be confirmed, unless there has been a valid preceding baptism. It seems to me, therefore, that the case of this child is precisely the same, so far as the rites of the church are concerned, as in the case of the most solemn form of baptism, because, it is quite clear, that a party is admitted into the church by baptism, and not by imposition of hands. There may be deficiencies in that baptism which may be afterwards supplied, but these deficiencies do not arise from the inward effect of that baptism, either in the case of the most regular or irregular baptism.

"Therefore, it does appear to me, upon these grounds, unless there be something in the allegation which can be said to constitute a valid defence for refusing to bury this child. I mean refusing the offices of the church, and the benefits conferred by the offices of the church, whatever they be, that this question has been determined by what took place in *Martin v. Escott*, and by the admission of the principle, that this is so far a valid baptism, that it need not be repeated. It is quite impossible, that this child, by an act of commission or omission, can have forfeited the right to those offices, for the child had shortly after its birth; at least, as far as the

child is concerned, it could not be by any fault of its own, that it did not obtain the ulterior rite of imposition of hands, for that can only be obtained by an adult having knowledge of the creed, the ten commandments, and the church catechism. The question, as it appears to me, is not whether this child was admitted into the church of England, but whether it was admitted into the church of Christ? 'God forbid,' said Dr. Phillimore, in arguing this case, 'that I should say, this child was not a Christian,' having received the rite of baptism.

"Unless, therefore, there be something in the articles of this allegation which can in form or substance constitute a defence to this charge, or prevent the party being condemned in costs, the court will reject the allegation."

"... The court has now gone through the different articles of this allegation; and is of opinion, that no advantage could accrue to the party cited by admitting them, or any part of them; they do not appear to the court to constitute any defence to, or any extenuation of, the offence charged to have been committed by this gentleman against the law which makes it imperative on him to perform the burial service over a parishioner who dies not unbaptised."

"It has been held that a person, not a member of the church, may administer valid baptism, and if the baptism be valid, this child was not unbaptised. This child had no opportunity of supplying any defect in that baptism; for, by its death before arriving at years of discretion, it could not have desired or received the benefit to be derived by imposition of hands. No crime can be imputed to this child, as not having sought to supply this deficiency; and the fair presumption is, that had it arrived at years of discretion, any deficiency would have been supplied."

"I am of opinion that, even if I admitted this allegation, I should not in any manner benefit the party proceeded against; indeed, I think I am doing good to the party by arriving at the conclusion to reject it. I am saving him from great expense and interminable delay. I therefore reject this allegation, but, as it is stated, that no case has occurred precisely of this description, if the party shall be advised to apply for leave to appeal, I shall not refuse leave."

"The case will stand over until next court day, to ascertain whether the party shall wish, or shall be advised to appeal."

[The rejection of the allegation was not appealed from.]

VI. QUARRELLING, CHIDING, AND BRAWLING.

Judgment of Sir Herbert Jenner Pust, in the office of the Judge promoted by Burder v. Langley.

The office of the judge promoted by *Burder v. Langley*, (1 Eccles. Notes of Cases, 541,) was a proceeding by letters of request from the Bishop of Oxford, under Stat. 3 & 4 Vict. c. 86, at the voluntary promotion of Mr. John Burder against the Rev. William

Hawkes Langley, M.A., perpetual curate of Wheatley, in the county and diocese of Oxford, for quarrelling, chiding, and brawling by words, in the parish church of Wheatley. The articles pleaded as follows:—

1. The Stat. 5 & 6 Edw. 6, c. 4, and the laws, statutes, canons, and constitutions of the church. 2 & 3. That the defendant was a clerk in holy orders of the church of England. 4. That on Sunday, the 9th May, 1841, whilst he was in the performance of divine offices in the church of the perpetual curacy, shortly before the conclusion of the litany, after the response immediately following the prayer beginning, "O God, merciful Father," he made a short pause, and instead of proceeding with the service, being wholly regardless of the sacredness of the place and of his own duty in the performance of the divine office, he, in a chiding, quarrelsome, and brawling manner, addressing the congregation then and there present, said, "You were, perhaps, surprised at the pause I made at the end of the prayer, but it reminded me of my enemies. I have this morning received a letter from the archdeacon, offering some clergyman to do my duty for me; some one in the congregation has had the audacity to write to the archdeacon on the subject. Who has had the audacity to do this? Is it a Puseyite, who wants to introduce popery into the parish? I will, however, take care they never shall, as I will do my duty myself. I have preached the gospel, and delivered my own soul, whether the people will hear, or whether they will forbear. Some one has committed perjury against me in an affidavit made before Mr. Ashurst; but he waited till the witnesses were dead, so that he could not be punished for his perjury. Another of my enemies has written a letter to the bishop, full of falsehoods, to take my poor old uncle's living away; one of them has been to a dear old friend of mine, the only dear friend I have at Oxford, driving falsehoods into his ears, in order to set him against me. I have been charged with adultery; but the fact is, that, one night, as I was coming from my tenant's at Lobb Farm, I saw a drunken man ill-treating his wife, and I interfered for her protection; for my being a clergyman did not prevent my acting with humanity towards a female under such circumstances. The man told me I might be damned: what was it to me? what had I to do with it? He then struck me; but the Lord gave me power, and I knocked the man down," at the same time using the action of striking with his fist, in illustration of the manner in which he struck the said man; that he then proceeded to say, "If any man can prove me an adulterer, I will have my head cut off and forfeit it, and I have before mentioned this circumstance to the bishop;" adding, "I pray for my enemies, and forgive them, and hope they will repent." That during the delivery of this address, he was in a very excited and impassioned state, and frequently struck the reading-desk and the books thereon, in a very violent manner, with his clenched fist, and by such improper and incorrect conduct, gave great offence to the congregation then assembled in the church, and reflected even-

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dal and disgrace on his sacred profession. 5. That the defendant proceeded with the service until after the response immediately succeeding the ninth commandment, when, instead of proceeding with the tenth, he, in a chiding, quarrelsome, and brawling manner, addressed the congregation, and after advertising to that part of his former address relating to the persons therein stated to have given information to the archdeacon, proceeded to say, "One of my enemies in the parish has had four bastards, all the children of one man by one woman; the bastards are dead, the woman is dead; all dead, dead; gone, gone out of the way." That he then adverted to her majesty's ministers, and the proposed alterations in the corn laws, and declared that the ministers deserved praise for enabling every one to worship God according to their own conscience, and for wishing to give to every man a cheap loaf; that all who had votes would soon be called upon to give them, and urged them to give them in favour of the then ministers, and added, "God bless the present government; I have been attacked on account of being engaged in their service; I forgive my enemies, and hope they will repent:" that by such his irreverent and improper conduct, he gave great offence to the congregation, and reflected scandal and disgrace upon his sacred profession. 6. That for such offence the defendant ought to be canonically and duly corrected and punished. 7. Pleaded the act 3 & 4 Vict. c. 86.

These articles were admitted, though opposed by the defendant in person.

Sir *Herbert Jenner* *Prest* observed: "Mr. Langley has attempted to justify himself on the ground that what he did was 'asking the prayers of the congregation.' That he did ask the prayers of the congregation, some of the witnesses admit. But how? At the conclusion of an excited and improper address, unsuited to the place or the occasion. Instead of expressing contrition, he seems to glory in the act, and contends that he has a right to repeat it. But he should consider, if he has no regard for his own character, the character of the place, and not make an individual the subject of remark, in the face of the parish, where he could not justify himself without being guilty of an offence. As Lord Stowell has said, 'The church is not the place where private quarrels are to be carried on, and it is no justification that there was misconduct on the other side, which might give the first provocation—the church not being a place where human infirmity can be pleaded to justify violent and indecent conduct, however produced.' And when Mr. Langley urges that, in *Cor v. Goodday*, (2 *Consist.* 138,) Lord Stowell said that a case might arise which would justify the officiating minister in addressing a congregation, 'as far as was necessary to remove an obstruction to the public service,' this is not such a case, namely, where, during the performance of divine service, something calls for immediate interference, to prevent indecent conduct in the church. Mr. Langley is, therefore, without any excuse of sudden provocation, and the asking for the prayers of the congregation, after the address

had been brought to a conclusion, was a mere pretence.

"Then it is objected, that these proceedings have been instituted by the secretary of the bishop. I suppose they have been instituted by the bishop's directions, and it is better, that the bishop should not be himself the promoter of the judge's office; indeed, I am not aware that, under the act, the bishop could be the promoter. The bishop is loaded with obloquy by Mr. Langley on account of his taking part in these proceedings. I can only say that, if the bishop had passed over Mr. Langley's conduct, he would not have properly discharged the duties of his high office. It is his duty to prevent any irreverent conduct by a minister during the performance of divine service, and more particularly by one who is under his immediate notice. I cannot but look at Mr. Langley's defence as a very great aggravation of the grave and serious offence of which he is guilty, and I cannot help observing, that the extraordinary course he has adopted, of bringing forward accusations against others, is not only a great aggravation of his offence, but a melancholy exhibition of himself, notwithstanding the caution which the court gave him, in a spirit of kindness.

"I am clearly of opinion, on a full consideration of the evidence, that the charge is abundantly proved, and the offence clearly and indisputably substantiated against Mr. Langley. There is only one other consideration—that is, what punishment is called for by the law for what has been properly described by the learned counsel as one of the worst cases of chiding and bawling which have ever come to the notice of the court.

"The proceedings have been instituted under the 5 & 6 Edw. 6, and not under the general ecclesiastical law, and the punishment which the court is prayed to inflict is that of suspension. What was the punishment assigned to the offence in former times by the general ecclesiastical law, it is not very easy to ascertain. In *Hutchins v. Deserille*, (1 *Consist.* 181,) Lord Stowell says that, by the ancient ecclesiastical law, for such an offence, the benefice of an offending minister might be sequestrated—whether for one offence, or for a repetition of the offence, is not stated; I cannot find that there was a sequestration of the living for one offence. I am therefore called to assign a punishment under the statute, whereby the punishment in such a case of a clerk in holy orders is suspension from the administration of his office 'for so long a time as the ordinary shall think fit, according to the fault.' The amount of punishment is thus left to the discretion of the court, and I am of opinion that, in this case, the court is bound to pronounce a sentence that shall carry with it the effect of showing its sense of the seriousness and gravity of the offence, and the court is of opinion that it will not exact a due measure of justice if it pronounce that Mr. Langley has committed an offence which calls for the punishment of suspension from his office for a period of eight calendar months from the time when such suspension

shall be published and notified in the parish of Wheatley.

"The court has been pressed not to allow the suspension to be removed till Mr. Langley shall produce a certificate of good behaviour during the period of suspension. But I have not been able to find any precedent for requiring a certificate of good behaviour in a proceeding of this description. In a proceeding for drunkenness, where the party, a minister in holy orders, with a benefice, has been suspended, a certificate has been required, (*Burder v. Speer*, 1 Eccles. Notes of Cases, 63,) as a proof of the conduct of the party: but *Dicks v. Haddeford*, (1 Add. 298,) was the first instance of a certificate being required even in such a case, and I consider that it would be extremely difficult to draw up a certificate with reference to the offence of chiding and brawling, embodying within itself the requisite qualifications to enable Mr. Langley to show in what manner he had conducted himself in this particular. I can understand that, in cases of immorality and habitual drunkenness, a certificate may be proper, to show that the party has abstained from such conduct; but in a case of chiding and brawling, I do not see how a certificate could be framed so as to show that the party had not committed the same offence. And, independently of this, the punishment in this case is prescribed by the statute, and I do not know that the court is at liberty to add to it by requiring a certificate of good behaviour during the time of suspension. I should have great doubt and difficulty in saying that the court has the power to require such a certificate, and as there is no precedent for it, I confine the sentence to what the law prescribes, and I direct the suspension to be signified on Sunday next, the 3rd of July. I further am bound to condemn Mr. Langley in the costs occasioned by these proceedings, and I am afraid they will fall heavily upon him; but the court has no means of relieving him from them. I endeavoured, as far as I could, to acquaint Mr. Langley with the nature of the offence charged against him, and to convince him of the propriety, if he was guilty, (as it has turned out he was,) of admitting the charge, and not rendering it necessary that the articles should go to proof; but Mr. Langley saw fit to take another course, and has brought this expense upon himself by the manner in which he has (I will not say defended himself, but) conducted his own cause, whereby the promoter must have incurred considerable expense. If Mr. Langley, after the intimation from the court, had, on the admission of the articles, given an affirmative issue, the expense would have been slight, and the suspension much less than must now be imposed for the sake of example, for the conduct pursued by Mr. Langley has induced the court to make the suspension continue for a longer period.

"I pronounce that Mr. Langley has incurred suspension for eight calendar months from the day (including the day) when the sentence is notified; I monish him to abstain from such conduct in future, and I condemn him in the costs."

VII. DRUNKENNESS, INDECENT CONDUCT, DEMEANOUR, AND LANGUAGE. STAT. 3 & 4 VICT. c. 86.

Judgment of Sir Herbert Jenner, in the office of the Judge promoted by Burder v. Speer,

The case of the office of the judge promoted by *Burder v. Speer*, (1 Eccles. Notes of Cases, 39,) was a cause of office promoted by Mr. John Burder, secretary to the Bishop of Winchester, against the Reverend Wilfred Speer, perpetual curate of Thames Ditton, Surrey, "for being an habitual drunkard, and for having been repeatedly guilty of the crime of drunkenness, and also for having been frequently guilty of indecent conduct, demeanour, and language, in the church of the perpetual curacy, as well in and during the performance of divine offices and services in the church as before and after the performance of such divine services and offices. The suit was brought by letters of request from the commissary of the Bishop of Winchester.

This case involved no subtle principles of law, but was merely a question of evidence, viz., whether the defendant was guilty of drunkenness or not.

Sir Herbert Jenner, inter alia, observed, "Upon the whole of the case, I am clearly of opinion that the evidence is sufficient to establish the charges made against Mr. Speer; that if he is not proved to have been, in the strict sense of the term, an habitual drunkard, he is proved to have been frequently guilty of the crime of drunkenness, and it is not necessary that every article should be proved to its full extent; it is quite sufficient if the ecclesiastical offence is made out distinctly by the evidence taken upon the articles. I am also clearly of opinion, that Mr. Speer is fully proved to have been rendered incapable, from the effect of liquor, of performing the duty of the parish church in a proper and seemly manner, and further, that he has gone the length of performing it in an indecent and irreverent manner, and that the natural consequence has been, the withdrawal of several of the parishioners from attendance at their parish church; and I think if some steps had not been taken to check his proceedings, they must have led to its entire desertion. It is, therefore, due to the attendants at the church, that the court should pronounce a sentence that shall have the effect of preventing the recurrence of these improper proceedings and exhibitions, and give this gentleman an opportunity to amend his conduct.

"Before I proceed to pronounce that sentence, I will notice certain interrogatories (upon which the court has been called upon to pronounce its opinion) administered to some of the witnesses examined upon the articles. The object with which I refer to these interrogatories is to point out the impropriety of imputing to witnesses of highly respectable character the charges to which I have adverted, namely, of acting from malice and private revenge, and of entering into a conspiracy against this gentleman, and attempting to support such proceeding by evidence which is false; in fact, of having brought forward these unfounded accusations to as-

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perse his character. Now, I repeat, that a more improbable case of conspiracy can hardly be imagined. I am not prepared to say, that it is not open to a party, if he choose, to impute malice, and resentment, and spite, to individuals by whom he suggests that he is persecuted. I have great difficulty in saying that the court ought to prescribe any rule by which counsel should be governed in settling interrogatories, upon such suggestions from their clients, fortified by their strong assertions of innocence. I feel great difficulty in saying what is the course which should be pursued, as the court cannot know what the individual circumstances of the case may be, and it must, I am afraid, be left, in each case, to the discretion of counsel—that discretion which they are bound to exercise for the advantage of their client, as well as with respect to the general interests of society. I must leave it to the good taste and discretion of counsel in what cases they will be justified in imputing to witnesses improper motives towards individuals. This court has not the means of stopping counsel in administering interrogatories, as in a court of law, where questions are put *vis à voce*, and where probable proof of a conspiracy if it exist, may be obtained at the moment. I can only say, that I disapprove of the nature of the interrogatories in this case, because I see that they are without a shadow of foundation in fact. What can I say, but that counsel should not lend themselves to attacks upon witnesses, by means of interrogatories which impute improper motives to them, of which there is no proof? I can only express my disapprobation of such interrogatories when they are brought to my notice, and from the facts before me, I have seen in this case, with great regret, that, from assurances given to counsel of innocence of the charges imputed to their client—for they must have been grounded upon those unfounded assurances, and upon statements that there were grounds for imputing the charges to spite and malice—the counsel have been induced to sign these interrogatories. I cannot lay down any rule; I can only express my hope that counsel will govern themselves by what they consider right, for I can assure counsel on both sides, that they can produce no other effect upon my mind than a prejudice against the person by whom these interrogatories are administered, provided they do not show that the persons to whom they are addressed have been actuated by improper motives. Whenever a case is made to depend upon charges of conspiracy, perjury, and subornation of perjury, against a number of individuals, whether in high or low life, it always creates a suspicion in the mind of the court, that that case has no substance or foundation. I can say no more upon this subject, than to express a hope that counsel will abstain, as far as they possibly can, from putting interrogatories which in substance or language they may consider as conveying imputations upon individuals, in whatever situation those individuals may be.

“With respect to the sentence, I have endeavoured to find, if possible, any circumstances which might justify the court in pass-

ing one less severe than that which it has been accustomed to pass in cases of this description. I have considered whether there is anything from which the court can suppose that this gentleman has shown any symptoms of contrition; but, unfortunately, I am bound to say that the circumstances show no ground of mitigation. From beginning to end, he has denied the charges; and it is suggested that they are founded in malice, and therefore there is nothing of which he has to repent; as no fault has been committed by him, there is nothing for which he is to express contrition. I am bound, therefore, to pronounce that sentence which the court has been in the habit of doing in cases of this kind,—such a sentence as will give the party opportunity of amendment,—namely, suspension for three years. The party will therefore be suspended officially and beneficially for three years, and, as is the usual course, until he produce a certificate, from three beneficed clergymen, that he has been of good conduct during that time; and, as a necessary consequence, I am under the necessity of condemning him to the costs incurred in these proceedings.”

Precedent of a Judgment for Drunkenness and Lewdness.

The following is a precedent of a judgment for drunkenness and lewdness [see *relat. the Bishop of Lincoln*]:

“In the name of God, Amen. We, John, by divine permission Bishop of Lincoln, having pursuant to the provisions of an act of parliament passed in the third and fourth years of the reign of her present majesty Queen Victoria, intituled, ‘An Act for better enforcing Church Discipline,’ of our own mere motion appointed certain commissioners for the purpose of making inquiry as to the grounds of certain scandal and evil report existing concerning the Reverend A.A. within our diocese and jurisdiction, for having offended against the law ecclesiastical, by having committed the crime of drunkenness and lewdness, for that he, on the day of last, at was in a state of intoxication, and in the company of a common prostitute; and also that on the day of at he was found in a state of intoxication; and also that on the day of at he was in a brothel house there; and also that on the day of in the year of our Lord one thousand eight hundred and he was intoxicated while performing divine service in the parish church of aforesaid: and we having received the report of of the said commissioners, that after full inquiry made according to the directions of the statute, they are unanimously of opinion that there are sufficient *prima facie* grounds for instituting further proceedings against the said and having received the consent in writing of the and to our pronouncing, without any further proceeding, such sentence in the case as we shall think fit, and having ourselves carefully examined and compared the depositions of the witnesses taken before us

said commissioners, we do hereby pronounce, declare, and adjudge, that the charges brought against the said of drunkenness and lowliness are proved, and that he be suspended for the space of from performing any services of the church within our diocese, and from all profits of the said benefice of and from taking and receiving the fruits, tithes, rents, and other ecclesiastical dues and emoluments whatsoever belonging thereto (such suspension to commence from the publication of these presents), and we accordingly do suspend the said and do condemn him in the costs of these proceedings; and do further pronounce and do decree, that at the expiration of the said the said shall exhibit to and leave with us a certificate under the hands of three clergymen, of his good behaviour and morals during the time of his said suspension, and the said certificate be approved of by us before such suspension be relaxed: and we do also decree a sequestration of all and singular the profits, tithes, rents, and other ecclesiastical dues and emoluments whatsoever of the said benefice, to issue in the accustomed form, under seal of our episcopal court; and we do direct and enjoin the churchwardens of the parish of aforesaid, jointly and severally, to publish these presents by affixing or causing to be affixed a true copy thereof (the said original sentence being first shown to them or some of them) upon the principal door of the parish church of aforesaid, and that the said copies of the said sentence remain so affixed upon three several Sundays next following the date of these presents, and be then deposited in the parish chest, or chests belonging to the said benefice or parish: and we do further direct, that these presents shall be exhibited to the said and that a true copy of the same be left with him, and that the said original, with all other proceedings relating thereto, be deposited in the registry of our episcopal court aforesaid. Given under our hand and episcopal seal the day of in the year of our Lord one thousand eight hundred and in the year of our translation."

VIII. DEPRAVING OF THE BOOK OF COMMON PRAYER.

Judgment of Sir Herbert Jenner Just in Sanders v. Head.

The office of the judge promoted by *Sanders v. Head*, (3 Curt. 570,) was a proceeding by articles against the Reverend Henry Erskine Head, a clerk in holy orders of the united church of England and Ireland, rector of the rectory and parish church of Feniton, in the county of Devon, in the diocese of Exeter, and in the province of Canterbury. This proceeding was commenced in the court of Arches, in virtue of letters of request from the Bishop of Exeter, which had been presented under Stat. 3 & 4 Viet. c. 86. On these letters being presented and accepted, a decree issued from the Arches court on the 14th of November, 1841, calling

on Mr. Head to answer to certain articles, heads, positions, or interrogatories to be administered to him touching and concerning his soul's health, and the lawful correction and reformation of his manners and excesses; and more especially for having offended against the laws, statutes, constitutions, and canons ecclesiastical of the realm, by having written and published, or caused to be published, in a certain newspaper called "The Western Times," a letter, entitled "A View of the Duplicity of the present System of Episcopal Ministration, in a Letter addressed to the Parishioners of Feniton, Devon, occasioned by the Bishop of Exeter's Circular on Confirmation, by Henry Erskine Head, A.M. Rector of Feniton, Devon;" in which letter it was openly affirmed and maintained, that the Catechism and the Order of Confirmation, in the Book of Common Prayer, contained erroneous and strange doctrine; and wherein was also openly affirmed and maintained other positions in derogation and depraving of the said Book of Common Prayer, contrary to the said laws, statutes, constitutions, and canons ecclesiastical of the realm, and against the peace and unity of the church.

The letter upon which the foregoing articles were founded contained, among others, the following passages:

"The only plea which can shield our prelates from the charge of intentional duplicity, is, that they really are not aware of the unscripturalness and mischievousness of those dogmas, with which they incumber themselves and us. Ignorance of Scripture is that, which is to be attributed to their lordships on a principle of mere charity. Hence their unreadiness to do that which they promise to be ready to do; hence their unwillingness to reform, or, (at least so far as their own ministrations are concerned,) to rectify or avoid the serious error which the confirmation service contains. Hence their reckless, ruthless, and inconsistent recommendations, to the public and to the clergy, of doctrine which is erroneous, strange, and contrary to God's word. The episcopal circular, which I have now received, is a clear specimen of a system of duplicity by which their lordships, the bishops, have long been deceived, and are now perhaps more extensively than ever deceiving the public."

"As reformation in this respect is not hopeless, and as I also am pledged, by my ordination vows, as a minister of the church of England, to banish and drive away all erroneous doctrine, I do hereby decline and refuse to give any countenance whatever to the office of confirmation, as it is now used by their lordships, the bishops; and, instead of recommending, in compliance with the episcopal circular, the perusal and re-perusal of that service to the young persons of this parish, I warn them all, young, old, and middle aged, to beware, in the name of God, of the erroneous and strange doctrine which it contains."

"It will be said, that for this, I deserve to be turned out of the church; are all clergymen then to be turned out of the ministry who dissent from certain points in the Prayer Book? In this case, every body will

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be turned out of the ministry, and then nobody will remain in the ministry; shew me the works of any churchman within the last four centuries, and I will undertake to convict him of inconsistency with the Prayer Book. It is a fact, that there is no bishop or clergyman in England, in Ireland, or in the colonies, who does not sin against the Prayer Book in one point or another. It is also a fact that the Prayer Book sins against itself; some parts of it are at variance with other parts; the fourth, sixth, eighth, and thirty-sixth canons are repugnant to the first and third ordination vows. Some of the dogmas in the Catechism, Confirmation and Baptismal Services, are utterly inconsistent with the doctrines contained in the eleventh, twelfth, thirteenth, and seventeenth Articles."

Sir Herbert Jenner *Post*, in giving judgment, stated, "... It is no part of the province of this court to determine, whether the Book of Common Prayer does contain erroneous doctrine; it is sufficient for this court that it is the book which is to be used by the clergy as prescribed by the law of the land: the question is, are the words used in Mr. Head's letter derogatory and in deprivation of that book?" ... *Caudrey's case*, (5 Co. 1.) "is a direct and positive recognition of the power of the ecclesiastical court to punish, by ecclesiastical censures, or by deprivation, any person offending against the unity of the church. There is, as has been shown, in the act of Elizabeth, a direct recognition or preservation of the power of the ecclesiastical court; and, by the subsequent act of the 13th & 14th Car. 2, there is also a regular recognition of the power and authority of the ecclesiastical court, for the preservation of the peace, and unity of the church."

"Can the court, then, for one moment, doubt that Mr. Head is within the jurisdiction of this court, and amenable to his diocesan for disobedience to his ordination vow, as also, that he is punishable for such disobedience by ecclesiastical censures; can the power of the court to suspend Mr. Head be doubted? I have no doubt whatever, either as to the jurisdiction of this court, or that Mr. Head has brought himself within the jurisdiction: indeed, I feel no doubt that Mr. Head is clearly within the provisions of the statute of Elizabeth; but, under the general ecclesiastical law, Mr. Head is punishable for publishing this letter, of which he openly avows himself the author."

"I therefore have no hesitation in pronouncing the articles proved; the remaining question is, what is the punishment the court shall pronounce against Mr. Head, a minister in holy orders, and a beneficed clergyman? Now, I have referred to one part of the statute of Charles 2 (sect. 6), by which Mr. Head, when he took possession of his living, must, within two months, have read the morning and evening prayers, appointed to be read by, and according to, the said Book of Common Prayer, and openly and publicly declared his unfeigned assent and consent to the use of all things therein contained; or, *ipso facto*, have been

deprived of his said ecclesiastical benefice and promotion: I have also referred to the 36th Canon, relating to the subscription to be made by such as are to be made ministers. This is absolutely necessary to be done by every candidate for holy orders, to subscribe before he can be admitted into the ministry, or obtain possession of a living."

"I therefore think Mr. Head has incurred the extreme sentence of this court, and that the court would be justified in pronouncing against him a sentence of deprivation. If Mr. Head could not have obtained possession of his living, without assenting or consenting to the use of all things contained in the Book of Common Prayer, he cannot complain if, by the sentence of this court, he is placed in precisely the same situation as if he had not, within two months, conformed to the provisions of the statute, and if he had not done so, he would, *ipso facto*, have been deprived; it would not, therefore, as I have before said, be a very harsh exercise of the power of the court to impose the penalty on Mr. Head, to which he was liable, if he had not made the declaration of conformity, according to the statute. The court, however, is not disposed to go to the full extent of its power; not from anything that exists in extenuation of Mr. Head's offence, for nothing can be more offensive than the way in which he has expressed himself in his letter; but the statute of Elizabeth makes a difference between a first and second offence; by it, 'any person preaching, declaring, or speaking against the prescribed rites and solemnities, is liable, for the first offence, to forfeit for one year the profits of all his ecclesiastical benefices, and also to be imprisoned for six months; for a second offence, he is to lose or be deprived *ipso facto* of all spiritual promotions, and to be imprisoned during life.' It seems, therefore, that, although it was considered, at the time the statute was passed, that the offence would not bear much extenuation, still that it was right and proper that the statute should make a distinction between persons guilty of one offence, and guilty of the like offence a second time. I think, therefore, that the justice of the case may be satisfied by suspending Mr. Head from his living, and from the emoluments of it, for three years. It will be borne in mind, that Mr. Head may be proceeded against for a second offence; he shall, during the term of his suspension, publish the like doctrines."

"I am, therefore, of opinion to pronounce the articles given in to be fully proved, and to decree that Mr. Head, for the offence he has committed, be suspended from his living and ministrations, for the term of three years; and that he be condemned in the costs of the suit; with an admonition to him to abstain from such conduct in future."

"I think the court would have been justified in going to the fullest extent of punishment, looking to the language in which Mr. Head has expressed his opinions in his letter."

IX. OBSERVANCE OR NON-OBSERVANCE OF CHURCH OFFICES.

In consequence of the conflicting opinions which exist respecting the observance or non-observance of church offices, enjoined by the rubric, it has been deemed expedient to publish extracts from a charge by the Bishop of London to the clergy of the diocese of London, at the visitation in October, 1842; the judgment of the Bishop of Exeter *in re Walter Blunt (Clerk)*; a letter from the Bishop of Exeter to a portion of the inhabitants of Falmouth, in reply to a memorial addressed by them to his lordship; a pastoral letter from the Bishop of Exeter to the clergy of the diocese of Exeter; the charge of the Bishop of Worcester, delivered to the candidates for ordination at their final examination, December 21, 1844; a letter from the Bishop of Exeter to the Editor, commenting on the charge of the Bishop of Worcester; and extracts from a charge by the Bishop of Gloucester and Bristol, to the clergy of his diocese, at his lordship's visitation, in August and September, 1844: which will tend to illustrate the principal points of controversy.

Extracts from a Charge by the Bishop of London to the Clergy of the Diocese of London, at the Visitation, in October, 1842.

"I now proceed to offer some observations upon the duty of complying with the church's directions in the celebration of divine services. Our proper rules in this respect are the rubric and canons, as the articles are, with regard to doctrine; and we are bound to observe the rule in the one case, as in the other, although it must be acknowledged, that a departure from the truth is more injurious in its consequences, than a deviation from the prescribed ritual. Now it is impossible to deny, that a great degree of laxity has crept over us in this matter; and we are much indebted to these learned and pious men, who have forcibly recalled our attention to a branch of duty, too long imperfectly performed. In some instances, indeed, they have gone beyond the line of duty and of prudence, in recommending, or practising, ceremonies and forms, not authorized by their own church; and in ascribing to others an importance which does not properly belong to them; but there can be no doubt of their having mainly contributed to the progress, which has been made during the last few years, towards a full and exact observance of the church's rubrical injunctions, as well as to a better understanding of the foundations and proportions of her polity, and the nature and value of her discipline. We ought not to overlook the real good, which they have effected in one direction, while we contemplate with apprehension the evil, which it is to be feared they have wrought in another.

"Every clergyman is bound, by the plainest obligations of duty, to obey the directions of the rubric. For conforming to them, in every particular, he needs no other authority than that of the rubric itself. We ought not to be deterred from a scrupulous observance

of the rites and customs, prescribed or sanctioned by our church, by a dread of being thought too careful about the externals of religion. If we are not to go beyond her ritual, at least we ought not to fall short of it; nor to make her public services less frequent, nor more naked and inexpressive, than she intends them to be. In saying this, I am not holding any new language. In my charge to the clergy of the diocese of Chester, in 1825, I used these words: 'A strict and punctual conformity with the Liturgy and Articles of our church is a duty, to which we have bound ourselves by a solemn promise, and which, while we continue in its ministry, we must scrupulously fulfil. Conformity to the Liturgy implies, of course, an exact observance of the rubric. We are no more at liberty to vary the mode of performing any part of public worship, than we are, to preach doctrines at variance with the Articles of religion. If there be any direction for the public service of the church, with which a clergyman cannot conscientiously comply, he is at liberty to withdraw from her ministry; but not to violate the solemn compact which he has made with her.'

"An honest endeavour to carry out the church's intentions, in every part of public worship, ought not to be stigmatised as popish, or superstitious. If it be singular, it is such a singularity as should be cured, not by one person's desisting from it, but by all taking it up. When I have been asked, whether I approved of certain changes in the mode of celebrating divine service, which were spoken of as novelties, but which were in fact nothing more than a return to the anciently established order of the church, my answer has been, far from questioning the right of the clergy to observe the rubric in every particular, I know it to be their duty; and the only doubt is, how far we are justified in not enforcing such observance in every instance?

"It may, indeed, call for the exercise of a sound discretion, in certain cases, as to the time and mode of bringing about an entire conformity of your practice, in this respect, with the letter of the law; but I cannot, as it appears to me, consistently with my duty, interpose any obstacles, nor offer any objection to its being done. I wish this observation to be understood, as applicable, not only to the administration of public baptism at the time prescribed by the rubric; to the reading of the offertory sentences, and the prayer for the church militant; but to the observance of the days, which the church appoints to be kept holy. I desire more particularly to call your attention to the duty incumbent upon you, of celebrating divine service upon each of the days, on which we commemorate the leading events in the history of our blessed Lord; not only his nativity, crucifixion, and resurrection; but his circumcision, his manifestation to the gentiles, and his glorious ascension. It is my wish, that in obedience to the church's directions, you should celebrate public worship on all the anniversaries of those events; on every day in Passion week, upon the Mondays and Tuesdays after Easter day and Whitsunday, and upon Ash

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Wednesday. By specifying these particular days I do not mean to insinuate, that the other festivals and the fasts of our church are not also to be duly kept; but if any distinction is made, those observances, which are appointed in honour of our blessed Lord himself, and the solemn commencement of our great penitential fast, are entitled to peculiar respect. The reason which is commonly assigned for the non-observance of some of these holy days, namely, that the people will not go to church even if we celebrate divine service, I consider not to be of such weight as to preponderate against the plain requirements of the law. The people's neglect in this particular, which began in an age when the church's discipline was sadly relaxed, was perhaps suffered to grow into a confirmed and almost universal habit, by the too great easiness of the clergy in giving way to it; in not pressing upon their hearers the duty of frequently attending church, and giving them opportunities of doing so. It must needs take some time to overcome that habit; but the clergy must be the first to attempt it, and they are not to be blamed for making the attempt. Let them do *their* part in carrying out the church's intentions, and then none of the laity will have cause to complain of being deprived, by their means, of any one of the opportunities and privileges to which all her children are entitled. 'The life and welfare,' (says Dr. Thomas Jackson,) 'as well of church as of common weal, depend, next under God, on the frequent and fervent prayer of the church; and to neglect such laws and canons, though made by men, as enjoin us to the frequent and decent performance of such duties, is to transgress all those branches of God's law, which command us to seek the peace and welfare of the church and commonweal, wherein the safety of the king and state under whom we live, and (which is above all) the advancement of God's glory, is concerned.'

"With respect to daily service, the rubric directs, that 'the curate or minister in every parish church or chapel, being at home, and not being otherwise reasonably hindered, shall say morning and evening prayer in the parish church or chapel where he ministers.' Of the reasonableness of the hindrance, which may excuse a clergyman from the daily celebration of divine service, he must himself be the judge, subject always to the authority of the bishop, in case he shall see fit to interpose it, and to require such celebration. In many cases it may be difficult for one clergyman to perform all the services appointed by the church; and that the framers of the rubric did not intend to insist upon an uninterrupted daily performance of divine service, appears, I think, from the direction given to the curate, that when it is performed, he shall cause a bell to be tolled a convenient time before, to give the people notice. But it is quite clear, that any clergyman who thinks fit to comply with the rubric in this respect, and has daily prayers in his church, is justified, and more than justified, in doing so. 'As we are not excused by,' says Dean Comber, 'so we ought not to be discouraged at, people's slowness in coming to daily

prayers; for their presence is indeed a comfort to us, and an advantage to themselves: but their absence does not hinder the success, nor should it obstruct the performance of our prayers.'—'Let our congregation be great or small, it is our duty to read these prayers daily.'

"In my primary charge to the clergy of this diocese, in speaking of masses, I expressed a wish that the experiment should be tried, not on Wednesdays or Fridays only, on which days the litany might still be used at eleven o'clock, but on every day except Sunday, agreeably to the practice of the early church and of our own in its better age. In expressing that wish, I had in view the parish churches in towns; and where it has been carried into effect, I believe that a considerable number of persons have been found to profit by the opportunities so afforded. I know of no reason why the same practice should not be resorted to in country parishes, where the resident clergyman or deacon is desirous of giving full effect to the church's intentions; although the employment and habits of our rural population may prevent it, for a time at least, from producing much effect. The truth is, reverend brethren, that until the church's intentions are completely fulfilled, as to her ritual, we do not know what the church really is, nor what she is capable of effecting. It is the instrument by which she seeks to realise and apply her doctrines; and the integrity and purity of the one may, as to their effect, be more and hindered, in what degree we know not, by a defective observance of the other.

"I would urge this consideration upon you, with an especial reference to the more frequent celebration of the holy communion, the most appropriate and distinguishing act of Christian worship. I am persuaded that much of the backwardness and unwillingness to communicate, which the clergy have so much cause to lament in country parishes, has arisen from the practice of having only quarterly communions. The people are brought to consider the Lord's supper, not only as the most solemn office of devotion, but as something so mysterious and awful, that the church can venture to celebrate it only upon rare occasions; and they are naturally led to question their own fitness to receive it. They are reminded of the duty only once in three months; and while they are doubting, and perhaps all but resolved to communicate, the opportunity passes away, and they think no more of it for another quarter of a year. A more frequent exhibition of these holy mysteries, with proper instruction on the part of the clergy, would keep the duty of communicating more constantly before the eyes of the people: the disobedience and neglect, which they practise once a quarter, they will be less likely to practise every month, or every week; and I believe that in few instances have the clergy multiplied the opportunities of parochial communion, without increasing the number of communicants."

"As to those forms and ceremonies which are expressly enjoined in the rubric or canons, and which, as is said in the 12th

Canon, are intended to 'testify the people's humility, christian resolution, and due acknowledgment that the Lord Jesus Christ, the true eternal Son of God, is the; only Saviour of the world,' I think that upon the principle asserted by Bishop Butler they are clearly reasonable, and that, being enjoined by the church, they are obligatory upon its members. Such are the various devotional postures prescribed in the Book of Common Prayer, and the doing lowly reverence when in time of divine service the Lord Jesus is mentioned, as directed by the same canon; which custom, says Hooker, 'sheweth a reverent regard to the Son of God, above other messengers, though speaking as from God also; and against infidels, jews, and arians, who derogate from the person of Jesus Christ, such ceremonies are most profitable.'

"Again, although I do not consider the Canons of 1640 to be binding upon the clergy, I see no very serious objection to the custom therein commended, as having been the ancient custom of the primitive church, and of this also for many years in the reign of Queen Elizabeth, of doing obeisance on entering and leaving churches and chancels; not, as the canon expressly declares, 'with any intention to exhibit any religious worship to the communion-table, the east, or church, or any thing therein contained, in so doing, or to perform the said gesture in the celebration of the holy eucharist from any opinion of the corporal presence of the body of Christ upon the holy table, or in the mystical elements, but only for the advancement of God's glory, to give Him alone that honour and glory which are due unto Him, and no otherwise.'

"But that the clergy, although they are at liberty to use this custom, are not obliged to do so, even if that canon be in force, is clear from the words of the canon itself, which heartily commends, but does not enjoin it. 'In the practice or omission of this rite,' (it says,) 'we desire that the rule of charity prescribed by the apostle may be observed, which is, that they who use this rite despise not them who use it not, and that they who use it not condemn not those that use it.' If those persons, who practise these obeisances towards the holy table, do so under the notion of a bodily presence of Christ in the consecrated elements, or if the people are led to suppose them to do so, then I consider the custom to be objectionable, and at variance with the spirit of our reformed church. If otherwise, the clergy, who observe it, are bound to explain it to the people, in the sense in which it is explained by the canon.

"The same Canons of 1640, declare, that the situation of the holy table at the east end of the church, being in its own nature indifferent, and that wherein no religion is to be placed, or scruple made thereon, 'doth not imply that it is, or ought to be accounted, a true and proper altar, whereon Christ is again really sacrificed; but it is, and may be called an altar, in that sense in which the primitive church called it an altar, and in no other.' Those persons who hold not simply

a real, but a *bodily* presence of Christ in the consecrated elements, can scarcely avoid holding also the notion of a propitiatory sacrifice; and to this notion of a *bodily* presence is to be traced a superstitious reverence for the external circumstances of the Eucharist. Our own church, admitting the doctrine of a real, though spiritual presence, utterly rejects that of a corporal presence, which, however it may be veiled under obscure and unintelligible terms, is virtually one with the error of transubstantiation. It is expressly declared at the end of the Communion Service, that by the custom of kneeling to receive the elements, 'no adoration is intended, or ought to be done, either unto the sacramental bread or wine then bodily received, or unto any corporal presence of Christ's natural flesh and blood.'

"The ceremonies,' says Bishop Fleetwood, [Works, 723.] 'allowed in practice in the church, though not enjoined by the rubric, are such as were used in the church *before* and *when* the rubrics were made; and being reasonable, and easy, and becoming, were not enforced by any new law, but were left in possession of what force they had obtained by custom. He that complies not with these ceremonies, offends against no law, but only against custom; which yet a prudent man will not lightly do, when once it has obtained in general.'

"With regard to worshipping towards the east, there can be no doubt of its having been a very ancient practice of the church; for it is mentioned by Clement of Alexandria, and by Tertullian. Bishop Stillingfleet, one of the most learned of our divines, considers it to be one of those customs derived from primitive times, and continuing to our own, which there is no reason to oppose, but rather to comply with. 'And of all customs,' he observes, 'that of contention and singularity, where there is no plain reason against them, doth the least become the church of God.'

"I do not, however, consider it to be the intention of our church, that the officiating minister, when reading prayers, should turn to the east with his back to the congregation. Bishop Sparrow thinks, that anciently the reading-desk was so placed, that the minister looked to the east, away from the people, to whom he is directed to turn in reading the lessons. But the reading-desk was not known in the early years of the Reformation. It is not mentioned in the Injunctions of King Edward the Sixth, nor in those of Queen Elizabeth, nor in any canons or visitation articles before the canon of 1603. The first rubric in King Edward's Common Prayer-Book, orders, that the minister so turn him in reading prayers as that the people may best hear him; and as the customary place for reading the prayers was then the chancel, at the communion-table, it is clear that he could not have faced the east. [Hamon L'Estrange, Alliance, 328.] It appears, however, from the proceedings of the Savoy Conference, that it *was* customary at that time for the minister to turn to the people only when he spoke *to* them, as in the lessons, absolution, and benedictions:

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'when he speaks for them to God,' it was argued by the bishops, 'it is fit that they should all turn another way, as the ancient church ever did, the reasons of which you may see in August. lib. 2, *de Ser. Dom. in Monte*.' [Dr. Cardwell's *History of Conferences*, 353.]

"I myself approve of, as convenient, though not necessary, the arrangement lately adopted in several churches, where the reading desk is near the east end of the church; by which the clergyman looks towards the south while reading prayers, and towards the west while reading the lessons.

"With respect to those ornaments of the church, about which there is a difference of opinion, where the rubric and canons are not clear, the judgment of the bishop should be sought for. A question has arisen about placing lights upon the communion-table. Some doubt may be entertained as to the law in this particular. They were forbidden by the Injunctions of King Edward the Sixth, in 1549; but they were in use when the first Liturgy of that monarch received the authority of parliament, and therefore seem to be sanctioned by the rubric in our present Common Prayer-Book. But whether it be so or not, they have always been retained in the chapels royal, in cathedrals, and in college chapels; and I see no objection to them, provided that the candles are not burning except when the church is lighted up for evening service.

"I strongly disapprove of the practice, which, as I am informed, has been adopted by a few of the clergy, of decorating the communion-table with flowers; and especially when that decoration is varied from day to day, so as to have some fanciful analogy to the history of the saint who is commemorated. This appears to me to be something worse than frivolous, and to approach very nearly to the honours paid by the church of Rome to deified sinners. Such practices as these, which are neither prescribed, nor recommended, nor even noticed by our church, nor sanctioned by general custom, throw discredit upon those decent ceremonies, and expressive forms, which are intended to enliven the devotion of those who are engaged in the service of God, and to do honour to his holy name. It is well observed by Bishop Halifax, that 'there may be too much of form in religion, as well as too little. The one leads to enthusiasm, the other degenerates into superstition; the one is puritanism, the other is popery; whereas the rational worship of God, is equally removed from either extreme.'

"In resisting an exaggerated spiritualism, we must be careful not to incur the charge of materializing religion; and above all, we must beware of arbitrarily connecting the gifts of God with ordinances of merely human appointment, and of teaching our people to place the ceremonies which the church has ordained, however significant and laudable, on the same footing as the Sacraments which have been ordained by the Lord Jesus Himself. It is very well to speak of them as precious fragments of an ancient, or perhaps a primitive ritual; but

we deny that they are to be cherished as anything more than decent and venerable usages; or that we have the slightest evidence of their being divinely authorized portions of the church's perpetual spiritual sacrifice.

"Ordinances and ceremonies, which cannot be shown to have been instituted by the apostles, with a direction for their continuance, are not of perpetual obligation upon the whole church; as, for example, the appointment of an order of deaconesses, or widows; the anointing of the sick with oil; and some other instances; although if we can prove them to have been used by the apostles, or make it appear highly probable that they were so, they may not be lightly laid aside, nor changed, even by churches, and not at all by individual members of a church. This is the doctrine of our own church, in the preface to her Book of Common Prayer; and in this respect every one, at least every clergyman, is bound by the laws of his own church. What they enjoy he is a practice; what they forbid he is to abstain from; what they purposely omit he is not to introduce.

"Prayers for the dead, trine immersion in baptism, the kiss of peace in the Eucharist, the mixing of water with wine in the chalice—all these were undoubtedly ancient customs, if not all of primitive antiquity; but they are not recognised by our own church, and they are, therefore, not to be practised by its ministers. 'Let no minister of a parish,' says Bishop Jeremy Taylor, 'introduce any ceremonies, rites, or gestures, that with some seeming piety or devotion, which are not commanded by the church and established by law; and let those also be even and usefully explicated to the people, that they may understand the reasons of observance; but let there be no more introduced lest the people be burdened unnecessarily and tempted, or divided.' [Instructions to the Clergy of Down and Connor.]

"You are not to take as your rule and model in this respect the early church, or the primitive church; but the church of England, as she speaks in plain and obvious cases by her rubric and canons, in doubtful and undecided ones by her bishops. This is the language of common sense, as it is of the canon law, laid down by its able interpreter Van Espen: '*Singularium consuetudinum ritus atque ceremonie, ut vestimenta, servanda sunt; neque presbyterus sine ecclesie ministerio, ritum præscriptum immutare licet, eo citius prestat, quo contrarius ritus pristinae ecclesie dum conformior esset, videreturque ad erigendam populi devotionem, necnon ad servanda mysteria, optior et convenientior*' [P. II, sect. 1, tit. 5, c. 1, § 24.] I earnestly wish that this rule were kept in view by all clergymen. We should not then be to complain of unwarrantable emendations or alterations of the church's service on the one hand, nor of unauthorized additions to the ritual on the other. I confess that I see the former fault with less complacency than the latter. I think that a clergyman who presumes to omit any part of the service

which he has solemnly pledged himself to use whole and entire, either through haste, or negligence, or, which is still worse, from a dislike of the doctrine which they assert, offends more grievously against the order of the church than he who, from a mistaken zeal for antiquity, revives obsolete practices, or is minutely scrupulous in his attention to the externals of religion. It is my earnest wish that you should omit no part of the solemn services which the church has appointed to be used, whether in the administration of the sacraments, or in what are commonly termed the occasional offices.

“With respect to the habits proper to be worn by the clergy, when ministering in divine service, no question is made, as far as the prayers are concerned; but it is doubted, whether a clergyman, when preaching, should wear a surplice or a gown. I apprehend, that for some time after the Reformation, when sermons were preached only in the morning as part of the communion service, the preacher always wore a surplice [or possibly an *albe*, or close-sleeved surplice], a custom which has been retained in cathedral churches, and college chapels. The injunction at the end of King Edward’s first Service Book requires the surplice to be used in all churches and chapels in the saying or singing of matins, and evensong, baptizing, and burying. And the present rubric enacts, that all the ornaments of ministers, at all times of their ministration, be the same as they were by authority of parliament in the second year of King Edward the Sixth. The gown was probably first worn in the pulpit by the licensed preachers, and by the lecturers, who preached when no part of the communion service was read. In the king’s Injunctions of 1533, to the archbishop, a direction is given, that ‘where a lecture is set up in a market town, it may be read by a company of grave and orthodox divines, and that they ever preach in such seemly habits as belong to their degrees, and not in cloaks.’ When there is only one officiating clergyman, and the prayer for the church militant is read, which must be read in a surplice, it seems better that he should preach in the surplice, than quit the church after the sermon, for the purpose of changing his habit. It would perhaps be most consonant with the intention of the church, if the preacher wore a surplice when preaching after the morning service, and a gown when the sermon is in the evening. Upon the whole, I am hardly prepared to give any positive direction on this point for this particular diocese, although it is certainly desirable that uniformity of practice should prevail in the church at large.

“A more important point than that of the *dress* of the officiating clergyman, is the manner in which he reads the common prayer. No person objects more strongly than I do to a declamatory, or dramatic mode of reading; but I do not understand why those clergymen, who seek to avoid that fault, should pass to the opposite extreme of rapid and monotonous recitation, which they describe as reading *piano cantu*. I am aware, that in the old rubric even the lessons were directed to be sung in plain tune, as

also the epistle and gospel. But this was wisely altered. There are certain parts of the service which the rubric still directs to be said or sung; with reference probably to ‘choirs, and places where they sing,’ as the rubric expresses it, and to parish churches and chapels, where the prayers are *said*, and not *sung*. But whether said or sung, it should be devoutly, audibly, and distinctly. The 14th Canon directs, that the common prayer ‘be said or sung distinctly and reverently.’ Queen Elizabeth’s injunction of 1559, was, ‘that all readers of public prayers be charged to read leisurely, plainly, and distinctly.’ The writer of the Homily on Common Prayer cites a Constitution of Justinian to the same effect: the rule laid down in the *Reformatio Legum* is, ‘*partite voces et distincte pronuntient, et cantus sit illorum clarus et aptus, ut ad auditorum sensum et intelligentiam perveniant.*’ The reason why so great a stress was laid on the distinct reading of the church service, independently of its obvious necessity, was the general prevalence of an opposite practice amongst the popish clergy, many of whom, after they had conformed to the Liturgy, read it as they had been accustomed to read the prayers in their Breviary.

“It is much to be regretted, that any of the clergy of our reformed church, which justly glories in a form of public prayer, so framed that the people may both understand it, and bear a part in it, should think it necessary, or profitable, or consistent with the church’s intentions, to read it in a hurried and indistinct manner. ‘It is an absurdity and an iniquity,’ says Bishop Gibson, ‘which we justly charge upon the church of Rome, that her public service is in a tongue unknown to the people: but though our service is in a known tongue, it must be owned, that as reading it, without being heard, makes it, to all intents and purposes, an unknown tongue, so confused and indistinct reading, with every degree thereof, is a gradual approach to it.’

“It is a subject, my brethren, of still deeper concern, that any of our body, though but few, should evince a desire and longing to revert, not merely to some of the outward ceremonies, but to the devotional formularies of the church of Rome; that they should speak disparagingly and disrespectfully of our Liturgy, and prepare men of ardent feelings, and warm imaginations, for a return to the Roman mass book, by publishing, for daily use, devotions and homilies, taken from authors of that church, and embodying not a few of its superstitions and unscriptural doctrines and practices: that they should recommend, or justify, under any qualification, prayers or addresses to saints, a practice which began in poetry, and ended in idolatry; intercessions for the dead, which our church, by her formal discontinuance of them, has implicitly forbidden, and which tend directly to the notion of purgatory; and auricular confession, a practice utterly unknown to the primitive church, one of the most fearful abuses of that of Rome, and the source of unspeakable abominations.

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"It is a subject of concern, that while they protest in cautious and measured terms against some of the errors of that church, they should abstain from the plain, uncompromising assertion of her unscriptural, or rather her anti-scriptural character; and spend their lamentations on their own national church, as sitting apart from the mother of churches, and in bondage to the powers of this world, rather than upon that system of corruption and tyranny, which drove her from communion with Rome, and which is still maintained by Rome in theory, and, as far as circumstances will permit, in practice also.

"Again, it is matter of shame and grief to us, and of exultation to our adversaries, that while such men as Hildebrand and Becket are held up to admiration, men who, if they were sincere, were yet the authors and abettors of evil, the firebrands of discord, and the subverters of civil government, reproach and censure should be cast upon those holy fathers, to whom, under God, we owe our deliverance from an intolerable yoke, Cranmer, and Ridley, and Jewel; as though the occasional errors into which they may have fallen, under circumstances of difficulty which we are wholly unable to appreciate, were not a thousand times outweighed by their services to the cause of God's truth and of his church."

"I think that it is not correct to commence divine service with a psalm or hymn.

"The psalms and services had better be said than sung, where the congregation are not sufficiently versed in the knowledge of music to take part in them.

"Where a saint's day falls upon a Sunday, the collect for the saint's day, as well as that for the Sunday, should be read, and the epistle and gospel for the saint's day, but the lessons for the Sunday.

"The minister should himself give out the psalms to be sung, and all notices that may be lawfully published in church.

"The prayers for the ember weeks should always be used as appointed.

"The responses in the communion service should be said, rather than sung, where there is not cathedral service.

"After the Nicene creed, the minister should in all cases declare, what holy days or fasting days are in the week following appointed to be observed.

"Baptism is never to be administered in private houses, except in cases of urgent necessity; and all such baptisms should be duly registered within the time prescribed by law. This I request you to take as my authoritative direction, as well as what follows.

"That you will not permit any clergyman to officiate as your temporary substitute, or assistant, not being a personal friend or acquaintance of your own, who shall not have first exhibited to me his letters of orders and testimonials; and that no clergyman, serving only one church, omit either morning or evening service on Sundays."

Judgment of the Bishop of Exeter in re Walter Blunt (Clerk).

On the 12th September, 1844, Mr. Hall, one of the churchwardens of Helston, in a letter to the Lord Bishop of Exeter, made complaints against the Rev. Walter Blunt, the curate of Helston, as follows:

"*First.* Comes the use of the surplice in the pulpit: this, however, excited little attention; probably it would have scarcely been noticed had he not at first preached in the gown.

"*Secondly.* A great deal of dissimulation was excited by the substitution of an extemporary dissertation on the Liturgy for a sermon; a sort of lectures interesting probably to the church antiquarian, but very unsatisfactory to a man anxious to learn his duty to God and man.

"*Thirdly.* The disease of any prayer before or after the sermon.

"*Fourthly.* The substitution of an extempore lecture on one of the lessons for a sermon in the evening; this being introduced after the second lesson, and neither preceded nor ended by prayer: the lecture itself being more frequently historical than of any practical tendency.

"*Fifthly.* The compelling all persons to remain in church on sacrament Sundays until the conclusion of the exhortation, on pain of excommunication, *ipse facto*; a custom, as Mr. Blunt allows, peculiar to this church.

"*Sixthly.* The refusal to read the Lord's Prayer with, or to administer the holy communion to, a man who had been baptized by a Roman catholic priest, the man having previously communicated in our church, and being unwilling that the sacrament of baptism should be repeated.

"*Seventhly.* The refusal to bury the corpse of a young man who had been baptized by a dissenting minister in a colony where no church minister was to be found.

"*Eighthly.* The refusal to marry persons unless they could prove satisfactorily that they had been baptized."

In consequence of these complaints, a commission was issued by the Bishop of Exeter, on the 4th of October, 1844, for the purpose of inquiring into and reporting concerning them.

An additional paper, entitled "Cause of complaint," was exhibited before the commissioners on the part of certain members of the church of Helston against their reverend curate, as follows:

"1. For having, shortly after he entered on the curacy, refused to administer the sacrament of the Lord's supper to John Blake, then supposed to be in a dying state, and having told the said John Blake that he could not bury him, unless he consented to be baptized.

"The following are briefly the facts of the case: John Blake, an Irishman by birth, was baptized by a Roman catholic priest, and afterwards confirmed by a catholic bishop; he was for ten years in the army, and during the last fourteen has resided at Helston, in the service of the Rev. Thomas Stabbeak; he was married in the West Indies according to the rite

of the English protestant church, and for the last twenty-four years he had been a regular attendant at the services of that church. Blake has always been remarkable for great propriety of conduct; his children were baptized in the church, and have been for some years at the national schools, where they have been distinguished for their good conduct. Supposing himself to be dying, Blake expressed a wish to see the clergyman, and to receive the sacrament; and Mr. Blunt was requested to administer it, but on discovering that Blake had been baptized by a catholic priest, he not only refused to do so, but declared that he could not use the Lord's Prayer in praying with him, as the words 'Our Father' could not be considered to apply to them jointly. On Blake's expressing a hope to Mr. Blunt that he would bury him, he declared he could not do so unless he was baptized. The poor man, however, not being satisfied of the necessity or even propriety of a repetition of the sacrament, declined Mr. Blunt's offer to administer it.

"These facts will be fully borne out by Blake, who still lives, and also by his wife.

"On Mr. Blunt's being asked upon what principle he had acted in this case, and if our church had not recognised baptism by Roman catholic priests? he replied that the Irish was not a true branch of the Romish church, that the Irish catholics were schismatics from our church, and therefore their services were entitled to no consideration.

"2. For adopting the use of the surplice in the pulpit, and dispensing with prayer both before and after the sermon, and frequently addressing the congregation from the pulpit before the sermon in a vehement and unbecoming manner, respecting the changes he had made and proposed to make in the mode of performing the services of the church.

"3. For having in the month of April last, published for the first time the banns of marriage between John Retallack and Elizabeth Ralph, and afterwards refusing to proceed with the publication on the ground that one of the parties had not been baptized.

"These parties were married in the register-office at Helston, on the 24th of May, and on the superintendent-registrar remonstrating with Mr. Blunt on the impolicy (to use the mildest term) of thus driving people from the church, and asking his reason for refusing to proceed with the banns, Mr. Blunt stated that the marriage service contemplated that parties married should receive the sacrament, and exhorted them to do so as soon as conveniently might be; that a person not baptized was not qualified to receive the sacrament, and therefore not in a condition to be married. On being asked what persons born and bred dissenters were to do, Mr. Blunt said they had the Marriage Act. To the question, what course was open to them before that act passed? he replied that it ought to have been passed long before. This case excited, as might be supposed, a great sensation, and only one marriage took place in Helston church during the three months of April, May, and June, instead of the average number of ten or twelve.

"4. For compelling women coming to be

churched to submit to the exposure and fatigue of kneeling at the rails of the communion table, where he reads the service, instead of permitting them to remain in the seat appropriate for the purpose, and performing the service in the desk in the ordinary manner.

"5. For dismissing the church singers, and substituting in their stead some of the national school boys, wholly ignorant of music, and who, being placed in the chancel, at the greatest possible distance from the organ, are quite beyond all control of the organist, whereby the solemn and devotional effect of this part of the service is entirely destroyed.

"6. For refusing to bury any person not baptized by a minister of the established church, in open defiance of the settled law of the land.

"7. For tendering to the churchwardens for their signature, conjointly with his own, a notice to be published to the effect that no dissenter should be buried in the churchyard before the hour of eight in the evening, which the churchwardens refused to sign.

"8. For requiring the whole of the congregation to remain in church on Sundays when the sacrament of the Lord's supper is administered during the offertory and collection of alms, and until after the reading of the exhortation.

"9. For having on Sunday, the 1st of September instant, after the conclusion of the sermon, addressed the congregation in a violent and intemperate manner, declaring his determination not to allow any persons who left the church on sacrament Sundays before the exhortation to partake of the holy communion again; and that persons so offending should not only be prevented from communicating in that church, but that he would take care they should be admitted to no other, and that he would write to every clergyman in the neighbourhood, enjoining them not to admit such persons to the sacrament in their churches."

Report of the Commissioners.

"October 10, 1844.

"My lord,—We, the commissioners appointed by your lordship to inquire into the circumstances connected with the present state of the church in Helston, beg leave to represent that we held a meeting on the 4th of October, in the national school-room of that town, endeavouring as far as possible to keep in view the instructions given us by your lordship as to the mode of procedure. In the accompanying paper, marked A, headed 'Notes, &c.' will be found a full and almost verbatim report of the evidence produced, together with Mr. Blunt's own explanations. Having sat for six hours on that day, and listened patiently to every statement that was offered, in consequence of the evidently exhausted and excited state of Mr. Blunt, and also of strong indications of impatience as well as acrimonious feeling displayed by other parties, we deemed it requisite to adjourn to the 10th inst., rather than allow Mr. Blunt to place himself in so unfavourable a position as he must have done by proceeding at such a time and place with his observations. It was therefore arranged,

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with the entire concurrence of Messrs. Hill and Blunt, that Mr. Blunt should, in the interval, be allowed to furnish us with such further observations or explanations as evading as he might deem advisable. We beg to forward Mr. Blunt's supplementary statements, which we have perused. It would be satisfactory were it in our power to report favourably of the tone and temper of either party concerned in the investigation. We regret, however, to state, that Mr. Hill seemed to us to have come to the meeting, and to have conducted his case throughout with feelings of considerable personal irritation. This might have been caused, we think, in some measure, by Mr. Blunt having at the outset of our proceedings refused to recognise Mr. Hill as a legal churchwarden, and by his having forwarded to him a *ticket of admission* to the investigation sought for by Mr. Hill himself. Throughout the day, Mr. Blunt appeared to labour under strong excitement, not perhaps, however, greater than might have been expected under the trying circumstances in which he was placed. Before we make any observations on the evidence, it may be necessary for us to observe, in consequence of an observation of Mr. Blunt's (*vide sheet 3*), that in no instance did we interfere so as to prevent Mr. Blunt from pursuing any line of examination that he might have thought requisite, consistently with the usual course of taking evidence; and that as to Mr. Blunt's feeling the investigation to be a degradation to himself, we trust that your lordship will see that we have only endeavoured to carry out the instructions of our commission.

"We proceed, then, with the charges in the order in which they appear in Mr. Hill's letter to your lordship, which charges were at our meeting, on the 4th, adopted by both churchwardens.

"1. Use of the surplice in the pulpit. This appears to be fully admitted by Mr. Blunt.

"2. Mr. Blunt admits that he has preached frequently from notes.

"3. The disuse of the prayer before or after sermon is also admitted by Mr. Blunt, and also the fact of his giving a lecture after the second lesson of the evening service.

"4. The compelling all persons to remain in church on sacrament Sundays till after the exhortation, &c.

"On this charge Mr. Blunt speaks fully in his supplementary observations. It will therefore be only necessary for us to state to your lordship what was proved as to the instance mentioned as having occurred on the 1st of September. There appears to us to be no doubt of the substantial truth of the evidence of Mr. Edwards as to Mr. Blunt's words, supported as it was by Mr. Gay and Mr. Tyacke, and in fact not denied by Mr. Blunt himself. With regard to his manner on that occasion, we are inclined to adopt the description of Mr. Blunt's own witness, Mr. Rockruge, that 'his language was very strong and vehement, and his manner much excited.' It is unfortunately too evident, that the effect of this circumstance has been to produce great dissatisfaction. We are

sorry to refer your lordship, with on this subject, to a letter of Mr. Hill to Mr. Blunt, intimating his intention to test Mr. Blunt's threat in his own person.

"We rejoice, however, to add, that Mr. Hill has, as yet, forbore to do so, and we trust that he will not.

"6. Refusal to read the Lord's Prayer with Blake, &c.

"It appears that Mr. Blunt, having been applied to by a sick man named Blake, for private communion, Mr. Blunt refused, on the ground that Blake was not to be considered as properly a baptismal person. We refer your lordship to Mr. Blunt's explanation, as giving a full statement of his feeling and practice on the subject. We have no direct proof of any renunciation of Romanism by Blake, or otherwise; but it appears to be a fact, that he has for many years been a constant attendant at the church at Holston, although he has not been a communicant.

"7. Refusal to bury the corpse of a young man, &c.

"Mr. Blunt admits that he did refuse, on the ground of his not having been baptized. It appears that he had been baptized in London by a Wesleyan.

"8. Refusal to marry persons, &c.

"Mr. Blunt's statement on this head appears to be uncontradicted, and our conclusion is, that he did not refuse to perform banns, but to marry a party who could not prove himself to have been baptized.

"Having thus gone through the charges and complaints upon which we had to collect evidence, we trust that your lordship will think we exercise a sound discretion in avoiding any unnecessary comments of our own.

"Your lordship will observe, that Mr. Blunt has referred particularly to the conduct of himself and the clergy at the archdeacon's last visitation (*vide sheet 13*). Although we cannot see that these circumstances have had any material connexion with the present causes of dissatisfaction on the part of his parishioners. The case has been already so fully before your lordship that it is unnecessary to do more than refer to the fact, that the archdeacon avoided any public censure upon Mr. Blunt's line of conduct on that day, expressing only his intention of leaving the matter entirely to your lordship.

"We believe we have now gone through the whole case with sufficient minuteness to place all its circumstances fully before your lordship. We shall be sincerely gratified if our proceedings should meet with your lordship's approval; but still more so if they shall be found to have tended in any degree to the restoration of Christian charity, and the advancement of the spiritual welfare of the church in Holston.

"We remain, my lord,

"Your lordship's most devoted and obedient servants,

"EDWARD DROG.

"EDWARD GAWTHORPE.

"T. PEARSON.

"To the Right Rev. the Lord Bishop of Exeter."

"P.S. 1. In reference to Mr. Blunt's strong and emphatic denial of that part of the 7th charge (see list of causes of complaint) which refers to the proposed notice, 'that dissenters should not be buried until after 8 o'clock, p.m.,' to which Mr. Hill also refers in the concluding part of his letter, it will be sufficient to call your lordship's attention to the draught of notice, written and signed by Mr. Blunt himself. It may be, perhaps, necessary to add in explanation, that the burials in question were those of dissenters unattended by any church service.

"2. Under the notice of the 4th charge, we ought to have added, that it appears to us that Mr. Blunt's practice of reading the exhortation beginning, 'Dearly beloved in the Lord, ye that mind to come to the holy communion,' &c. after the prayer for the church militant, on sacramental Sundays, and his strongly enjoining it upon all persons as an absolute duty to remain in the church till after the conclusion of this exhortation, was, even from his own supplemental statement, that part of his ministerial conduct by which he placed himself most at variance with the feelings and wishes of many of the most respectable members of his congregation.

"EDWARD BUDGE.

"EDWARD GRIFFITH.

"T. PHILLIPOTS."

Judgment.

"Bishopstowe, Oct. 23, 1844.

"I have read with much attention the report made to me by the commissioners of the inquiry holden at Helston on Friday, the 4th inst., into the matters of complaint and dissatisfaction on the part of the parishioners of Helston against their minister, the Rev. Walter Blunt, as stated in a letter to me from Mr. Hill, the churchwarden, dated September the 18th last, and also in an additional paper presented by him at the meeting of the commissioners, entitled 'Causes of complaint.'

"I have likewise read notes of evidence, taken on the occasion by the commissioners, divers documents presented by both parties, and Mr. Blunt's written statement to the commissioners, on the various matters alleged against him.

"I proceed to give my judgment, which is the result of much deliberation, on all the subjects brought to my attention.

"1. First comes 'the use of the surplice in the pulpit; this, however, excited little attention, probably it would scarcely have been noticed, had he not at first preached in the gown.'

"As such a matter seems to have been

regarded at first with no more attention than it merited, it is difficult to understand how it should have been swelled into importance afterwards; since the only reason given for its exciting attention at all existed in fullest force at first—that is, when he changed from the gown to the surplice.

"Mr. Blunt says, that he preached in the gown only while he was acting under Mr. Boraston, and not since he was licensed as curate.

"On this particular I have no difficulty in saying, that Mr. Blunt has been right since he has preached in his surplice.

"The sermon is part of the communion service*, and whatever be the proper garb of the minister in the one part of that service, the same ought to be worn by him throughout. The rubric and canons recognise no difference whatever.

"The rubric, at the commencement of 'The order for morning and evening prayer,' says, 'That such ornaments of the church, and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this church of England by the authority of parliament, in the second year of the reign of King Edward VI.,' in other words, 'a white albe plain, with a vestment or cope.'

"These were forbidden in King Edward the Sixth's Second Book, which ordered that 'The minister at the time of the communion; and at all other times of his ministration, shall use neither albe, vestment, nor cope, but being an archbishop or bishop, he shall have and wear a rochet; and being a priest or deacon, he shall have and wear a surplice only.'

"This was a triumph of the party most opposed to the church of Rome, and most anxious to carry reformation to the very farthest point.

"But their triumph was brief. Within a few months Queen Mary restored popery; and when the accession of Queen Elizabeth brought back the Reformation, she, and the convocation, and the parliament, deliberately rejected the simpler direction of Edward's Second Book, and revived the ornaments of the first. This decision was followed again by the crown, convocation, and parliament, at the restoration of Charles the Second, when the existing Act of Uniformity established the Book of Common Prayer, with its rubrics, in the form in which they now stand.

"From this statement it will be seen, that the surplice may be objected to with some reason; but then it must be because the law requires 'the albe, and the vestment, or the cope.'

* ["The Master of the Temple, in his pamphlet entitled, 'Canons and Rubrics of the Church of England considered,' says, p. 47, 'Neither is the Bishop of Exeter's assertion true, "that the sermon is part of the communion service."']

["This he infers from a rubric at the end of the communion service, taken in conjunction with one at the beginning of that service in Edward the Sixth's First Book. Now, if he had adverted to another rubric in that service, immediately after the blessing, 'The peace,' &c., he would hardly have hazarded so unceremonious a contradiction. The rubric is as follows: 'When the holy communion is celebrated on the work-day, or in private houses, then may be omitted the Gloria in excelsis, the creed, the *Agnus Dei*, and the exhortation beginning, 'Dearly beloved,' &c.'"]

["Surely the *Agnus Dei* is here a 'part of the communion service,' if the other matters are parts of it." *See relat. the Bishop of Exeter.*]

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"Why have these been disused? Because the parishioners—that is, the churchwardens, who represent the parishioners—have neglected their duty to provide them; for such is the duty of the parishioners by the plain and express canon law of England*." (Gibson, 200.) True, it would be a very costly duty, and for that reason, most probably, churchwardens have neglected it, and archdeacons have connived at the neglect. I have no wish that it should be otherwise. But, be this as it may, if the churchwardens of Helston shall perform this duty, at the charge of the parish, providing an albe, a vestment, and a cope, as they might in strictness be required to do, (Gibson, 201.) I shall enjoin the minister, be he who he may, to use them. But until these ornaments are provided by the parishioners, it is the duty of the minister to use the garment actually provided by them for him, which is the surplice. The parishioners never provide a gown, nor, if they did, would he have a right to wear it in any part of his ministrations. For the gown is nowhere mentioned or alluded to in any of the rubrics. Neither is it included, as the albe, the cope, and *three* surplices expressly are, among 'the furniture and ornaments proper for divine service,' to be provided by the parishioners of every parish. Gibson, *ubi supra*.

"The 58th Canon of 1604, (which, however, cannot control the Act of Uniformity of 1662,) enjoins that 'every minister, saying the public prayers, or ministering the sacraments, or other rites of the church, shall wear a decent and comely surplice, with sleeves, &c., to be provided at the charge of the parish.' For the things required for the common prayer of the parish were and are to be provided by the parish. If a gown were required, it would be to be provided by the parish.

"But the commissioners say, that Mr. Hill told them at the time of the inquiry, that 'he should not object to the use of the surplice, if it were not the badge of a party.' This, I am aware, is a very common cry. But I cannot forbear from saying, that if any of the clergy deserve to be called a party, in an invidious sense of the phrase, they who agree in violating the law of the church ought to be so designated, not they who observe it. But in the present case, I do not think that any such reproachful name would properly be applied to either the one or the other. Those who observe the law ought to be protected from all reproach by their faithfulness; they who do not observe it, by the long and general, however irregular, prevalence of such non-observance, on the part of the clergy, and of connivance on the part of the bishops.

* ["The Master of the Temple says, in his pamphlet entitled, 'Canons and Rubrics of the Church of England considered,' p. 44, 'It may be doubted, whether this constitution of Archbishop Winchelsea, which relates to popish garments, as they were used more than 100 hundred years before the Reformation, could be enforced in the present day.'

["If the Act of Uniformity requires that the cope be worn, its having been a popish vestment does not make it less requisite. And as the constitution which requires the churchwardens to provide it, is one of the canons 'not contrariant nor repugnant to the laws, statutes, and customs of this realm,' it is still part of our canon law. 25 Hen. 8, c. 19, s. 1.

["If, however, the canon be not binding, there is no way of providing the cope, or enforcing the use of it; and so the surplice (to be provided at the charge of the parish) must be worn in preaching the sermon in the communion service. 58 Can. 1603." *See note* the Bishop of Exeter.]

"There is one, and one way only, in which all appearance of party and division among the clergy, in this respect, may be avoided. I mean by all of them complying with the easy requisition of the church, that they wear one and the same garb during the whole of the communion service, including the sermon, which, I repeat, is only a part of that service. And the experience which I have had, not only at Helston, but at several other places, of the great practical evils and scandals which have arisen, and are daily arising, from suffering the law of the church in this instance to be set at naught, will make me earnestly call upon my clergy throughout the diocese to return to obedience to the law, by wearing throughout their ministration that dress which is provided for them, the *surplice*, if the use of the other more costly garments be not (as it is not desired by any that it should be) revived among us.

"2. 'A great deal of dissatisfaction was excited by the substitution of an extemporary dissertation on the Liturgy for a sermon—a sort of lecture, interesting probably to the church antiquarian, but very unsatisfactory to a man anxious to learn his duty to God and man.'

"The habit of preaching extempore was much disapproved by me generally; but as I have never told Mr. Blunt that I disapprove it, I cannot justly censure him for adopting the practice.

"A 'dissertation' in the pulpit on my subject would seem to me highly improper, but whether a sermon may deserve to be called a 'dissertation,' can be decided only by those who have heard it, unless it have been committed to writing, as unfortunately these sermons appear not to have been. This is one of the many grounds on which preaching, either extempore or merely *memoriter*, may be deemed very undesirable. In such a case, if the sermon be with reason objected to by a hearer, justice can rarely be done to the objector; if it be objected to without reason, the preacher can never do justice to himself.

"In the present instance, Mr. Hill objects to Mr. Blunt's sermons on the Liturgy, not for any unsoundness of doctrine, but because they were 'a sort of lecture, interesting probably to the church antiquarian, but very unsatisfactory to a man anxious to learn his duty to God and man.'

"If such was the character of Mr. Blunt's sermons, I am sorry for it. Most certainly it was not necessary that sermons on the Liturgy should be of so unedifying a description. For the Liturgy is itself a most solemn

able application of God's word to practice; instructing all who study it, most richly, most clearly, most persuasively, in all the great duties of Christians. The Liturgy may be made, and in the hands of an able and zealous minister, as Mr. Hill very honourably attests Mr. Blunt to be, might be expected to be made, a most powerful auxiliary to his direct teaching from scripture. It is, therefore, not with surprise, but with much satisfaction, that I find the testimony of one, whom all who know him will esteem a very competent judge, the Rev. W. Thomas, vicar of Sithney, to the character of two of these sermons, which only he heard, and of which he writes to Mr. Blunt, in a letter, transmitted to me by the commissioners, that 'he has no hesitation in repeating now what he had expressed then to his own family, regarding their character, which he considered both interesting and edifying.' It is possible that he may have been peculiarly fortunate in being present at the best specimens of those sermons; but, in the absence of other evidence, I must consider his testimony so far to neutralize Mr. Hill's as to make me decline to pronounce against Mr. Blunt on this point.

"3. 'The disuse of any prayer before or after the sermon.'

"When a question regarding the performance of any part of the Book of Common Prayer is brought before me, I feel it my duty, instead of considering what I or others may desire, to look carefully to the 13th and 14th Car. 2, c. 4, (the Act of Uniformity in Public Worship,) because that is the law, which all the authorities in church and state have concurred in making decisive and conclusive in every such question. I there read that 'an universal agreement in the public worship' is, for the gravest reasons, declared to be the object of the statute, and in order thereto, 'that all ministers shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments, &c. in such order and form as is mentioned in the Book of Common Prayer.'

"I further read (s. 17), that 'no form or order of common prayer, or administration of sacraments, &c. shall be openly used in any church, &c. other than what is prescribed and appointed to be used in and by the said book.' It is plain that this latter clause prohibits all addition to, as the other does all diminution from, the form prescribed.

"When, therefore, I receive, as I now do, a complaint against one of my clergy for 'the disuse,' or non-use, 'of any prayer before or after the sermon,' I examine 'what is prescribed and appointed to be used in and by the Book of Common Prayer' in this respect; and I find there, after the Nicene Creed, and after an order for the publication of divers notices, &c., 'Then shall follow the sermon, or one of the homilies already set forth, or hereafter to be set forth by authority.'

"The sermon or homily being finished, 'Then shall the priest return to the Lord's table and begin the offertory,' &c.

"The result is, that no prayer being pre-

scribed and appointed either before or after the sermon, the minister who uses no prayer, either before or after the sermon, strictly conforms to the law of church and state, and is, therefore, not open to any censure or discouragement from his bishop.

"Very true it is, that this practice is now unusual, and that almost all clergymen have been for a very long time accustomed to use, in their parish churches, a collect and the Lord's Prayer before the sermon. So entirely is this custom fixed and rooted among us, that I shall probably surprise most of those to whom I am now writing, when I cite from the 'Directions of King George I. to the archbishops and bishops for preserving of unity in the church,' the sixth of those directions, expressly calling on them to prohibit this very practice, the propriety of which is now esteemed so fixed and certain, that the departure from it by a minister is made matter of remark, and even complaint.

"True it also is, that this royal letter of 1714 directs the bishops 'to require their clergy, in their prayer before sermon, that they do keep strictly to the form in the 55th Canon contained or to the effect thereof,'—in other words, the bidding prayer, as it is commonly called,—which is required by the 55th Canon of 1604 to be used before all sermons.

"But in respect to the canon which requires the use of this form, if there were no authority or practice to the contrary, it must be deemed to be superseded by the rubric which we have just read, so far as concerns the sermon, which is part of the communion service, and could have effect only in the case of sermons at other times, such as in the evening prayer or in the morning prayer on days when the communion service is not used, or in the universities, where, by an express provision of the Act of Uniformity (sect. 23), sermons may be had without being preceded by morning or evening prayer.

"But the direction of King George I. is to the effect of requiring the use of the bidding prayer generally 'before sermon;' and the notorious practice in cathedrals, even before the sermon in the communion service, is in conformity to it. Whether such a royal mandate, and such a practice in cathedrals, be of sufficient authority to counterbalance the letter of the Act of Uniformity, or rather to shew that the act is to be construed as approving the use of this form, are questions which I am not competent to solve. My own opinion, not unaccompanied with doubt, (by reason of the above cited authority, and of that only,) is, that the canon is superseded so far as concerns the sermon in the communion service.

"But, at any rate, and under any view of the matter, the collect with the Lord's Prayer is not in accordance with the rubric, and is repudiated by all authority, however generally used. If, therefore, a prayer before the sermon be insisted on, it can only be the bidding prayer.

"Mr. Blunt, it seems, at first used that prayer, but, entertaining some doubt on the matter, he consulted me. Being so consulted, and not being at the time aware of

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King George's letter, I resolved his doubt by saying, that I considered the Act of Uniformity as having superseded the canon, in respect to the sermon in the communion service.

"If it be the wish of either clergy or laity at Helston that I should reconsider this my resolution of Mr. Blunt's doubt, as to the necessity of using the bidding prayer, I am quite willing to do so; and then, if I cannot, by further consideration and inquiry, relieve my own mind from doubt on the subject, I will do, as I rejoice that I am enabled by law to do, submit the doubt to the Archbishop of Canterbury for his final and conclusive judgment.

"Meanwhile, I think it right to say, with reference to the 55th Canon, which orders the bidding prayer, that even if it be not, in any respect, superseded by the Act of Uniformity, it will not necessarily follow that it ought now in all cases to be enforced.

"For the canon law differs in this respect from the temporal law. Where the reason for any canon has ceased, and where, on that or any other account, it has long been suffered by the ecclesiastical authorities to remain unenforced, it is not necessarily to be at once called again into activity; certainly not without previous notice.

"So far, therefore, as regards parish churches, in almost all of which the bidding prayer has long ceased to be used, it may be within the discretion of the ordinary whether to revive the use of it or not. Every ordinary, before he shall resolve in the affirmative, will probably consider well whether there be sufficient cause for reviving it. Is it, for instance, an edifying prayer? No—it is not, strictly speaking, a prayer at all—it is a direction to the people, *bidding* them to pray, and telling them for whom to pray. And this direction is fulfilled most effectually and most faithfully in the prayer for the church militant. Whenever, therefore, the prayer for the church militant is used in its proper place in the communion service, as it ought to be on every Sunday and holyday in every church, whether the holy communion be administered or not, there the whole matter of the bidding prayer is repeated as a prayer, except as regards the queen's titles, which it would manifestly be irreverent to recount in an address to Almighty God. Now, it was the assertion of these titles that the queen is 'defender of the faith, and in all other causes and over all persons, ecclesiastical as well as temporal, within her dominions supreme,' which seems to have been one, if not the only main end and object of the canon requiring the use of the bidding prayer. I will not at present enter into the proof of this position. I content myself now with saying, that the object of this 55th Canon is very similar to that part of the 1st Canon which requires 'all ecclesiastical persons having cure of souls, and all other preachers, to the uttermost of their wit, knowledge, and learning, to teach, manifest, open, and declare in their sermons, four times at least in the year, that all usurped and foreign power (repugnant to the ancient jurisdiction of the crown over the state eccle-

siastical) hath no establishment by the word of God, and is for most just causes taken away and abolished.'

"Both the one canon and the other are equally stringent and imperative, and both have long been suffered, wisely I think, to lie dormant.

"Should the time ever come when it shall be necessary to re-assert the queen's supremacy every Sunday in every church in England—and four times in every year to teach it in sermons—I trust that the bishops will not fail in their duty to enforce both these canons, or the clergy in their duty to observe them. Meanwhile, it will be considered by most men quite sufficient that the bidding prayer be, as it is, used in cathedrals and universities, and sometimes, and on some special occasions, such as visitations of the clergy, elsewhere.

"4. 'The substitution of an extemporary lecture on one of the lessons for a sermon in the evening, this being introduced after the second lesson.'

"Mr. Blunt partially admits the fact, and rests his justification of it on the rubric at the end of the catechism, which requires 'That the curate of every parish shall diligently, upon Sundays and holydays, after the second lesson at evening prayer, openly to the church instruct and examine so many children of his parish sent unto him as he shall think convenient, in some part of the catechism.'

"He says that he cannot catechize at present, 'there being no middle aisle,' and no other proper place 'to gather the children for the purpose.' 'But he can, and does instruct from notes, so as to be understood by the young and by the poor, bearing now or less upon some portion of the catechism, and (so as to keep up the church's instruction for the day) founded generally upon one of the lessons.'

"As no sermon is required by the rubric in the evening prayer, as the only instruction then required is connected with catechizing, and as the time appointed for such instruction is after the second lesson, I should be of opinion that there is nothing wrong in the particular of Mr. Blunt's practice, which appears to approach as near to catechizing as the circumstances of Helston church fairly admit; did not the Act of Uniformity, 13 & 14 Car. 2, c. 4, s. 22, expressly provide 'That when any sermon or lecture is to be preached, the common prayers appointed to be read for that time of the day shall be read before such sermon or lecture be preached.'

"This, however, is not in itself a matter requiring grave animadversion. It is correct, not required by the church, and rather contrary to its law. But it was, too, as innovation; and on that account, if otherwise allowable, it ought not to have been bantered lightly, and without previously ascertaining that it would give no offence to the congregation.

"My direction to Mr. Blunt, as cited by himself on another point, was general,—'It is nothing new, unless required by the church, which your congregation will not willingly concur in.'

"5. 'The compelling all persons to remain in church on sacrament Sundays until the conclusion of the exhortation, on pain of excommunication *ipso facto*.' A custom, as Mr. Blunt allows, peculiar to this church."

"This matter appears to have been in its effect the most mischievous, as it has been in its progress the most irregular and the least justifiable, of all the particulars stated against Mr. Blunt."

"In one point, indeed, the statement itself is somewhat exaggerated; for the utmost which is alleged is far short of 'excommunication *ipso facto*'—the greater excommunication, cutting off from the communion of Christians."

"But I turn to the case itself."

"What may be the particular part of the service, and whether there be any, when those who do not propose to partake of the holy communion may properly leave the church, is not declared. Manifestly, they ought not to go before that part of the service begins which is used only at the actual celebration of the holy communion—not, therefore, until after the prayer for the church militant. But ought they to go then? There is no direction requiring them to go, or recognising their departure. The earlier Books of Common Prayer plainly contemplate their remaining during the whole administration; for the invitation to those who come to receive the sacrament was, until the last review, worded thus: 'Draw near, and take this holy sacrament to your comfort; make your humble confession to Almighty God *before this congregation here gathered together in His name*, meekly kneeling upon your knees.'

"In the present form there is no such recognition of a congregation, besides those who are about to communicate; yet there is, I repeat, nothing to indicate their departure before the close of the service."

"Mr. Blunt wrote to me, requesting my direction, '*where the pause is to be made*,' in order that non-communicants may depart. He stated that he had long been accustomed not to make any pause until the end of the exhortation, 'Dearly beloved in the Lord.' His reasons were that the exhortation is, *not* to communicate in an improper state of mind—that it is a fearful thing to receive unworthily; nevertheless, if a person were moved by the exhortation to feel that he ought not to communicate, the shame of exposing his own sense of his own unworthiness by withdrawing, when none but communicants remain, might tempt him to resist his awakened conscience; that such an evil would be prevented, if the congregation continued in the church till the conclusion of the exhortation, when any person who felt himself unfit to communicate might retire, unnoticed, with the rest."

"My answer appears to have been as follows: '*Departure of non-communicants*. The reason you give I warmly assent to, for encouraging them not to depart until after the exhortation. Its fitness is specially indi-

cated by the address following 'Ye that do,' STAT. 3 & 4 &c.' (I may here observe that it accords with the rubric in the order of communion of Edward VI., 'Here the priest shall pause a while, to see if any man will withdraw himself.') VICT. c. 86.

"On this answer*, Mr. Blunt has founded his justification of the course taken by him. He says, 'This was the bishop's resolution of the doubt;' and 'henceforth it was his duty, and that of his congregation, to obey it.' He 'told them of the bishop's decision—explained it to them—and encouraged them to comply with it.' Such is his answer to the charge made against him on this particular."

"That charge is stated above; and it appears by the clearest evidence, that instead of *encouraging* the congregation to remain until after the exhortation, as I had authorized him to do, he used my letter as his authority for declaring that he never would give the communion to any one who should leave the church before the exhortation. It further appears, that on the first of September last, he made this declaration in very vehement language, and under great excitement—in a manner which could not fail greatly to disturb the feelings of his congregation, and to disqualify them from partaking of the blessed sacrament, which he was then about to administer, in that state of quietude and composure, which alone befit so solemn an occasion."

"On this matter my judgment cannot but be most strongly against Mr. Blunt. I blame him for rashness of no ordinary kind, and with little or no excuse. I blame him for his unreasonable use of the sanction given to him by his bishop for edification, not for destruction. I blame him for the fearful, though I would hope, temporary rent made on that day, between him and his people. I blame him for driving, God only knows how many, meek and pious Christians from the table of the Lord. I blame him for alienating from himself and his ministry many whom his talents and zeal and piety might, with God's blessing, have attached to him and to their church. I blame him for hardening others, be they many or few, whose factious and schismatical temper might, indeed, have been proof against all the exertions of the meekest and most long-suffering minister—but who would not, in that case, have been able to plead their justification in the violence of him, the special duty of whose office it is, 'not to strive, but to be gentle unto all men, apt to teach, patient, in meekness instructing those that oppose themselves; if God peradventure will give them repentance to the acknowledging of the truth; and that they may recover themselves out of the snare of the devil, who are taken captive by him at his will.'

"From a subject so distressing I gladly turn to other matter."

"6. 'The refusal to read the Lord's Prayer with, or to administer the holy communion to, a man who had been baptized by a Roman catholic priest, *the man having previously*

* ["This answer was evidently not intended as an order. The matter is one of discretion; and the experience of this case seems to indicate, that the non-communicants are not likely to be content to remain so long as Mr. Blunt was authorized to encourage them to stay." *Ex relat. the Bishop of Exeter.*]

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communicated in our church, and being unwilling that the sacrament should be repeated.'

"This is a very grave charge: to refuse to pray with a dying member of the church, (as this party is here stated to be,) and to administer the holy communion to him, would not only expose any clergyman to the just indignation of all who heard of such misconduct, but would also make him liable to very heavy ecclesiastical censures, which the bishop would deem it his imperative duty to inflict.

"But what has appeared on the investigation? The main allegation, that 'the man had previously communicated in our church,' was at once abandoned. Not a word was said to justify the statement in this prime particular. Yet the whole charge rested on it. If the dying man was *not* a member of the church, it was the duty of the minister to decline either to administer the sacrament to him, or to pray with him, as with a member of the church. To pray for him, and in his presence, was, indeed, even then, Mr. Blunt's duty—a duty which there is no reason to doubt he discharged faithfully and earnestly. After all, the refusal to read the Lord's Prayer amounted to this—that in conversation with Blake, explaining to him the difference between catholic and schismatic, Mr. Blunt incidentally said, that 'a catholic could not properly use the Lord's Prayer with a schismatic.' There was no direct refusal.

"It may be right to add, that the office for 'the visitation of the sick' cannot with propriety be used towards a schismatic. If this were otherwise doubtful, all doubt would be removed by the terms of one of the prayers—'*Preserve and continue this sick member in the unity of the church.*'

"Whether this man, Blake, had been baptized, is somewhat doubtful—there is only the presumption which arises from his own statement, that 'his parents were careful people, and that he had been confirmed by a Romanist bishop in Ireland.'

"But supposing him to have been baptized, as such baptism was administered by a schismatic, it did not, of itself, make the man a member of the church. And the point for Mr. Blunt to be satisfied upon, before he could lawfully give the holy communion, was, *whether he was a member of the church.* If not, what was necessary to make him such? Mr. Blunt offered to baptize him conditionally. This Blake refused; not because of his 'not being satisfied of the necessity or propriety of a repetition of the sacrament,' as is affirmed in the 'causes of complaint;' for it appears that he was, at first, ready to receive conditional baptism—and more than this, that he was anxious that his daughter, who had received baptism from an Irish Romanist priest, should be, and she accordingly was baptized conditionally by Mr. Blunt; but, 'because he had been confirmed by an Irish Romanist bishop, and Irish Romanists considered the repetition or denial of such confirmation a most grievous sin.' Was this man to be deemed and dealt with as a member of our church? Did he renounce the schism in which he was born, and for many

years had lived? If not, Mr. Blunt was bound, however reluctantly, to refuse to give the holy communion to him. Much as I lament this case of Blake, I cannot hesitate to sanction Mr. Blunt's decision.

"But the 'Causes of complaint,' a paper, of which I must say that it appears to have been drawn with much less of candour than might be expected on such an occasion, carries the case further. It says, that 'on Blake's expressing a hope to Mr. Blunt, that he would bury him, he declared he could not do so, unless he was rebaptised.'

"Now, what was the real fact? Mr. Blunt sought to avoid wounding the sick man's feelings: instead of making any declaration on the subject, or endeavouring to use it as a threat to prevail on him to be baptized, he for a long time declined answering the question at all, and it was not until after many days of earnest entreaty, that he did at length answer—being desirous that Blake's decision respecting his baptism should be made on higher grounds. All this was told by him to Mr. Hill and others at the time; yet it is now dragged forth, and thus distorted, in order to swell the catalogue of the charges against him.

"Whether Mr. Blunt adopted the best mode of testing Blake's fitness and disposition to be brought into the church by thus urging on him, against his will, conditional baptism, is a question which forms no part of the present inquiry. Whether he ever to bury Blake, if he died without renouncing the Romanist schism, and without seeking admission into the church, is also a question on which I am not now called upon to give an opinion.

"But I must not dismiss the subject altogether without saying, though I do not suspect the slightest intention to misrepresent, that Mr. Blunt has not cited any authority, as it was given to him, quite satisfactorily. He says that I only told him, that 'if the man was willing to be conditionally baptized he might very properly administer such baptism to him.' Now, this would have been a very insufficient answer to a clergyman asking his bishop how he was to act in a certain case.

"The truth is, that Mr. Blunt, after stating the case, proposed two questions: '1st. Am I right in supposing that baptism and confirmation in the Romish schism in England or Ireland do not admit to the holy catholic church?' '2nd. Am I right in supposing that in such a case as that above-mentioned the proper mode of admission is conditional baptism?'

"The first of these questions being a general question, involving an important point of theology, was not proper to be answered on such an occasion.

"The second, under the appearance of being particular, was in truth much too large in its terms. Such a case as that above-mentioned might be, and was not unlikely to be, construed very loosely.

"I therefore thought it necessary to confine my answer to the one case actually before me, and according to the aspect in which it was presented to me. Now, Mr. Blunt

stated in his letter to me, that 'there is no evidence that the poor man has received baptism in a *right form*, or even baptism at all.' This was a position to which I could not absolutely assent, after reading what Mr. Blunt had written respecting the man's own declarations. But he had questioned the man, and I had not; he had stated, that the man 'knows not where or when he was baptized.' I therefore did not think myself called upon, even if I were in a condition, to controvert Mr. Blunt's conclusion respecting the absence of all evidence that Blake had been baptized. For this reason, and because I understood that the man himself wished to be baptized, I rested my answer on this one particular. 'In respect to the sick man whom you mention, and who is, I conclude, desirous of baptism, and found by you fit for admission to that sacrament, I think you may very properly use the conditional form of baptism towards him.

"I think this a sufficient answer to direct your practice in this case; and I decline unnecessarily to answer a general question."

"7. 'The refusal to bury the corpse of a young man, who had been baptized by a dissenting minister, in a colony where no church minister was to be found.'

"The real fact turns out to have been, that the deceased had been baptized by a Wesleyan minister in London.

"But this charge is somewhat varied in the 'Causes of complaint'—where it is expressed as follows:—'for refusing to bury any person not baptized by a minister of the established church, in open defiance of the settled law of the land.'

"It would be prudent, and, on the part of one who accuses his minister before his bishop, it is demanded by higher considerations than prudence, that before that minister be charged with acting 'in open defiance of the settled law of the land,' his accuser, especially if he be himself a lawyer, should first ascertain what 'the settled law of the land' really is.

"Up to this day nothing further is the 'settled law' on the subject, than that a minister is bound to bury the corpse of an infant baptized by a layman.

"Whether he would be so bound to bury the corpse even of an infant baptized by a *heretic or schismatic* is not yet 'the settled law of the land;' for that very question is now awaiting the decision of the supreme court of appeal, the judicial committee of her majesty's Privy Council.

"But if that question be there decided against the minister, the decision will not apply to the case in which Mr. Blunt refused to bury—namely, the case of an adult who, having been baptized by a *schismatic*, lived to the years of discretion, himself a *schismatic*, and died without having been made a member of the church.

"The complaints made against Mr. Blunt in this, and the immediately preceding instance, constitute grave 'doubts, concerning the manner, how to understand, do, and execute, the things contained in the Book of Common Prayer.' And, as these doubts have been attended with much warmth of

language and bitterness, I fear, of feeling, they call on me 'by my discretion to take order for the quieting and appeasing of the same,' as directed by the preface 'concerning the service of the church.'

"I now resolve these doubts by saying, that neither the office 'for the visitation of the sick,' nor that 'for the burial of the dead,' ought to be used for an adult who, having been baptized in schism, and having lived a schismatic, has never been admitted into the church.

"So far as concerns 'the visitation of the sick,' the words already cited sufficiently prove this; and, surely, if the party be not admissible to the benefit of that office, he cannot be entitled to the office of burial. He could not be so entitled, even if the tone and tenour of the office itself were less conclusive than they are. But who can read the prayers in that office, and think them fit to be used over the body of one who, when living, never was admitted, nor sought to be admitted, into the church?

"Can the church consistently say, that they 'are departed hence in the Lord,' who were not members of his body? Can she number them among the 'faithful?' (a phrase specially appropriated to those who are in full communion with the church,) or speak of them, even in the language of hope, as having 'departed in the true faith of Christ's holy name?'

"To decline so to abuse the offices of the church implies no want of charity—no presumptuous denial of the ultimate blessedness of the deceased. We leave them to their and our most merciful Judge, confident that He, who knoweth what is in man, will make all due allowances for the sins and errors of all his creatures, whether they die within his church, or without its pale. But to attempt to break down the pale itself, is an act of presumption which no faithful minister will dare to commit—no humble minded Christian, when duly informed, will persist in asking.

"After all, what is there of hardship in the case? Can they who, while they live, repudiate our communion, complain, that, when dead, they will not be treated as if they had lived within it?

"8. 'The refusal to marry persons, unless they could prove satisfactorily that they have been baptized.'

"It appears that Mr. Blunt requires no further proof that the parties had been baptized than their own declaration.

"In the paper entitled 'Causes of complaint,' this grievance is abandoned, and another is substituted: that in a particular case, 'Mr. Blunt having discovered, after the first publication of banns, that one of the parties had never been baptized, refused to proceed with the publication.' This statement was proved to be not correct. He offered to proceed with the banns; but as he had informed the unbaptized party that he should not marry him, the banns were withdrawn, and the parties were married before the registrar.

"That Mr. Blunt would have been right in refusing to solemnize the marriage of these

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parties, if their banns had not been withdrawn, is not so clear as he has regarded it.

"There seems, indeed, little doubt, that before the last review of the Book of Common Prayer, no minister could have used this 'form of solemnization of matrimony' in such a case; because the communion was part of the form itself, and it was expressly enjoined in the rubric that 'the new married persons, the same day of their marriage, *must receive the holy communion.*' In the present book, the rubric does not require absolutely that the communion be received by the parties, but is content with declaring the fitness of their so receiving—'It is *convenient* that the new married persons should receive the holy communion at the time of their marriage.'

"This may have left the minister at liberty to decline using the office, if either of the parties were disabled from receiving the holy communion; and if he were at liberty, it might have been ordinarily the better way to refuse to use the office in such case, so long as the use of it was not necessary to the validity of marriage, in other words, before the first Marriage Act, 26th Geo. 2, c. 33. But that act having made the use of this form absolutely necessary to the valid marriage of all, (except Quakers and Jews,) the minister ceased to be at liberty to refuse.

"It may be argued—I do not say that the argument would be conclusive—that the late Marriage Act, 6th & 7th Gul. 4, c. 83, permitting marriages to be entered into before the registrars, has restored to the minister liberty to refuse solemnizing matrimony, if either of the parties cannot communicate; and that, if he be at liberty, it may be his duty to refuse. But if he refuse, it must be *before he publishes the banns*; for by the 26th Geo. 2, c. 33, s. 1, it is enacted, that 'in all cases, where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels, where such banns shall have been published, and in no other place whatever.' And this provision of the first Marriage Act remains unrepealed.

"These are all the complaints which were transmitted to me in Mr. Hill's letter of the 12th of September. But there is a matter, on which one of the witnesses seems to have commented, as a part of Mr. Blunt's irregular conduct—and on which much has been said by others—I mean the unpleasant occurrence at the archdeacon's last visitation at Helston. In this particular, I do not think that any blame attaches to Mr. Blunt; and, in order to show the view taken by me of his conduct, I subjoin a copy of my letter on the occasion to the archdeacon.

"June 14, 1844.

"My dear Archdeacon,—Having given attention to the principal circumstances stated in your letter of the 12th, and as the same post brought to me letters on the same subject, from Mr. Blunt and Canon Rogers, I conclude that I may consider the whole case to be before me. In relation to any authority from me in this case, it is right that I should say, in the first instance, (so far as my memory, in the absence of letters, permits

me,) what has been the extent of my communications to Mr. Blunt. Originally, on his offering himself for a curacy in this diocese, he told me that he could not conscientiously accept any charge in which he was not at liberty to follow out all the directions of the rubric. I gave him, without hesitation, as assurance that he should have such liberty; and I applauded the high feeling and principle which prompted the demand.

"I added, if I mistake not, that in every instance in which any of my clergy should express similar determination to follow strictly the requirements of the church, he should have my full support, though I did not deem it necessary to give a general order for relaxing those usages, and the observance of the rubrics which had fallen into desuetude. I further said, that I permitted him, as I had permitted another, and as I am ready to permit any one who may seek the permission, to use my name as *ordering* the observance in this case—provided this should be deemed important as a protection against the resistance of the parishioners. You will see, then, that Mr. Blunt has a right to say that he acts by my *authority*, and, if he thinks necessary, my *order* for the faithful observance of all the rubrics. So far as there is no doubt what the direction of the rubric may be in any particular point, he is not only justified in adhering to himself on all occasions, but also in requiring it to be adhered to by others, as a condition of his permission to perform any part of his duty in his church. It is distressing to me to find that the assertion of this right, and the acting on this principle, have brought him into collision with any of his brethren in the clergy; above all, with his archdeacon at his visitation. But I cannot and do not blame him. If he had required that the preacher at my visitation should adhere to the practice introduced by him of strict adherence to the rubric, I should have sustained him in his requisition. The day on which the visitation was held was, it appears, the festival of St. Barnabas. On that day the church order that the communion service be read, and assigns a certain place in that service for the sermon, with certain other portions of the service to follow it. If Mr. Blunt insisted on this, and no more than this, I think that under the circumstances of his case—especially considering the practice he had succeeded in establishing in his church, with the good-will and concurrence of his parishioners—he exercised a reasonable discretion. I will not willingly go into all particulars. The general question is that which is alone worthy of discussion; because, as I understood the case, it was the general claim of Mr. Blunt, that the preacher should follow the rubric, as observed by Mr. Blunt, which was, in effect, disputed.

"I am, my dear Archdeacon,

"Yours very faithfully,

"H. EXETER

"Venerable Archdeacon Sheepshanks"

"I have now considered the reasons for the alleged dissatisfaction of the parishioners of Helston with Mr. Blunt, their minister, stated in Mr. Hill's letter to me of the 12th ultimo.

"There remain some others, which are contained in a paper delivered by him to the commissioners, under the title of 'Causes of Complaint on the part of the Church at Helston against the Curate.'

"The most important of these I have already incidentally examined, in connexion with what has preceded.

"1. (Case of Blake, already disposed of.)

"2. 'For frequently addressing the congregation from the pulpit, *before the sermon*, in a vehement and unbecoming manner, respecting the changes he had made, and purposed to make, in the mode of performing the services of the church.'

"Upon this it does not appear that the slightest proof was tendered. I must therefore regard it as unfounded.

"3. (The case of publication of banns, in which one of the parties had never been baptised: considered already.)

"4. 'For compelling women coming to be churchd to submit to the exposure and fatigue of kneeling at the rails of the communion table, where he reads the service, instead of permitting them to remain in the seat appropriated for the purpose, and performing the service in the ordinary manner.'

"It does not appear that any complaints had been made on the part of any women who had been churchd on this account. On the contrary, evidence was adduced to show that no dissatisfaction had existed; and it was stated by Mr. Blunt, in answer to an inquiry put to him, that 'the number of churchings had immensely increased' since the practice of performing this office at the communion table had been introduced.

"I will remark on this matter, that the rubric directs 'that the woman shall kneel down in some convenient place, as *hath been accustomed*, or as the ordinary shall direct.'

"At Helston, it seems that recently the place of kneeling for 'the women to be churchd' has been changed by the churchwardens; it does not appear by what authority.

"If no special cause be shown to the contrary, I, as ordinary, appoint that they kneel at the rails of the communion table, as being most conducive to reverence and solemnity in the performance of the office, and as being also the place designated by the phrase in the rubric, 'as hath been accustomed.'

"That this is the meaning of the rubric is manifest from what passed at the Savoy conference (holden by the king's authority to review the Book of Common Prayer previously to the Act of Uniformity, 1661). The rubric in the former book stood thus: 'The woman shall come into the church, and there shall kneel down in some convenient place, *nigh unto the place where the table standeth*, and the priest standing by her shall say,' &c.

"To this the exception taken was, 'In regard that the women's kneeling near the table is, in many churches, inconvenient, we desire that these words may be left out, and that the minister may perform that service either in the desk or pulpit.' Cardwell's Conferences, 334.

"The bishops answered, 'It is fit that the woman performing especial service of thanksgiving should have a special place for it, where she may be perspicuous to the whole congregation, and *near the holy table*, in regard of the offering she is there to make. They need not fear popery in this, since in the church of Rome she is to kneel at the church door.' Ibid. 362.

"This proves that the present rubric was intended at once to retain generally the practice of kneeling near the table, 'as was accustomed,' and to admit of consideration of special reasons of inconvenience in particular churches, for which the ordinary is empowered to provide.

"5. 'For dismissing the church singers, and substituting in their stead some of the national school boys, wholly ignorant of music, and who being placed in the chancel, at the greatest possible distance from the organ, are quite beyond the control of the organist, whereby the solemn and devotional effect of this part of the service is entirely destroyed.'

"The notes of evidence, sent to me by the commissioners, state that 'Mr. Blunt says they were dismissed by the churchwardens; but Mr. Clarke, one of the churchwardens, is positive that they were dismissed by Mr. Blunt.' A marginal note is appended in these words: 'They seem to have been dismissed by the concurrence of the churchwardens. E. B.'

"It happens that I have a letter from Mr. Blunt, dated so long ago as the 1st of March last, which seems fully to confirm the opinion here expressed. Mr. Blunt wrote thus: '*With the help of the churchwardens*, I am forming a voluntary double choir, to be placed in the chancel, instead of a most ill-behaved set of paid singers, which are an annoyance to the whole congregation. The present prayer desk is a second pulpit. It would be very advisable to remove this, and place one in the choir, looking south. May I do this, *if the churchwardens sanction it*?'

"I am glad that I retained a copy of my answer to this letter. The following is what refers to the passage just cited:

"'*Voluntary double choir*. I highly approve it, if you have ascertained that your parishioners have sense enough not to fancy it popish.

"'*Do nothing new*, unless required by the church, which your congregation will not willingly concur in.'

"It is quite plain, therefore, that Mr. Blunt did not, of his own mere motion, and without the concurrence of the churchwardens, 'dismiss the church singers, and substitute boys, &c., who, being placed in the chancel, are quite beyond all control of the organist.' Whether the experiment was wise, and whether it succeeded, or not, is a matter not necessarily connected with this inquiry. But I think it right to say that the testimony of the organist proves that the school boys were much better placed in the chancel, near to the minister, than in the gallery, where they were under no effectual supervision.

"I also think it right to add, that a complaint of this sort, and on this subject, comes

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with an extremely ill grace from Mr. Hill, who took upon himself, in the character of churchwarden, to remove the seats from the chancel, and so force the school-boys back into the gallery, on the 5th of this month, while this inquiry was going on; and persisted in doing so after he had been reminded by me, that as his colleague had made the declaration required by the statute, and he himself had not, he was in law, and therefore in fact, not churchwarden.

"6. ('In refusing to bury,' &c., already considered.)

"7. 'For tendering to the churchwardens for their signature, conjointly with his own, a notice, to be published, to the effect, that no dissenter should be buried in the churchyard before the hour of eight in the evening, which the churchwardens refused to sign.'

"This complaint seems to me to be made without that fair explanation which the proposed notice, on the face of it, presents. It may, indeed, be thought that a mere abortive proposal, for the purpose of meeting a great practical evil, hardly merited a place in a formal catalogue of grievances. But if it did, yet common candour demanded, that instead of thus intimating that the notice was directed against 'dissenters,' as dissenters, the complainant should have stated, that it was not directed against any particular class or description of persons; but that, in terms of courtesy and charity, it professed deep regret that 'the conduct of certain parties, in repeatedly interfering with the church's services, and otherwise infringing the church's laws, had compelled the minister and churchwardens to make the rule.'

"I think it right to remark also, that the date of the notice, the 3rd of July, removes much of the seeming harshness of the proposal; 8 o'clock is not, at that season of the year, an hour of unseemly lateness, for mere interment, without any service at the grave. It required no extraordinary degree of charity to presume that it was designed to vary the hour with the season of the year.

"8 and 9. ('For requiring the whole of the congregation to remain in church,' &c.; and 'for having, on Sunday, the 1st of September,' &c. already considered.)

"I have thus patiently waded through the long list of grievances stated to me, and the evidence and documents adduced on both sides. I have done this at greater length, and with more of minuteness, than might perhaps have been expected, or might even seem to have been demanded by the nature (of many at least) of the matters complained of. But I have submitted to this most distasteful task, because I feel the deep importance to the people, not only of Helston, but of other places to which the knowledge of the case cannot have failed to reach, and to the clergy of the whole of my diocese, that I should testify my firm determination, to the utmost of my power, and in reliance on God's blessing, so to exercise the authority which has been intrusted to me, as shall on the one hand preserve the service of the church from being invaded by rash and unauthorized innovation, and on the other, protect the conscientious ministers of the

church from being overborne in their honest and faithful endeavours to carry out the requirements of the Book of Common Prayer in all their integrity.

"On this occasion I have, unhappily, seen very much indeed to deplore. On the part of the curate of Helston (among minor errors I have witnessed one instance of most culpable indiscretion, indiscretion which has carried with it its own appropriate and very heavy punishment, by most seriously impairing his usefulness, by robbing him, it may be feared, of much of the confidence and attachment of the best of his people, even of those whose respect he had already begun to acquire by qualifications of no common order, and must otherwise have largely increased; above all, by encouraging, and in some measure justifying, a clamour against him, which has issued in the present distressing, I am afraid I might add humiliating, investigation. But this punishment, thank God, is temporary, and will tend, we may hope, to chasten and purify that zeal, which, accompanied as I doubt not it is, by high principle, as well as by devoted attachment to the duties of his ministry, will enable him, with God's blessing, to be yet a most useful labourer in the Lord's vineyard, even at Helston.

"I say, even at Helston; for I would not inflict on those whose opposition to him has been not only bitter, but in some particulars manifestly unjust, the cutting self-reproach which, if not immediately, yet very soon, they could not fail to experience, if they should be permitted to succeed in driving him with ignominy, and with the destruction of his prospects of usefulness, from a place which already owes to him a debt of gratitude, however partially cancelled, which he is well qualified hereafter most largely to increase.

"When, indeed, I look back at the catalogue of grievances, and see how few of them have been sustained by proofs, and how much fewer have been worthy even of being exposed; when I then remember who it is that brought them forward, a principal inhabitant of one of the principal towns in Cornwall, an honoured member of a profession which must have peculiarly qualified him to estimate the value of the charges he was adducing, and the weight of the evidence he had to support them; a sincere and honest churchman too, who, as such, has long given liberally of his time and talents, as well as of his pecuniary means, to support the cause of the church at Helston; I cannot ascribe to unworthy motives, that conduct, which in a less honourable man, it would be difficult to ascribe to any other. I see in it rather a proof of the lamentable delusion, in many instances little short of infatuation, which can discern nothing but popery in every endeavour to restore sound church principles, the surest barrier against popery, and even to fulfil with diligence and faithfulness the obligations entered into at ordination.

"One more astounding instance of the infatuation, and only one, I have indeed witnessed, and that is the instance to which Mr. Hill himself refers in the beginning of his

letter to me of the 12th of September. 'Matters at Helston,' he says, 'have been hastened to a crisis by the publication in a dissenting newspaper of a letter, conceived in an intemperate and grossly offensive spirit, the authorship of which rumour attaches, I grieve to say, to a churchman and clergyman of the established church. I enclose a copy for your lordship's perusal, and I can scarcely bring myself to think that your lordship will be greatly surprised at discovering marks of dissatisfaction among the laity of the town, when a clergyman of another deanery considers himself called on to make strictures on a brother priest in the public prints. I will not draw the inference which many do from the publication of that letter—"that Mr. Blunt must be deserving of episcopal censure, otherwise no clergyman could be found to condemn him in such unmeasured terms."'

"Public rumour was not wrong. At the demand of Mr. Blunt's attorney, the editor gave up his correspondent—a clergyman, an aged clergyman—one, who having long retired from the active duties of his ministry, lives in opulence and good repute at a distance of many miles from Helston. This clergyman, hitherto respected and beloved for his benevolence, for the amenity of his manners, for his general unwillingness to think evil, or to do evil, has been hurried by his horror of a surplice (!) into a bitterness of invective, which a practised libeller would have had the wisdom to avoid. Would that this were all! Not only has charity been forgotten, and candour, and decent attention to facts and evidence, nay, and honesty in citing a document on which he affected to comment, but even the most solemn engagements made at the most solemn epoch of his life. His ordination vows are flung by him to the winds. He had promised at God's table, as one of the conditions of his priesthood, that 'he would, the Lord being his helper, reverently obey his ordinary, and other chief ministers of the church, and them to whom the charge and government over him is committed, following with a glad mind and will their godly admonitions, and submitting himself to their godly judgments.' He keeps this promise by sending a series of anonymous letters to a newspaper notorious for the violence of its hostility to the church, arraigning his bishop in terms the most offensive, because that bishop, judging on cases duly brought before him for his judgment, pronounced one clergyman blameless, who had acted on the liberty which rubrics and canons expressly gave to him, and refused to censure another for adhering to his own just sense of his own duty.

"Again, this aged clergyman, who on the same awful occasion, and under the same solemn adjuration, had vowed to 'maintain and set forwards, as much as lieth in him, quietness, peace, and love, among all Christian people,' has had recourse to the same vehicle of mischief, in order to inflame the minds of the whole population of a considerable town against their pastor, snatching greedily at every silly and every calumnious tale, and giving to them the currency of his own smart writing, and whatever authority they

might derive from his own loudly-whispered name, thus glorying in the shame of getting up a miserable agitation against a curate—a solitary and almost unknown and unfriended curate, intrusted with the charge of more than three thousand souls. May He who knows the folly of the wisest, and the weakness of the best of His poor creatures, judge with mercy this awful dereliction of all that we had a right to look for in such a man! It is for us, not to judge, but to deplore—to take warning from his temporary fall—to 'mourn over him, saying, alas! my brother.'

"But I return to my proper subject, and shall conclude with calling on Mr. Blunt to be more cautious than he has hitherto been; especially to avoid all extempore addresses from the pulpit—a practice not safe to any man, but most hazardous to a fervid and zealous mind like his. Let him be content with performing the worship of God according to the real ordinances of our church, in all their fulness if he will, but also in all their simplicity and all their purity. Let him avoid all unauthorized innovation, above all that worst species of innovation, the revival of bygone usages, not ordered by the church, which are associated in the minds of the people with the remembrance of the superstitions and corruptions of Rome. This, indeed, is not even charged against him.

"In the course of this investigation we have seen much of violence and unseemly provocation on both sides—too much, certainly, to allow either party to look back upon it with feelings of exultation, as on a triumph over an opponent.

"Yet it can be, and I trust will be, made by both an occasion of a far better triumph—a triumph over prejudices, temper, passions—over feelings, natural it may be, but surely not on that account less requiring that they be subdued.

"Instead of perpetuating strife by publishing statements and counterstatements, let me express my hope, or rather my earnest entreaty—an entreaty which churchmen will not on such an occasion suffer their bishop to address to them in vain—that as far as is possible all may be forgotten—every document suppressed—this my judgment with the rest.

"Let the parties mainly concerned mutually forgive, and not trouble themselves or others by considering who has most to forgive. There has been great misunderstanding on the part of the parishioners, and some injustice in consequence of that misunderstanding. There has been great indiscretion on the part of Mr. Blunt, too, fully accounting for the resistance and hostility which he has met with. They now know each other better, and will return to the feelings which become the sacred connexion of a pastor with his people.

"May their future contests be contests of love—who shall most faithfully serve, and, under the divine blessing, most largely advance, the only cause which can long be worth their contending for—'glory to God in the highest, and on earth peace, good will towards men.'"

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Letter from the Bishop of Exeter to a portion of the Inhabitants of Falmouth, in reply to a Memorial addressed by them to his Lordship.

"Bishopstowe, Torquay, June 30, 1843.

"Gentlemen, — I yesterday received a packet, containing a letter from you, a copy of resolutions passed at a meeting convened by you, and a memorial numerously signed by persons calling themselves 'The congregation of the parish church of Falmouth,' which memorial states that 'within the last twelve months various alterations have been introduced in the mode of celebrating service in their church, which, in their opinion, in a great measure destroy the beautiful simplicity and spiritual character of the reformed religion, and assimilate the ceremonies of our church to those of the Romish hierarchy.' The memorialists, therefore, 'pray that I will examine into those recent changes, and issue such directions as shall induce the rector to restore the services to what they were before he commenced his ministry among them.'

"The memorial states no particulars of the changes into which it prays me to examine. But the resolutions enumerate certain matters, designating them as 'grievances,' into which I proceed, as requested, 'to examine.'

"They are as follows:—

"'1. The chanting of Amen — of the Psalter — of the Creeds.'

"'2. The repeated bowings to the altar.'

"'3. The display of sacramental plate thereon.'

"Of the first of these things, the chanting, one of the resolutions states, that it 'has rendered the Psalter and the Creeds almost unintelligible to the congregation,' that is, to the memorialists, 'and especially to the poorer and juvenile members thereof.'

"Now this is to me, I frankly avow, very surprising. Psalms are spiritual songs, and therefore it surely is fit that they be sung or chanted, which I need not say is only a simpler mode of singing, and in which even those who have no skill in music may join. The psalm which precedes the rest in morning prayer, commences, as the memorialists well know, with the words, 'O come let us sing unto the Lord.' The apostle Paul had no apprehension that singing made the matter sung unintelligible, for, after saying to the Colossians, 'Let the word of Christ dwell in you richly in all wisdom,' he immediately adds, as a mode of effecting this, 'teaching and admonishing one another in psalms and hymns and spiritual songs, singing with grace in your hearts to the Lord.' Accordingly, the church of Christ, in the earliest and purest ages, was in the habit of doing what the apostle enjoined; the singing of psalms, especially the Psalms of David and the other inspired psalmists, was always a large portion of the worship of God. Our own church, at the Reformation, followed the course presented in holy scripture, and pursued by the primitive church, without being afraid of doing this because it was also done at Rome. Nor did the apprehension of thus

making 'this part of the service unintelligible,' even occur to them. For, in prescribing the rubrical directions for the performance of this part, they expressly say, 'these shall be said or sung.' Now, what Crammer, Ridley, and other martyred fathers of the Reformation who composed our Liturgy, permitted in plain terms, and sanctioned by their practice, I can hardly be expected to forbid, as rendering the service 'unintelligible.' If, indeed, the congregation at Falmouth differ herein from the congregations of other towns, not superior to it in intellectual advancement or general refinement, and happens, from whatever cause, to dislike chanting, and will be content to ask their rector to gratify them by discontinuing it, and shall do this in a tone of ordinary courtesy and kindness, I cannot doubt that he will most readily comply. If he do not, (which I do not anticipate as possible,) they may then very reasonably call on me to interpose.

"Under this head of chanting, I had almost forgotten to notice creeds; (I do not forget, but absolutely refuse to notice the Amen.) Now, the creeds are already fully understood, or supposed to be understood, by those who recite them, whether they be said or sung. The chanting of creeds, therefore, cannot reasonably be an objection as 'rendering that part of the service unintelligible.' I turn to other matters.

"2. The next is the frequent 'bowings to the altar.' These bowings may or may not be proper; and you give me no intimation whatever which may assist me in discovering in which description they are to be placed.

"They may be merely those bowings which are commanded by the 18th Canon of 1603, which command, with the annexed reason, I here subjoin for the edification of yourselves and of the other memorialists.

"'When in time of divine service the Lord Jesus shall be mentioned, due and lowly reverence shall be done by all persons present, as it hath been accustomed; testifying by these outward ceremonies and gestures their inward humility, christian resolution, and our acknowledgment that the Lord Jesus Christ, the true and eternal Son of God, is the only Saviour of the world; in whom alone all the mercies, graces, and promises of God to mankind for this life and the life to come, are fully and wholly comprised.'

"That the reverence here enjoined was indeed accustomed is manifest from the 52nd of the injunctions of Queen Elizabeth, in the first year of her reign, (which injunctions were subsequently recognised in an act of parliament,) 'That whosoever the name of Jesus shall be in any lesson, sermon, or otherwise, in the church pronounced, due reverence be made of all persons, young and old, with lowliness of courtesy as themselves doth necessarily belong, and heretofore hath been accustomed.'

"Need I remind you of a higher authority than kings and queens, acts of parliament, or canons of synods, the hallowed usage of even the word of God itself? 'He became obedient unto death, even the death of the cross. Whereunto God hath highly exalted

Him, and given Him a name which is above every name; that at the name of Jesus every knee shall bow, of things in heaven, and things in earth, and things under the earth.' Now, if such be the 'bowings' of which the memorialists complain, as destroying the beautiful simplicity and spiritual character of the reformed religion, and assimilating our services to those of Rome, I, as their bishop, am bound to deplore and to endeavour to remove their unhappy blindness.

"Again, 'the bowings to the altar' may be the bowings recommended in the seventh canon of the Synod of 1640*, which says that, 'Whereas the church is the house of God, dedicated to His holy worship, and therefore ought to mind us both of the greatness and goodness of His divine majesty; certain it is that the acknowledgment thereof, not only inwardly in our hearts, but also outwardly in our bodies, must needs be pious in itself, profitable unto us, and edifying unto others. We therefore think it very meet and behoveful, and heartily commend it to all good and well affected people, members of this church, that they be ready to tender unto the Lord the said acknowledgment, by doing reverence and obeisance, both at the coming in and going out of the said churches, according to the most ancient custom of the primitive church in the present time, and of this church also for many years of the reign of Queen Elizabeth. The reviving, therefore, of this ancient and laudable custom we heartily commend to the serious consideration of all people; not with any intention to exhibit any religious worship to the communion table, the east, or the church, or anything therein contained, in so doing, but only for the advancement of God's majesty, and to give Him alone that honour and glory that is due unto Him, and no otherwise.'

"Now, if 'the bowings to the altar,' enumerated among your 'grievances,' be of this kind, I must decline issuing any directions to the rector which may induce him to discontinue them. I do not understand that

he attempts to impose them as duties on his people. He performs them, it seems, himself, thereby exercising his Christian liberty, with which I have no right nor inclination to interfere. I do not, indeed, practise this obeisance myself, 'in coming in and going out of church,' but I respect the freedom of others, and I from my heart subscribe to the wise and charitable language with which the canon last cited by me concludes: 'In the practice or omission of this rite, we desire that the rule of charity prescribed by the apostle may be observed, which is, that they which use this rite despise not them which use it not; and that they who use it not condemn not those who use it.' I have thus noticed the only 'bowing to the altar,' of which I have ever heard as practised by any minister or member of our church; of these, one it is the duty of your rector to perform, the other is recommended to him by one of the canons. If he practise any others, and if you offer any proof that they are of an improper character, I shall give to that proof my best attention. But, in the absence of all testimony, and even of direct allegation, that your rector's 'bowings' are thus improper, I must decline calling on him even to explain them.

"3. There remains the third and last of your 'grievances'—of the matters which you, and the other persons who passed the resolutions which you have transmitted to me, have the confidence to characterize as 'contrary to the principles of our reformed religion, and distressing to the consciences of the congregation.'

"It is, 'the display of the sacramental plate' on the Lord's table, at times (I suppose, though you do not state it,) when the holy communion is not celebrated.

"If this harmless, customary, and, in my opinion, seemingly usage, the exhibition of the sacramental plate to decorate the table of the Lord, and to testify man's wish to honour God's service with the choicest of his substance, had been deliberately thus characterized by some hundreds of persons, it would

* ["The Master of the Temple, in his pamphlet entitled, 'Canons and Rubrics of the Church of England considered,' p. 11, says, 'An act was passed, (13 Car. 2, c. 12,) forbidding all ecclesiastical persons whatever from attempting to confirm the Canons of 1640, or any of them.'

["Rarely has one met with so extraordinary a misapprehension. To speak of an 'ecclesiastical person attempting to confirm' these, or any other 'canons,' is, on all principles hitherto recognised, absolutely unintelligible. The statute is not worded so absurdly as the learned master conceives. The words cited by him are part of a proviso, that '*the act shall not be construed to extend to give any archbishop or bishop or any other ecclesiastical judge, &c., or other person, &c., any authority to exercise any jurisdiction which, &c., nor to abridge or diminish the king's majesty's supremacy, nor to confirm the canons made in the year 1640:*' that is, 'the act shall not be construed to extend,' *inter alia*, 'to confirm these canons'—or give to them the authority of parliament.

["The master proceeds gravely to argue on his own strange construction of this proviso, that 'if the custom of bowing in churches is sought to be justified by the sanction of these synodical enactments, it is a proceeding which the law appears positively to forbid, for it formally disallows them.' The clergyman 'is evidently an introducer of unauthorized ceremonies, and as such is liable to censure,' &c.

["Now so far is all this from being in accordance with our ecclesiastical law, that within a few months after the passing of the act, convocation appointed, more than once, a committee of bishops, to examine the Canons of 1640, and to declare which of them were in force, as being not contrary to the law of the land, and which were void, as being contrary to the same. (See Cardwell, Syn. 660, l. 5.) That the 7th Canon, which permits these bowings, is one of those which are void, never before seems to have occurred to any man.

["No canons of any synod since the Reformation have any of their authority from any act of parliament: therefore the proviso, that the 13 Car. 2, c. 12, should not be construed to confirm the Canons of 1640, left those canons untouched." *Ex relat. the Bishop of Exeter.*]

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be most painful to contemplate. But I am not so unjust, so uncharitable, or so blind, as to believe that words so palpably extravagant, and even inapplicable, have been deliberately adopted by the great majority of those who voted for the resolutions, or subscribed to the memorial. I would willingly hope, if it were possible, that they had been deliberately used by none, that they were hastily and thoughtlessly perused as well as subscribed. But glaring facts forbid me to entertain this hope. The bustle of long preparation, the parading of the whole procedure in requisitions, placards, and newspapers, force upon me the painful conviction, that there are at Falmouth persons so dead to the feelings which ought to warm and soften the heart of every one that 'nameth the name of Christ,' as to labour to call down public obloquy on a minister of God—their own minister—by the use of words which charity itself cannot believe them sincere in using on the occasion to which they applied them. 'The display of the sacramental plate' on the Lord's table—a display which is made almost in every church where the plate is worthy of being displayed—may, it seems, be described at Falmouth as 'contrary to the principles of our reformed religion, and distressing to the consciences of the congregation.' Certain of the professing Christians and members of the church in that town have, after much premeditation, solemnly declared this; and hundreds of others have, ignorantly or heedlessly, subscribed to it.

"As their bishop, I dare not forbear telling them all that they have all grievously sinned, although doubtless in different measures, in what they have thus done. Heedlessness can little extenuate in so plain a case, though malignity may have much aggravated the sinfulness which belongs to the proceeding itself. May God give them grace to see and to deplore their sin! Of one thing they may be sure, that they will not have seen, much less deplored and repented it—as they ought—till they recognise the sacred tie which binds them to their minister. If there be truth in God's word, 'The Holy Ghost hath made him an overseer over them to feed the church of God,' (Acts xxii. 28,) they are bound to 'know him as over them in the Lord, and to esteem him very highly in love for his work's sake.' (Thess. xii. 13.) He may have, and doubtless he has, as every one of us has, many faults. He may have acted on several occasions, as every one of us is liable to act, with imprudence, rashness, want of due consideration for the feelings or prejudices of others. He may even have exhibited these qualities in a more than ordinary degree (I know not that he has; certainly nothing brought to my notice on this occasion proves to me that he has). But he cannot have so conducted himself as to justify or to excuse the conduct which he has experienced from those who have borne any part in the transaction which I have been compelled thus to deal with. He is on the point of quitting his house and his parish, in search of bodily health to her who is most dear to him. For God's sake, for Christ's sake, for your own souls' sake, if you know

what Christian love is, let not the pain of his absence for so afflicting a cause be embittered by the recollection that in his last lingering sojourn at Falmouth he was insulted, cruelly persecuted, foully maligned by those who ought to honour him as a father, while they mourn for him as a brother.

"I will say no more; I have said enough to those who have hearts to bleed, or consciences to feel. May God, in his mercy, pardon and finally accept us all for his dear Son's sake! May He hear and grant this, the humble and fervent prayer of one who is too conscious of his own manifold unworthiness, to dwell unnecessarily on the faults of others. I am, gentlemen, with the sincerest wishes for the spiritual and temporal good of yourselves, and of all who joined you in addressing me, your faithful friend and servant.

"H. EXETER.

"*The Churchwardens of Falmouth.*"

Pastoral Letter from the Bishop of Exeter to the Clergy of the Diocese of Exeter

"Bishopstowe, Nov. 19, 1844.

"Rev. and dear Brethren,—I address you on a subject of very deep interest to us all—the diversity of practice in the worship of Almighty God, which, in concurrence with other unhappy causes, has threatened to involve us in a state of painful, I had almost said perilous, disunion.

"That the mischief has not been felt so strongly in this diocese as in some others, while it calls for our especial thankfulness to Almighty God, may, we hope, be ascribed in no small measure to warm and steady attachment to the church on the part of the laity, and not less, I rejoice in thinking, to the general soberness and discretion of you, the clergy.

"But even here we are very far from being exempt from the common evil. There are parishes in Devonshire, and still more a Cornwall, in which grave misunderstandings have arisen between the minister and the people, from causes for which neither he nor they have been primarily responsible.

"Discussions of important principles in other parts of the church, though they found among us no vehement partisans on either side, have led, in several instances, to very painful results. While they have excited in many of the clergy a livelier sense of the responsibility imposed on them by their engagements to the church, and have made them solicitous to follow out its requisitions to their full extent; they have at the same time indisposed the laity to the reception of any change, by exhibiting too many instances of the fatal consequences of change, introduced, as it has elsewhere been, by private individuals, whether from simple desire of novelty, or as part of a systematic attempt to bring back our church nearer to the corrupt usages from which it was reformed.

"It was therefore actual experience of great, and pressing, and growing evils, which recently induced me to have recourse to the unusual, but strictly canonical, expedient of seeking the advice of those whose other and standing, and I may truly add, whose personal qualifications, pre-eminently fit them

to form the council of their bishop.

"Sixteen members of the general chapter of the cathedral of Exeter, together with the Archdeacons of Totnes and Barnstaple, (the Archdeacon of Cornwall being unfortunately absent through illness,) met in the chapter room, and gave to me the benefit of their united deliberations. Another distinguished prebendary, (reluctantly detained by sickness,) sent to us his judgment, founded on long experience in one of the most populous and important districts in Cornwall.

"They were unanimous in deploring existing evils, and in apprehending greater, if some timely check be not applied. And, if they were not unanimous in advising what that check should be, this very want of unanimity gave to me the advantage of more fully hearing all that could be urged by able and experienced men on either side. After a discussion of three hours, more than two thirds of the whole number agreed in advising me, that the only proper, and, under God, the only effectual remedy, appeared to be, at once to restrain all undue change, and to look to the law as our sole guide. Of that law, the law of the whole church of England, including under that comprehensive term not the pastors and teachers alone, but the people also—that is, the state—of that law, one main and leading object, since the Reformation, has ever been to establish 'uniformity of public prayers, and administration of sacraments, and other rites and ceremonies.'

"This object, good in itself, becomes inestimable, when we look to the evils which it alone can prevent. But uniformity, it is manifest, can only be secured by laying down one rule. This the law has done. And, if process of time have introduced some relaxations in practice, issuing in the great evils we now deplore, it is a convincing proof that the true remedy for those evils must be sought in returning to a faithful observance of the Act of Uniformity.

"That act has, in truth, every claim a law can have, on the dutiful and cordial obedience of churchmen. Based on the soundest principles, recognising and declaring the Liturgy itself to be purely spiritual in its origin, and applying temporal sanctions only to enforce the use of it, this illustrious statute bears on it the character of a solemn compact; by which the church, having provided for the nation a pure form of Christian worship, received for that form the assured protection and support of the crown, and all the estates of the realm; a statute which, for this very reason, is holden to be 'essential and fundamental,' and is so declared to be in the great constitutional act, the Act of Union between the realms of England and Scotland.

"Now, I do not say, that every departure from any minute direction of the Book of Common Prayer, enshrined as it is in this fundamental law, deserves to be stigmatised as a violation of the national compact; but I say, that the duty of strict obedience to it cannot be too strongly felt by any—least of all, by the clergy. To this duty we pledged ourselves in our ordination vows. We renewed that pledge, as often as we undertook the cure of souls, or were otherwise admitted

to serve in any office in the house of God. To the strict fulfilment, therefore, of that duty, no faithful minister of God's word will think it a hardship that his bishop should now recall him. He will, rather, gladly recognise the fitness of recurring to it, at a time of general doubt and difficulty, as the one, the only rule, by which our practice in public prayer can be honestly or safely regulated.

"And, while a willing and hearty obedience is thus confidently anticipated from the clergy, can we apprehend less ready acquiescence in the same course on the part of the laity? Assuredly not—provided that we previously instruct them in the nature of the changes introduced, and of the reason for which they are introduced—not from love of change, but to prevent change—to enable us, at length, to find a rest for ourselves amidst the fluctuation of usages around us, and to find it in strict obedience to the law.

"Need I add, that this very purpose of ensuring stability, as well as uniformity in our public worship, is the very end and object of the statute, as thus declared in its preamble—'In regard that nothing conduceth more to the settling of the peace of this nation, (which is desired of all good men,) nor to the honour of our religion and the propagation thereof, than an universal agreement in the public worship of Almighty God; and to the intent that every person within this realm may certainly know the rule to which he is to conform in public worship and administration of the sacraments, and other rites and ceremonies of the church of England.'

"For these reasons I scruple not to address you all in the language of most earnest entreaty—entreaty which I thankfully acknowledge, after the experience of fourteen years, you have never yet disregarded, but which I now put forth with far greater anxiety than I ever before testified—that you will all concur with me in discountenancing every attempt to divide us into parties, by rendering a steady, uniform, and peaceful obedience to the laws of the church, especially in all that relates to the public worship of Almighty God, as enjoined in the rubric of the Book of Common Prayer. If to this my earnest entreaty I add, as I am bound to add, the language of authority and order, you will, I am sure, see in it only the fuller sanction and support of your own desire to act in conformity with your own deep feeling of your duty.

"I abstain at present from entering into details. Let me, however, say that I advise a very cautious and forbearing tone in all that respects the duty of the laity, as laid down in the rubric. For instance—you are bound to read, at least, one sentence of the offertory whenever the communion service shall be read. But it is left to your discretion whether you should read more, in other words, whether you should enforce a collection.

"Now, in every church in which the congregation in general is prepared to regard the collection as the exercise of a high Christian privilege—the privilege of offering to God—of giving to him of his own—there I advise

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that a collection be always made. But wherever the pervading tone and feeling is not yet of this high order, be patient, strive, but strive gently, and with prayer to God, to raise your people to a better mind; and till they have attained to it, shock not their prejudices, irritate not their selfishness, it may be their worldly-mindedness. Only let them not deceive themselves; let them see and feel that you 'seek not theirs, but them.' Tell them the truth in love, and leave the rest to God.

"One further caution I would add, though I hope it is almost needless.

"While I urge you to return to a full observance of the rubric—falling short of your prescribed part in nothing—beware of exceeding it. The peculiar dangers of the times, as well as the prevailing tone of public opinion, call upon you most powerfully, as you would avoid being in the number of 'them through whom offences come,' to forbear all unnecessary innovation, especially, as I have recently had occasion to urge, that worst kind of innovation, the revival of obsolete usages not required by law, which are associated in the minds of the people with the superstitions and corruptions of Rome.

"This letter will reach you through your deans rural; and I advise you to communicate together in your several deaneries; thus of yourselves you will on most points come to an accordance. Should doubts arise, the preface to the Book of Common Prayer, 'concerning the service of the church,' tells you how to act. You are to have recourse to your bishop, who, if he be in doubt himself, is 'to send to the archbishop for the resolution thereof.'

"I also advise that you make no deviation from the mode in which you may be now severally in the habit of performing divine service, until there shall have been an opportunity of collating the different practices and propositions of the different deaneries.

"We may too, perhaps, be thus enabled to profit by the construction put on the rubrics in other dioceses, if any similar consideration of the matter meanwhile be had elsewhere.

"One great advantage must arise from this delay, that it will enable us to make all the change which shall be found necessary, at once, and thus to avoid future change.

"A very few months at the utmost will more than suffice to enable you to bring all questions to a decision. Should it be necessary for me to explain the grounds of the resolution of any of the doubts submitted to me, an opportunity will soon be afforded, if it please God that I have health and strength to hold my visitation in the next year, which it is my present intention to commence immediately after my ordination on Trinity Sunday.

"There is one 'diversity,' 'for the quieting and appeasing of which' I will now 'take order.' This I feel myself called upon to do, because, unhappily, the 'diversity' to which I refer is regarded by many of the people as exhibiting the badges of party, on one side, at least, if not on both. It cannot, therefore, too soon be settled.

"I refer to the use of the surplice in preaching, a matter so inconsiderable, that it could not, of itself, excite any strong feeling in any reasonable man. But the more unimportant it is in itself, the more manifest is the necessity of stripping it of that factitious importance which is given to it by its being made the symbol of dissension. This can be done only by requiring that there be no longer any 'diversity,' that all either use or disuse the surplice when they preach.

"If there were no law, one way or the other, there might be difficulty in deciding which to require. But the law, on due investigation, is clear, however complicated may be the inquiry which is necessary to ascertain it.

"That law, beyond all question which now arise, requires that the surplice be always used in the sermon, which is part of the communion service; and as to all other times, whenever a sermon is part of the ministration of the parochial clergy, there is so little reason for question, that I resolve the doubt, by requiring (as it was required in the diocese in which my own ministerial life was passed, the diocese of Durham, and there by the order of one of its most distinguished prelates, and of our most eminent ritualists Bishop Cosin,) that the surplice be always used.

"There remains one matter on which there is no rubrical direction, as it was not contemplated when the Book of Common Prayer was compiled: I mean the sermon at the time of evening prayer. The power of the bishop to order it rests on a modern statute, which does not control his discretion in ordering how it is to be introduced. I therefore direct (and I do so with the express sanction of his grace the archbishop, that, where there is a sermon in the evening, it be delivered after evening prayer, in the accustomed manner; that is, preceded by a collect (unless the bidding prayer be used, and the Lord's Prayer, and followed by the blessing. I hope it is unnecessary for me to add, that there must be no prayer of your own composing either before or after the sermon.

"I conclude with entreating you to join with me in fervent prayer to Him 'who is the author of peace and lover of concord,' that He will accept and bless this our humble endeavour to promote peace and concord among us within his own house, and in his own immediate service.

"I am, rev. and dear brethren,

"Your affectionate friend and brother.

"H. EXETER."

The Charge of the Bishop of Worcester delivered to the Candidates for Ordination at their final Examination, December 21. 1844.

"My dear young Friends,—It has been usual for the bishop, on occasions like the present, to address such pastoral advice to the candidates for orders as he may think best calculated to prepare their minds for the solemn engagements which they are about

so soon to undertake; and, in performing this important function of his episcopal office, to dwell upon the general duties of the clergy, the doctrines which they are bound to teach, and the habits of life which they should endeavour to form. These are important matters, and in common times such as cannot be too frequently pressed upon your attention; but, in times like the present, it appears to me that it is incumbent upon the bishop to be somewhat more particular in his directions to those who are about to embark on troubled waters, and who will need all the assistance which an experienced pilot can afford them.

"I have on former occasions, not only in my primary charge addressed to the whole diocese, but afterwards, when opportunities like the present have occurred, of giving advice to my younger brethren in the ministry, deprecated that spirit of innovation which, on the plea of a more punctual observance of the rubric and a respect for the practices of the primitive church, was, I felt convinced, calculated to alienate the affections of the laity from the clergy, and thus to give a fatal blow to our beloved church, which must depend very much, not only for its usefulness but its security, on retaining its hold upon the affections of the people. However necessary it may be to recommend caution and discretion in these matters to the clergy at large, it is more especially so to those who are just entering on the discharge of their sacred calling. It too often happens, that those who have taken a wrong direction, however much they may afterwards be sensible of the evil consequences resulting from their indiscretion, are deterred by a false shame, and perhaps by a not unnatural indisposition to give way before the prejudices of their people, from retracing their steps, and restoring the intercourse between themselves and their parishioners to that happy state of peace and tranquillity which may be considered as the general character of our church before a mistaken regard for obsolete forms introduced discord and dissension among us. Those of you who are on the morrow to receive the first orders in the church cannot have thus committed yourselves; and it may be reasonably hoped, that they who have for a short time been ministering as deacons, have been too sensible of their subordinate rank in the church to have ventured to take a decided line on these controverted points, till a longer experience had enabled them to weigh certain evils against most problematical advantages. My advice to you then is, that in entering upon your several cures, you retain the privileges you at present possess, of not being committed to a party, and be cautious how you take a course which I am confident you will be anxious to retrace, when you have found that you have lost thereby the affections of your people; but in which a false pride, and the feelings naturally belonging to party, may induce you, notwithstanding, to persevere.

"In reviewing the history of our church since the Reformation, it is hardly possible to note a time when its prosperity and use-

fulness was more remarkable than the period immediately preceding the publication of the Oxford Tracts. An increased degree of zeal, a more entire devotion to their sacred functions, was manifest among the clergy; and not only did the most complete concord exist between them and the laity, but the latter attested their deep veneration for the church of their forefathers, by contributing most liberally to the erection of churches and the support of church and missionary societies. The service of the church was then performed in strict accordance with the general directions of the rubric; and though, on some trifling points, slight variations had been introduced, it was generally understood, that although these variations could not be legally sanctioned without the authority of convocation, they were made in deference to public opinion, and under the authority derived from the tacit acquiescence of the bishops. Schools were multiplied, the great truths of the everlasting gospel were more distinctly and more generally preached, and such was the impression gradually made on those who had separated from us, by such increased zeal and activity on the part of our clergy, that in several dioceses not only dissenting ministers, but whole congregations of dissenters, joined our communion. My brethren, I will not contrast this state of things with that which prevails at the present moment in other dioceses, and, I fear, in a small portion even of this diocese: but, as nothing human is perfect, and as in all the transactions of life, it must be our lot to decide upon a comparative balance of advantages and disadvantages, I will request you to make the comparison, and then ask yourselves whether the advantages, whatever they may be, which can be derived from a minute regard to ritual observances and the usages of antiquity, may not be purchased at too dear a rate, if purchased at such a price.

"The limits within which I must necessarily confine myself on an occasion like the present will not admit of my going into the various points which have of late been made the matter of so much unpleasant discussion; but it may be useful to you that I should dwell upon one or two with regard to which you may entertain doubts, and on which you will be compelled to make up your minds when you take possession of your respective curacies. And, first, with regard to the habit which you ought to wear when instructing your people from the pulpit. This is a question which I consider so utterly unimportant that I have never hitherto thought it worth while to express my opinion on the subject. I have myself been present during the celebration of divine service when the officiating clergyman has thought fit to preach in a surplice, without thinking it necessary to notice such a deviation from the general custom; and though I certainly should have been better pleased if no such innovation had been attempted, still I considered the whole matter as much too insignificant to require my interference. What, however, is in itself insignificant, acquires importance when it is considered as the badge of a party, and when, on this account, it becomes a

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stumbling-block and offence to others. On this ground I should be disposed to advise you to continue the practice which has so long prevailed of preaching in your academical habit, even though by so doing you deviated from the precise directions of the rubric. For the sake of those, however, whose consciences are tender on this point, I have carefully considered the question, and I have satisfied myself, and I hope that I may satisfy you, that it never has been the custom since the Reformation for the clergy to preach in their surplices. The whole argument upon this point turns upon the sermon being a portion of the communion service. If, therefore, we can show that the sermon is not a part of that service, there will remain no longer the slightest ground for an innovation which, though in itself indifferent, will be sure to shock the prejudices and excite the suspicion of your congregations. The 58th Canon, which relates to this matter, is thus headed, 'Ministers reading divine service and administering the sacraments to wear surplices;' and it directs that every minister saying the *public prayers* or ministering the *sacraments* or other rites of the church, shall wear a decent and comely surplice with sleeves, to be provided at the charge of the parish. Now, can it be said that when we are preaching a sermon we are either saying public prayers or administering a sacrament? That we are not doing the former is self-evident, and I will proceed to show that the sermon, though introduced in the course of the communion service, forms no part of the proper sacramental service of the Lord's supper. It is worthy of remark that in the First Prayer-Book of Edward the Sixth so little were the ten commandments or the sermon considered a part of the sacramental service that, after this portion of the service had been concluded, the following rubric occurred: 'That so many as shall be partakers of the holy communion shall tarry still in the quire, or in some convenient place nigh the quire, the men on the one side and the women on the other side. All other (that mind *not* to receive the holy communion) shall depart out of the quire, except the minister and clerks.' It is clear, therefore, that at that time, so far from the sermon forming part of the sacramental service, a complete interruption occurred after the sermon, during which those who did not mind to receive the holy communion are directed to retire, and then the proper sacramental service commences. This rubric is indeed not repeated in the Second Prayer-Book of Edward the Sixth or in the Prayer-Book which we now use; but it is clear that the like interruption of the service was contemplated, for immediately after the Nicene creed the curate is directed to declare unto the people what holidays or fasting days are to be observed in the week following; and all briefs, citations, and excommunications, are directed to be read; and can this be said to form part of the sacramental service? 'Then,' the rubric proceeds, 'shall follow the sermon;' so that you perceive that preaching a sermon is classed with reading briefs, citations, and excommunications, which,

certainly, in the words of the 58th Canon, can form no part either of divine service, or of administering the sacrament, during which ministers are directed to wear a surplice.

"The inference which I have attempted to draw from the rubric is further confirmed by the practice adopted at our two universities. It is well known that in no place is a regard for strict ritual observance more observed than in our universities; and yet so little is the sermon considered a part of the sacramental service, that it is preached at a different place and at a different time from the college chapels, where daily service is read and the sacraments are administered; and here I cannot but observe, that if the surplice had ever been worn, as the proper habit of a preacher, it would have been adopted in our university pulpits; but here we know, that at the present time the gown is always worn and I believe I may venture to say, that no record exists of the surplice having ever been used on such occasions, and the gown substituted for it; but such a change could not have been effected in a place where old customs are so strictly adhered to, as in our universities without authority, and if effected by authority, some record of it would unquestionably exist at the present day. Again so far was the sermon from being considered as included in the reading of public prayers or ministering the sacraments, that we know it was frequently preached by some of our most eminent reformers at St. Paul's Cross, and it can hardly be supposed, that the surplice was worn on such occasions. The substance of the case I take to be, that you are directed to use the surplice only when reading divine service or administering the sacraments; you then appear in your proper character of priest or deacon, appointing a minister in holy things; but when you preach, you assume the character of a teacher, and as such your proper habit (if, indeed, proper or improper are fit words for a matter so insignificant) is your academical gown with a hood, denoting your degree at the university.

"I have thus attempted to prove that it is a mistaken notion to suppose that the surplice is the proper dress for you to wear in the pulpit. If I have not convinced you, I think that you must all admit, that, under the circumstances which I have stated to you, it is at least a doubtful question, and a very doubtful question I feel sure that you will obey the apostle's direction, which cannot have much more authority with you than anything which I can say, and 'follow after the things which make for peace.'

"Another change which has, of late years, been attempted in our church service, is the reading of the prayer for the church militant, which, if originally intended to form part of the service, had been almost universally discontinued in our parochial churches, and even in many of our cathedrals. Up to this point the rubrics are certainly inconsistent. In that which immediately precedes the prayer, the following words occur: 'And when there is a communion, the priest shall place upon the table so much bread and wine as he shall think sufficient.'

after which done, the priest shall say, Let us pray for the whole state of Christ's church militant here on earth.' Did the rubric stand alone, there could be no doubt that the prayer for the church militant was to be read only when the sacrament was about to be administered; but another rubric occurs, inconsistent with the above, at the conclusion of the communion service, where we read, 'That upon Sundays and holydays, if there be no communion, shall be said all that is appointed at the communion until the end of the general prayer for the whole state of Christ's church militant here on earth.' It is difficult to account for these two contradictory rubrics, which appear to have been inserted at the same time, that is, at the second revision of the Prayer Book in the reign of Edward the Sixth; but as they do exist, it is not extraordinary that the clergy should have felt themselves at liberty to observe which they pleased; and partly on account of the length of the service, so distressing to those who are in advanced years, partly on account of the awkwardness of being obliged again to exchange the gown for the surplice, this prayer became gradually discontinued. And here I cannot but observe, that the disuse of this prayer is of itself a proof that the surplice was not usually worn in the pulpit. Had it been so, there would have been no difficulty in the minister's returning from the pulpit to the communion table, and reading the prayer as directed by the second rubric to which I referred. It was because he wore a gown, and not a surplice, that this practice was found inconvenient, and therefore was discontinued.

"The only other point to which I shall think it necessary to call your especial attention on the present occasion, is the use of the offertory, and the collecting of alms from the congregation on every Lord's day. There is no doubt that originally this collection was intended as a substitute for the alms which used to be given at the doors of convents, and as it is still continued in Scotland and the isle of Man, where no poor rates exist, we may reasonably conclude that it would never have been discontinued in this country, if the poor had not been otherwise provided for by a rate levied on all the pariahioners. The custom then became almost universal, that it should only be used at the administration of the Lord's supper. Attempts, however, have of late years been made by some of the clergy, to renew the practice of reading the offertory and making collections every Sunday, for the purpose of procuring contributions towards the support of our church societies; and where this can be done without offence to the congregation, it is impossible to object to a practice which, while it encourages the charitable feelings of the congregation, might, if extensively adopted, materially aid those most valuable institutions. The consent, however, of the congregation, is a material element in the propriety of adopting such a practice, for we have no right to *force* upon a congregation, without their consent, what is not strictly legal; and I have always been inti-

mately convinced, that no collections can be legally made in a church during the reading of the offertory, except for the benefit of the poor residing in the parish where the church is situated, or under the authority of the queen's letter. The phrase of the 'poor man's box,' which occurs in the rubric, can have reference only to that box which used to be placed in all our churches to receive the alms of the charitable for the benefit of that particular parish. A very curious decision of Sir Littellton Powys, in the reign of George the First, has been lately published, which sets this matter at rest, for it is therein distinctly stated as the law at that time, (and it does not appear that any adverse decision has been since made to reverse it,) that no collections can be legally made in churches during the offertory, except for the poor of the parish, but by the leave and permission of the crown. If, therefore, you think fit to restore the use of the offertory in any of the churches where you may be appointed to serve, you will bear in mind, that all the money so collected can only be *legally* applied to the relief of the poor of the parish. There can be no objection to collections being made for other purposes, in cases where the congregation themselves are consenting parties to them; but, whenever such collections are resisted, it will not be safe for you to persist, while the law upon this subject remains, at best, so doubtful.

"I have thus stated my opinion upon some of those points which have been the most fruitful causes of dissension between the clergy and the laity, and in conclusion, I will only refer you to one of the questions which you will be called upon to answer to-morrow. You will be asked, 'Will you maintain and set forward as much as lieth in you quietness, peace, and love among all Christian people, and especially among them that are or shall be committed to your charge?' To this question you will be required to reply, 'I will do so, the Lord being my helper.' Be assured that your usefulness in your parishes will very much depend upon your fulfilling the pledge which you will thus give; and if you will go forth to your respective cures anxious to fulfil your sacred duties in the spirit of peace, not pertinacious about trifles, even if the law be on your side, and still less so if this be doubtful, anxious only to win souls to Christ; and with this view, endeavouring to conciliate the affections of your people while you point out to them the way of everlasting life, 'the Lord will be your helper.' He will bless your ministerial labours with success; and may you hereafter be enabled to appear before his judgment seat, and say with well-grounded confidence, 'Of those whom Thou hast given me have I lost none.'"

Letter from the Bishop of Exeter to the Editor, commenting on the Charge of the Bishop of Worcester.

"London, 26 February, 1845.

"Sir,—In complying with your request, that I would allow you to publish in your collection of the Ecclesiastical Statutes, my

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letter to my clergy, of November 19, 1844, 'On the Observance of the Rubric,' I avail myself of the opportunity to make some remarks on certain particulars contained in a charge delivered by the Bishop of Worcester to his candidates for ordination, on 22nd December, of last year, at the very time when the excitement on account of that letter was at its height. His lordship has, indeed, been so good as voluntarily to inform me, that he did not make the remarks on the rubric, contained in his charge, in intentional opposition to those which I had expressed. But as he did therein expressly refer to 'the state of things then prevailing in other dioceses,'—as his remarks did, in fact, impugn mine, and as the publication of them, at that time, did, in fact, greatly stimulate the resistance which was made to me,—I think it right to state the reasons, why I adhere to the opinions which I have given to my clergy on the principal matters, on which his lordship has pronounced a contrary judgment.

"I. The first point is, whether the sermon be '*part of the communion service*,' or be, as the Bishop of Worcester considers it, '*classed with reading briefs, citations, excommunications*,' &c. This is the sole ground, on which his lordship rests his judgment, that *the surplice is not to be worn in preaching*.

"When I stated that the sermon is '*part of the communion service*,' it is plain that I did not consider it as belonging to the strictly '*sacramental service*,' any more than the decalogue, the epistle and gospel, the Nicene creed, the prayer for the church militant, &c., which are to be read whether there be a communion or not.

"Now for the statement actually made by me, I have the authority, I believe, of all the ritualists, who have ever dealt with the matter. Let one or two testimonies suffice. 1st, I cite from Nicholls on the Common Prayer; 'Additional Notes on the Communion Service,' 40.

"'Rubrick. *After the creed shall follow the sermon*. This is one difference from the Mass-Book, where there is no sermon there appointed; for they commonly have their sermons in the afternoon. But *the church of England hath restored the sermon into the due place of it*, after the reading of the epistle and gospel, which, in the ancient church, was the subject of the sermon which followed.' 'From the constitutions of the apostles, the custom has been very general, to begin the sermon when the reading of the epistle and gospel was done. The creed was afterwards added and inserted, because of the heresies newly risen.' Ibid.

"In confirmation of the accuracy of this statement of the practice of the ancient church, I add a citation from the First Apology of Justin Martyr, written not later than A.D. 150. In the 87th section, he thus relates the ordinary celebration of the Eucharist. 'On the day which is called Sunday, there is an assembly in one place of all who dwell either in towns or in the country; and the memoirs of the apostles or the writings of the prophets are read, as long as the time permits. Then, when the reader hath

ceased, the president *delivers a discourse*, in which he reminds and exhorts them to the imitation of these good things. We then all stand up together, and put forth prayer. Then, when we cease from prayer, bread is brought, and wine, and water: and the president in like manner offers up prayers and praises with his utmost power: and the people express their assent by saying, Amen. The consecrated elements are then distributed and received by every one.' Translation of Epistles, &c., Chevalier, 275.

"2. L'Estrange, Alliance of Divine Offices 170. Rubric. *After the creed, if there be no sermon*. 'In the primitive service, no creed interposing, the sermon immediately followed the gospel, and was an usual exhortation upon it, whence I conceive the name *Postil* is derived, quasi *post illa evangelia*, postil being nothing but a discourse upon, and subsequent to, the gospel.' It may be well to add, that most of the Homilies of the Fathers were on the gospels of the day.

"In our own church, since the Reformation, the sermon has always been considered as part of the communion service. In the rubric of 1549, it is said, '*After the creed ended, shall follow the sermon, or homily*, wherein if the people be not exhorted to the worthy receiving of the holy sacrament, then shall the curate give *this exhortation to those that be minded to receive the same*.' Here, if the sermon is not part of the service, neither is the exhortation.

"Lastly, there is a decisive proof, that at the review of the Book of Common Prayer, in 1662, the sermon was distinctly considered as *part of the communion service*. For at the Savoy Conference, under its head, 'The Order for the Administration of the Lord's Supper,' Rubric, *After the creed, if there be no sermon, shall follow one of the homilies*, the non-conforming ministers make this exception: 'We desire that the preaching of the word may be strictly joined, and not left so indifferent, at the administration of the sacrament.' Cartwell, Conf. 318.

"So much for the sermon being part of the communion service, on which the Bishop of Worcester tells us, that '*the whole argument*' for the use of the surplice, in preaching, '*turns*.'

"II. The next particular on which his lordship remarks, is the reading of 'The Prayer for the Church Militant.' Upon this point, he says, '*the rubrics are certainly inconsistent*.' What are these rubrics, which are thus inconsistent? 1. '*Where there is a communion, the priest shall place upon the table so much bread and wine as he shall think sufficient; after which doth the priest shall say, Let us pray for the whole state of Christ's church militant here on earth*.' 2. '*Upon Sundays, and Holydays, if there be no communion, shall be said all that is appointed at the communion, until the end of the general prayer for the whole state of Christ's church militant here on earth*.'

"I profess myself at a loss to perceive the slightest inconsistency in these two directions. If there be a communion, the priest

is to place the bread and wine upon the table, before he says this prayer:—*If there be no communion* he is to proceed until the end of the prayer, without placing the bread and wine upon the table.

"The usage of the church has accorded with this construction of the rubrics. Not only in almost all cathedrals, but in many parish churches, on Sundays and holidays, it is still usual to 'say one or more of the sentences of the offertory, and the prayer for the church militant.'

"In all the services for the State holidays, this is invariably *ordered*.

"Nay, it is plainly recognised in the rubric of 'The Form of Solemnization of Matrimony,' as the constant and necessary usage. 'The banns of all that are to be married together, must be published in the church three several Sundays or Holy-days, in the time of divine service, *immediately before the sentences for the offertory*.' This, it is true, has been altered in modern Prayer-Books, since the Marriage Act of 26 Geo. 2, c. 33 (without sufficient authority): but the testimony of this rubric to the duty of reading the offertory and the prayer for the church militant remains in full force.

"III. The only other particular, to which the Bishop of Worcester directs his observations, is 'the use of the offertory and the collecting of alms on every Lord's day:' but this will occupy me at some length.

"Now, I agree with his lordship, and have so told my clergy, that it is not desirable that this should be done, 'without the consent of the congregation.' But I do not agree with him in discouraging the clergy from seeking to bring their congregation to consent to them in this (as I consider it) work of Christian love.

"But the bishop further expresses his 'intimate conviction, that no collections can be *legally* made in a church *during the reading of the offertory*, except for the poor of the parish, or under the authority of the queen's letter.' He adds, 'A very curious decision of Sir Littellton Powys, in the reign of George the First, has been lately published, which *sets this matter at rest*; for it is therein distinctly stated, as the law at that time, (and it does not appear that any adverse decision has been since made to reverse it,) that no collections can be legally made in churches *during the offertory*, except for the poor of the parish, but by the leave and permission of the crown. If, therefore, you think fit to restore the use of the offertory, you will bear in mind, that all the money so collected can only be *legally* applied to the relief of the poor of the parish. *There can be no objection to collections being made for other purposes, in cases where the congregation themselves are consenting parties to them.*'

"On this very remarkable passage, I commence my observations, by adverting to its concluding sentence; of which I must not refrain saying, that, while it completely accords with my recommendation to my clergy, it does directly contradict all that his lordship has just before said, especially the stated authority of the decision of Sir Lit-

telton Powys. 'The money collected at the offertory,' says the Bishop of Worcester, 'can only be *legally* applied to the relief of the poor of the parish,' yet he immediately adds, 'There can be *no objection* to collections being made *for other purposes* in cases where the congregation consent.' In other words, that such an application is *illegal*, can be no objection to it!

"Now this, I say, is not only to contradict the bishop himself, but is also in the very teeth of Sir Littellton Powys's decision, of which he has just said that it 'sets this matter at rest.'

"That learned judge's decision did not at all proceed on the *non-consent* of the congregation. Be they consenting, or dissenting, (in the case before him, it appeared that the great body of them were not only *consenting*, but *eager and forward* to contribute,) he decided that the collection for any purpose, but the relief of the poor of the parish, without the king's letter, was illegal.

"In order to do justice to this decision, we must bear in mind several matters, which the Bishop of Worcester did not think it necessary to state.

"1. Sir L. Powys was *not directly adjudicating upon the rubric* respecting the offertory. The case was one of an indictment against certain parties, that 'being evilly and seditiously disposed towards the government of our most excellent lord, George, &c., and averse to the happy establishment thereof, and wickedly desirous of gain, and horridly and unjustly intending to procure to themselves unlawful gains, &c., did conspire and confederate, with the said boys and girls (charity-school children of another parish,) to wander up and down in Kent, &c. in order to collect great sums for the said purposes.'

"In the course of the trial, one of the witnesses for the defendants, in giving his evidence, referred to the rubrics, respecting the offertory, as authorising the collection in this case; which none of the numerous counsel, (three or four on each side,) had done. Upon this the judge, reporting the case in a letter to the Lord Keeper Parker, tells him, 'As to the rubric in the communion service, I said I thought that was to be taken *secundum subjectam materiam*, viz., the ordinary collection at the communion, which is ever then used to be made for the poor of the parish, but should not extend to every collection the parson should appoint for any foreign charity; and that I did not till now hear, that the clergy did claim that power. And further I said, I thought these words of the rubric did not imply such a power in the parson for the words being, &c., such a power of appointing a collection at pleasure is as much implied in the churchwardens as in the parson, &c.; but that I thought that the parson and churchwardens, either jointly or severally, could not appoint any collection for charity otherwise than in common form for the poor of their own parish, and that *those are the charitable uses intended by the rubric*, and particularly at the communion, to the service of which these words of the rubric are subjoined.'

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"Having thus told the lord keeper what he had said, he adds, 'I hope your lordship, on reading that part of the rubric at the end of the communion service, will be of my opinion, which I then suddenly declared, as to the implication, and do not since alter, unless otherwise convinced.'

"2. That an 'opinion thus suddenly declared,' on a point incidentally arising, should be invested with the character of an authoritative decision, is itself somewhat unusual. It would be so, even if the judge had had the whole case before him. But this was not so. It is avowed by himself, that he looked either solely or particularly to the rubric at the end of the communion service, where he read, 'The money given at the offertory shall be disposed of to such pious and charitable uses as the minister and churchwardens shall think fit.' Of these, he says that they must be 'for the poor of their own parish.'

"Now, if he had adverted to the rubric after the sentences at the offertory, he would have seen, that 'whilst these sentences are in reading, the deacons, &c., shall receive the alms for the poor, and other devotions of the people.' And if he had adverted to this, is it improbable that he would have paused, before he had decided, that 'and other devotions of the people,' meant 'no other devotions of the people' but those which were just designated as 'alms for the poor'?"

"3. Again, if he had not been obliged to 'suddenly declare his opinion'—if he had had time to consider and reflect, is it improbable, that he would have inquired a little into matters, which might illustrate the meaning of these very important words, 'and other devotions of the people'? If he had done so, he would have found that these words were, for the first time, introduced into the rubric in 1662, seemingly for the very purpose of extending the objects for which collections were to be made at the offertory, beyond 'alms for the poor,' the only object mentioned, or implied, in the rubric of any preceding Book of Common Prayer.

"In the First Book of Edward the Sixth, the rubric says, 'In the meantime, whilst the clerks do sing the offertory, so many as are disposed shall offer to the poor men's box every one according to his ability and charitable mind.' In the Second Book of the same king, in that of Queen Elizabeth, of King James the First, it is to similar effect: 'Then shall the churchwardens, &c., gather the devotion of the people, and put the same into the poor men's box.' But in 1662, in the rubric which is now established by law, the words are enlarged, as is stated above: 'Alms for the poor, and other devotions of the people.' Could any judge, with this fact before him, have ruled that the words, so added, were designed to have no meaning at all?"

"4. But, it may be contended that, as it is not stated what are the 'other devotions of the people,' these words have no specific meaning, and therefore may be either rejected by reason of their uncertainty, or at any rate ought to be limited to parochial purposes.

"Now, here a doubt would be started, 'concerning the manner how to understand, do, and execute the things contained in the Book of Common Prayer.' In such a case, the law has plainly prescribed the course which must be taken; the preface to the Book of Common Prayer, 'Concerning the Service of the Church,' which is part of the Act of Uniformity, has ordered that 'The parties that so doubt, or diversely take anything, shall always resort to the bishop of the diocese, who by his discretion shall take order for the quieting and apposing of the same; so that the same order be not contrary to anything contained in this book.'

"I presume, therefore, to think, that Sir Littellton Powys, if he had been aware of the rule, thus sanctioned by the statute, would have hesitated long, before he could have thought himself at liberty to put any construction whatever on any doubtful words in the rubric. He would have seen that he had no jurisdiction: that it was the bishop who had a right to resolve the doubt; and that this right could not be controlled by any court, unless it were so exercised, as should be 'contrary to something contained in the Book.' In the present instance, the Bishop of Worcester adopts, as he has a right to do, the dictum of Sir Littellton Powys, and resolves the doubt, in his own diocese, by saying that 'alms for the poor and other devotions of the people' mean no more than 'alms for the poor' of the parish; the Bishop of Exeter, as he has a right to do, resolves the doubt in his diocese, by saying, that the words have not so restricted a meaning, as to extend to 'other devotions of the people' for pious and charitable uses, not necessarily confined to the poor of the parish.

"I have dwelt thus at length on the above decision of Sir L. Powys, because great importance has been ascribed to it, not only by the Bishop of Worcester, but by other persons, especially by one or two of the ex-nicharies of my own cathedral.

"I must now add, concerning it, that I can hardly conceive any decision of any court less commended to our respect by the circumstances under which it was given—at a time of extraordinary political excitement—in a case in which the very intricacies involved party interests, and stimulated party feelings—by a judge who, even on the basis of justice, gave vent to those feelings, in a manner scarcely paralleled by a Scroggs or Jeffries.

"Though not a particle of evidence was given to sustain the charge of a political conspiracy, and disaffection to the government, yet this judge thought fit to tell the jury, that 'he was a little suspicious that V. H. (the preacher) had Cardinal Albani's leave, as well as the Bishop of Rochester (Atterbury) to make this collection, in view of some designs; and was confirmed in this suspicion, because the manner of raising the money had some resemblance to that of the Cardinal's in Spain;' Cardinal Albani at that time, A.D. 1719, being notoriously employed in exerting all the power and influence in Spain, (where he was prime minister) to place the Pretender on the throne of England."

"This same judge, in the same letter in which he reports his conduct on this trial to the lord keeper, *boasts of some other of his achievements on the same circuit: viz., 'A man at Rochester, worth nothing, was convicted before me of drinking the Pretender's health. I ordered him to be whipped in open market twice, till his back was bloody, with a month between the first and second whipping. At Lewes, a man was convicted before me of drinking the health of King James the Third, saying he knew no such man as King George. He had nothing but an annuity of 30*l.* per annum. I fined him 100*l.*, and committed him till it was paid, and that he should find good sureties for three years. I told him, that by paying 100*l.* to King George, he would certainly know there is such a person.'*

"This is the judge, whose decision must, it seems, be taken as having 'set at rest' the matter respecting the offertory.

"Be it so: but if his decision is to be taken at all, let it be taken, not only so far as may be convenient to those who adduce it, but also as far as it really goes. And this is, in Sir Littleton's own words, as follows:

"Here in England, *no collection even for charity, (unless for the poor of the same parish,) is, by law, to be made, but by the leave and permission of the king, gathering of money being so nice a matter, that it must not be done, even for charity, without his leave, in the most compassionate cases.*' This was the great principle of law, laid down by Sir Littleton Powys—this was his decision on the point actually before him; for the construction of the rubric was dealt with incidentally, and only as it might present an exception to his general principle. Of this principle, is it too much to say, that it has received its contradiction in the practice, the deliberate practice, of every judge who has ever sat on any bench of justice in England since the putting forth of this redoubted decision?

"But it has been contradicted not only by practice, but by the most deliberate judgments. Be it sufficient to cite the one instance, which is exhibited by the reporter of this very trial. At the trial of the rebel lords in 1746, it appeared it had been urged by several gentlemen in different counties, that the *voluntary* contributions, (not by authority of parliament, or the king's licence,) for loyal purposes, were illegal. Lord Hardwicke, (18 How. St. Tr. 501,) in his speech as lord high steward, said, 'Men of property of all ranks and orders, crowded in with liberal subscriptions, of their own motion, beyond the *examples of former times*, and uncompelled by any law; and yet in the *most legal and warrantable manner*, notwithstanding what has been ignorantly and *presumptuously suggested to the contrary.*'

"Happily, therefore, Sir Littleton Powys's decision has not 'set the matter at rest.' There may be collections for county hospitals, for church missionary, pastoral aid, conversion of the Jews, and other societies—after sermons—without the queen's letter,—which there could not be if that learned judge's

decision had settled the matter in the way which has been asserted.

"I am, sir,

"Your obedient servant,

"A. J. Stephens, Esq."

H. EXETER."

Extract from a Charge of the Bishop of Gloucester and Bristol to the Clergy of the Diocese of Gloucester and Bristol.

The Bishop of Gloucester and Bristol propounded the following opinions respecting the observance of church ordinances, in a charge to the clergy of his diocese, in August and September, 1844.

"It is impossible to regard without uneasiness the dissensions and agitations existing in the bosom of our establishment. Being desirous of avoiding topics of an irritating nature, I should probably have abstained from all allusion to our internal differences, were there not a danger that from my silence on this subject wrong inferences might be deduced. Having three years ago felt it my duty to declare in plain and uncompromising terms my condemnation of certain publications recently put forth by the reputed leaders of a section of the church, I now think it right to avow, that my sentiments upon those topics have undergone no change, and that all which has since passed has rather confirmed my opinions of the tendency of those writings to Romanism. It is painful to my feelings now, as on the former occasion, to have to utter remarks calculated to give pain to some of my clergy, for whose worth and character I entertain the sincerest esteem. But upon subjects of general concernment, whatever be my real sentiments, such and such only must I declare. It would be of little avail that you should come together for the purpose of meeting your diocesan, and listening to his counsel, unless that counsel were the offspring of his own unbiased judgment and mature conviction. Of the party of which public opinion considers the writers in question to be the leaders, I am far from joining in the indiscriminate censures which we frequently hear; and am ready to allow, that in some respects the church owes to them an obligation. It were to be wished that each particular of their opinions and their practice were candidly and dispassionately considered on the ground of its own merits; for it is my conviction, that the general adoption of such parts of the system as are consistent with the spirit and intentions of our Reformers, would do more to obviate any danger apprehended from this party, than all the denunciations of their supposed views and designs. . . . Not satisfied with a scrupulous attention to all the minutest injunctions of our rubric, they attempted to introduce forms of which the Anglican church knew nothing, and which, even if they had a certain antiquity to plead in their favour, had been intentionally discarded at the Reformation. Besides, attention seemed to be fixed more upon outward ceremonies than upon the spiritual character of our worship; and the church was exalted from being the minister of God's word and sacraments, till it appeared to be all but an object of adoration. When to this was added a

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constant and studious propensity to commend the practices of the papal church, and to lament over our separation, it cannot be wondered, that a feeling of revulsion was excited against the system in many who were tenacious of our apostolical principles, and repudiated doctrines founded upon anything except the written Word of God. Minds imbued with Scripture recoiled from the idea of any mediation except that of our Redeemer, or of grounding our hopes upon any merits except those of his sacrifice on the Cross for the sins of mankind. On the other hand, the jealousy of which we speak tends to excite suspicions upon the most unsubstantial foundation, and thus to keep up a state of agitation and excitement highly prejudicial to that 'godly quietness' in which we pray that our church may be permitted to serve the Lord. For instance, where a congregation has been long accustomed to the omission of the prayer for the church militant after the sermon, and where baptisms have usually taken place either before or after the service, instead of the time prescribed, and when on a sudden a clergyman corrects these irregularities, and likewise gives notice from the communion table of the holy days to be observed in the ensuing week, strange alarm seizes a part of the parishioners; they regard as innovations what are simply the duties enjoined to their pastor; and after much agitation and disturbance, they discontinue their attendance in the house of the Lord. That any such exhibition of ignorance has occurred in this diocese, I have not heard; but elsewhere it certainly has: and I mention it as one instance of the evil consequences of a disregard of regulations on one hand, and on the other, as a caution against abrupt and ill-understood reform. Let it be considered, that for the misapprehensions of the laity we may perhaps be ourselves to blame. We know that they are hardly ever acquainted with the canons or the acts of uniformity; and many editions of the Prayer Book have been published, in which the rubric is totally omitted, apparently with the view of diminishing the bulk and price of the volume. I have myself observed some of these impressions, which were not the speculation of a bookseller, but proceeded from the press of one of our universities in the latter part of the last and commencement of the present century.

"In regard to ceremonies, I cannot do better than entreat that all will consider with attention the remarks of the preface to the Prayer Book, which seem to me so fraught with good sense, with Christian spirit, and with that moderation which is taught by the perusal of the apostolical epistles, that they can hardly fail to procure the assent of all candid minds, to whatever party they may happen to incline."

X. A DECENT COMMUNION TABLE.

*Judgment of Sir Herbert Jenner Fust in
Faulkner v. Litchfield & Stearne.*

This was an appeal to the court of Arches [Jan. 31, 1845] from the Consistorial court of Ely, which had granted a faculty, on

the application of the churchwardens of the parish of the Holy Sepulchre, in the town of Cambridge, for confirming certain alterations, repairs, and restorations made in the parish church, under a former faculty, and extending it to other alterations and repairs not comprised in such former faculty, including a stone communion table and a stone credence table. The minister of the parish, (the Rev. R. R. Faulkner,) was a party to the petition for the former faculty, but not to the application for the second faculty, which he opposed in the court below, and he was now the appellant. The facts were shortly these: the church of the Holy Sepulchre, (commonly known as the "Round Church,") had been thoroughly repaired and restored, according to the resolutions of the parishioners in vestry, under the directions of a committee, of which the incumbent was a member, with the assistance of the Cambridge Camden Society. The appellant alleged in his act of petition, that the repairs had been almost completed, and the church nearly ready to be re-opened for divine service, when he learnt, for the first time, that a table, in good and substantial repair, which had stood in the chancel, well suited and commonly used for the celebration of the Lord's Supper, and of a kind generally used for that purpose in all churches belonging to the established church in the country, had been removed, without his sanction, and "a stone altar, or altar table, and credence table, such as are erected and used for idolatrous and heretical purposes in popish churches," had been set up instead, the said altar being moreover cemented to the wall of the chancel, and being, from its form and great weight, incapable of being moved to any other part of the chancel or church; the said erection and fixing of the same being contrary as well to the laws, canons, and constitutions of the reformed protestant church by law established in this country, as to the rubrical directions in the Book of Common Prayer, and repugnant, moreover, to the pure and apostolical doctrines maintained and taught by the said church. The churchwardens, (respondents,) in reply, admitting that there was, prior to the faculty, a communion table of wood standing in the chancel, alleged that it became necessary, in accordance with the design of restoring the church to its original architectural character, and to preserve the uniformity of its internal arrangements, that a new communion table should be provided, and a private contributor to the funds for the restoration of the church having presented, as a free gift to the parish, a new stone communion table, corresponding in design with the interior arrangements of the church, and also a table, usually termed a credence table, for the reception of the bread and wine about to be used in the celebration of the holy communion, prior to the consecration of the same, they were, in accordance with the ancient design of the fabric, placed in the chancel; that the same table is not cemented or otherwise fixed to the wall of the chancel, nor incapable of being removed if required; that the tables were placed with the unanimous concurrence of the parishioners in vestry; that the commo-

nion table is a decent and convenient table, well fit for the due celebration of the holy communion, and that the other table is assistant to the ministration of the same, and neither is repugnant to the laws or lawful usages of the church of England. The respondents annexed to their act a list of churches in which there are communion tables of a nearly similar kind. On the part of the respondents, affidavits of three persons, employed in executing the repairs of the church, were produced, which stated that the top slab and the three upright slabs of the altar were jointed against the finished plaster of the upright chancel wall with mortar; that it weighs upwards of two tons, and that the bottom or lower slab, forming the base, was made to rest on concrete, and was firmly embedded in mortar, about one inch below the chancel floor.

Sir *Herbert Jenner* *Prest.*, in a very long judgment, after detailing the allegations and proofs, observed: "In my mind, the motives of the parties have nothing to do with the question, which is one simply of the construction of the rubrics, incorporated in the Stat. 13 & 14 Car. 2, called the Act of Uniformity, and of the Canons of 1603, particularly the 82nd Canon; namely, 'Is this, or is it not, a communion table within the meaning of the rubrics and canons, and the general laws, canons, and constitutions ecclesiastical of the realm?' It would be useless for the court, if it held that this is not a communion table, to grant a faculty, which could not sanction an article illegal in itself. If it should appear that the true construction of the word 'table,' in the rubrics and canons, is, that it should be of wood, and moveable, not fixed and immoveable, the court must proceed in the same manner as if it were so expressly declared and enacted.

"If the fact were material, I should be bound to say, upon the affidavits, that the allegation of the churchwardens, that the table did not adhere to the wall of the chancel, is a mere allegation, and that, at the date of the affidavits, (the 12th June, 1844,) the table did adhere to the wall by mortar or cement. But, in my view of the case, this makes no difference; if the structure is fixed, as it is stated to be, to the floor of the chancel, firmly embedded in mortar or concrete, it is just as immoveable as if made to adhere to the wall.

"The court has been told, in the act on petition, that it became essential, in order to preserve the uniformity of the internal arrangements of the church, and with reference to its original architectural character, that a new communion table should be erected corresponding to such arrangements; but the court must never hold, that uniformity of internal style is to be consulted in preference to that which is the object of the statute, namely, uniformity in the performance of divine service; it cannot sacrifice the greater uniformity to the minor one of internal style and arrangement. And the court might even doubt whether, in point of taste, a great sacrifice would have been made, when it appears that there are three other churches of the same character in which no such table is erected. It does not appear that, in the Temple Church,

which has been recently repaired and restored, this kind of communion table has been thought essential.

"Now it is admitted that the present question must be decided by the Act of Uniformity, and the rubrics incorporated therein. All the former Acts of Uniformity were not incorporated into or confirmed by that of Car. 2. But in order to arrive at the true meaning of the expression in the present Act of Uniformity and rubric, it may not be improper to consider the sense and meaning attached to the term 'table' when the alterations were made in respect to the fittings up of churches at the Reformation, and down to the year 1662, when the first edition of the present Book of Common Prayer was published. And in construing acts of parliament, it is the rule, in the first instance, to construe the terms in their usual, general, and popular sense, and only to resort to any other construction where it was clearly the intention of the framers that a more restricted or a wider interpretation should be given to the terms than they would naturally suggest: and in considering which mode of interpretation should be applied, it is proper to see what was the contemporaneous construction, because *contemporanea expositio est fortissima in lege*. What then was the general use of the word when the first change was made from 'altar' to 'table,' at the Reformation? for there must have been some difference between these terms in the minds of the persons by whom the change was made.

"Prior to the Reformation, the religion of this country being the Roman catholic, the church of England held the doctrine of transubstantiation; that doctrine, at the Reformation, was one of the most important points upon which the two churches differed from each other, and by the 28th Article of our church, it is declared to be 'repugnant to the plain words of scripture, overthroweth the nature of a sacrament, and hath given occasion to many superstitions.' It is necessary, therefore, to see what a 'table' was at that time, and what an 'altar,' and whether the terms were indifferently used: whether it was not meant that there should be a change in the form as well as the name.

"It is important to this inquiry to see, in the first place, what were the requisites of altars at the time when these structures were used in our churches before the Reformation. Cardinal Bona. (*De Rebus Liturgicis*, lib. 1, c. 20,) gives the origin, history, and condition of altars from the earliest times. They were at first of wood; subsequently, of stone or wood; but at length it was required that no altar should be used that was not of stone: '*Sancivit Ecclesia ut nemini liceat celebrari nisi in altari lapideo consecrato*.' The construction varied; sometimes they were supported by one pillar, and sometimes by two, the most recent being in the form of tombs, '*humuli formam referebant, tanquam martyrum sepulchra*,' and they were to be fixed and immoveable, adhering to the place in which they were erected. Cardinal Devoti, in his *Institutiones Canonice*, (vol. 2, tit. 7, lib. 2, sec. 12,) speaks much to the same effect. The court may, therefore, safely conclude that, at

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the time of the Reformation, the altars in our churches were of stone, fixed and immovable, and generally in the form of tombs of the martyrs.

"Upon the renunciation of the doctrine of transubstantiation by the reformed church, it became necessary to remove from the minds of the people all those superstitious notions connected with that doctrine. Up to the accession of Edward the Sixth, however, mass continued to be celebrated; and we find, in his First Prayer Book, (1549,) that, in the Order for the Celebration of the Mass, the word 'altar' was used; but in the Second Prayer Book, (1552,) very material alterations were made in that service. In the First Prayer Book, the communion service is described as 'The Supper of the Lord and the Holy Communion, commonly called the Mass;' in the Second, it was called 'The Order for the Administration of the Lord's Supper or Holy Communion,' and the word 'table' was substituted for 'altar.'"

[The learned judge pointed out with great minuteness the several variations between the two Prayer Books.]

"In the Second Prayer Book the following direction is given: 'And to take away the superstition which any person hath or might have of the bread and wine, it shall suffice that the bread shall be such as is usual to be eaten at the table with other meats.' This seems to throw a very important light upon the meaning of the word 'table' in the Second Prayer Book.

"But in the interval between the publication of the two Prayer Books, certain events had occurred, and various orders and injunctions had been issued directing changes in the place where the sacrament was to be administered. In 1547, orders were given for the taking away and utterly destroying all shrines and monuments of superstition. In 1550, Bishop Ridley issued his Injunctions to the clergy in the diocese of London, 'for that the form of a table may more move and turn the simple from the old superstitious opinions of the popish mass, and to the right use of the Lord's supper, we exhort the curates, &c., to erect and set up the Lord's board after the form of an honest table,' and 'to take down and abolish all other by-altars or tables.' And it appears, from Cardwell's Documentary Annals, (No. 24, p. 100,) that an order in council was issued to take down all altars, and to place tables in their stead; and Burnet's History of the Reformation, (vol. 2, part 2, p. 31,) states that letters were sent to every bishop to 'pluck down the altars,' the reason assigned being that of 'removing the people from the superstitious opinions of the popish mass, and because *table* was a more proper name than *altar* for that on which the sacrament was laid.' It is proper to keep this consideration in mind with reference to the alterations made at this time, when communion tables came to be used instead of altars.

"It is clear that, in the reign of Edward the Sixth, the communion table was no longer of stone and fixed, but of wood and moveable, and was required to be placed in the body of the

church or in the chancel, where the minister could be most conveniently seen and heard. In the reign of Mary, the acts passed in the preceding reign regarding religion were repealed; but upon the succession of Queen Elizabeth, in 1558, the statutes of Philip and Mary were, in their turn, repealed, and the orders contained in the Second Prayer Book of Edward the Sixth became again the rule for the administration of the sacrament. The object of this alteration was stated to be, the removal of the old superstitious connected with the popish mass, and one mode of effecting it was to be by the abolition of all altars, and the substitution of tables. This change must mean something more than a mere alteration of name, for the mere change of the name would have left the old superstitious notion of a sacrifice still remaining; the alteration must have been a substantial, not a merely nominal one."

[The learned judge then referred to the order of Queen Elizabeth in 1559, "For Tables in the Church," which directed that "the holy table in every church be decently made, and set in the place where the altar stood, and so to stand, saving when the communion of the sacrament is to be distributed, at which time the same shall be so placed a good sort within the chancel, as whereby the minister may be more conveniently heard, &c.; and after the communion done, from time to time, the same holy table to be placed where it stood before." Also to the Interpretations and further Considerations of the Injunctions, drawn up by the archbishops and bishops, "That the table be removed out of the choir into the body of the church, before the chancel door, and where the choir seemeth to be too little, or at great feast or receivings, and at the end of the communion, to be set up again, according to the Injunctions." Also, to the Advertisements, 1564, "That the parish provide a decent table, standing on a frame, for the communion table." Also, to Archbishop Parker's Inquiries, 1569, "Have you a comely and decent table for the holy communion, covered decently, and set in the place prescribed by the queen's majesty's Injunctions?" Also, to Archbishop Grindall's Injunctions, 1571, that "all altars were to be pulled to the ground, and the altar-stones defaced, and bestowed to some common use; the prayers and other service appointed for the ministration of the holy communion to be done at the communion table;" and to his Articles of Inquiry, in 1576, when translated from York to Canterbury, "Whether in your churches and chapels all altars be utterly taken down and clean removed even unto the foundation, and the place where they stood paved, and the wall whereunto they joined painted over and made uniform with the rest?" Also, to the Report of the proceedings of the queen's commissioners at the cathedral church of St. Paul, at their visitation in 1559, (set forth very fully in Strype's Annals,) directing the removal of altars and the substitution of decent tables for the celebration of the Lord's supper. Also, to the demolition of the altar altars in Westminster Abbey, and generally throughout the diocese of London.]

"In the year 1571, (the reign of Elizabeth,) a set of canons and constitutions ecclesiastical was published, in one of which it is expressly stated of what material the communion table should be made, namely, of wood: '*mensa ex asseribus composita juncta.*' (See Cardwell's Synodalia, vol. 1, p. 123.) Therefore, beyond all doubt, in Queen Elizabeth's reign, the communion table was not only moveable, but made of wood. In the reign of James the First, the present canons were published; and the 82nd, though it does not expressly say, as that of 1571, that the table shall be '*ex asseribus juncta,*' directs that it shall be a 'decent table,' and be placed, when the holy communion is to be administered, 'in so good sort, within the church or chancel, as thereby the minister may be more conveniently heard of the communicants in his prayer and ministration.' That it is to be moveable is implied by its having a different position at one time and at another."

[After referring to the contests respecting the mode of administering the holy communion in the reign of Charles the First, and reading and commenting upon a passage from Lord Clarendon's History of the Rebellion, in which he speaks of Archbishop Laud's proceedings regarding the position of the communion table, and implies that it was then not of stone and not fixed, but moveable, referring also to the part taken by Williams, bishop of Lincoln, in the dispute, the learned judge read copious extracts from a tract, entitled *The Holy Table, Name and Thing*, printed at Lincoln, 1637, and attributed to Bishop Williams, wherein reference is made to a dispute between the vicar of Grantham and his parishioners, respecting the proper place in which the holy table should stand, the vicar insisting that it should stand at the upper end of the chancel, against the east wall; the parishioners contending for the body of the church: the bishop, being appealed to, gave his decision that the table should stand, when not used, in the upper end of the chancel, "not altar-wise, but table-wise," and when used, "the churchwardens are to cause the clerk or sexton to remove it either to the place where it stood before, or any other place in church or chancel where the minister may be most audibly heard of the whole congregation;" and with reference to an alleged threat of the vicar that he would set up a stone altar, the bishop says, "You may not erect an altar where the canons admit only a communion table." The judge also referred to other tracts upon the same subject, (*i. e.*, the position of the table,) taking different sides of the controversy, namely, *Antidotum Lincolnense*, 1637, by Dr. Heylin; *Allare Christianum*, 1637, by Dr. Pocklington; *Superstitio Superstes*, 1641; and a *Discourse of Proper Sacrifice*, 1644, by Sir Ed. Dering.]

"Therefore, at this time (in 1637) things stood in precisely the same state as they did in the reigns of Edward the Sixth, and Elizabeth; there was a complete annihilation of the ancient structures; the tables were no longer immovable; they were no longer of stone; they were of wood, and moveable. From this time, I cannot see that any alteration

was made in any of the rubrics of the Book of Common Prayer till the time of the Restoration. Two instances were adverted to in the argument, as shewing that the proper place for the table was considered to be altar-wise at the east end of the chancel, there to remain; but upon an examination of those cases, it appears to me that they go the other way. The cases are, that of Crayford church, in 1633, and that of the church of St. Gregory, London, in the same year, and although the tables are directed to stand at the upper end of the chancel, it is not said permanently; and in the latter it is expressly stated that its position might be changed as the ordinary 'may find cause.' And so in the 'Orders and Directions for the Diocese of Norwich,' by Bishop Wren, 1636, 'that the communion table in every church do stand always close under the east wall of the chancel of the church, the ends thereof north and south, unless the ordinary give particular direction otherwise.'

"Then we come to the real point: has any alteration been since made? Did the rubric of 1662 introduce any variation? The word 'table' is used throughout, and the present rubric affords no reason to suppose that any different sense was attached to the word than that which is given to it by common use. There is also a provision in the rubric for the communion service, guarding against any superstition connected with the bread and wine used in the ceremony, following up the alterations made in the reign of Edward the Sixth, with reference to the superstitions associated with the doctrine of transubstantiation. And looking at the word 'table' itself, as used in the rubric, would any one suppose that it meant such an object as is represented by the model before the court? Any flat surface raised from the ground, and supported by pillars or otherwise, may be called a table; but a stone table of such a weight and such dimensions, imbedded in the floor, does not correspond with the ordinary and popular meaning of the word. Upon my construction of the rubrics, therefore, I have no doubt that the article was meant to be a table in the popular sense of the word, and I have no difficulty in holding that the faculty in this case cannot issue.

"With respect to the credence table, I do not find sufficient information to enable me to judge when these tables were first introduced. It is clear that they were in use in the English churches before the time of Archbishop Laud, because he refers to his use of one as an article of accusation against him, and justifies himself by representing that the table had been used by his predecessors, and, amongst others, by Bishop Andrews; but it was considered that this was strong proof of his desire to introduce popish rites and ceremonies. The derivation of the term 'credence table' is referred to the Italian language, and it is said to mean what Archbishop Laud calls it, 'a sideboard.' The question is not of much importance; but in Adelung's German Dictionary we have the following definition of the word: '*Credenzen*, from the Italian "*credensare*," to taste beforehand the meats and drink before they

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report(1)(2) as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been

are offered to be enjoyed by another: an ancient court-practice, which was performed by the cup-bearers and carvers, who for this reason were also called *credenszer*: hence also the *credens-teller*, credence plate, on which the cup-bearers *credensed* the wine; and in general a plate on which a person offers anything to another; *credens-tische*, credence table, or sideboard, an artificial cupboard, with a table, for the purpose of arranging in order and keeping the drinking apparatus therein.

"I am of opinion that the credence table must follow the same principle as the other; for, though in use in the Greek and Latin churches, it forms no part of the fittings-up of our churches, and is not to be considered a communion table, or part of a communion table, in the proper meaning of the term.

"I am bound, therefore, to refuse to confirm the faculty granted by the court below, from a conscientious impression in my own mind that it never was the intention, from the time of the Reformation, when stone altars were removed, to continue articles of this description; for I cannot conceive how it differs from an altar in a Roman catholic church, except that it has not received consecration; with this exception, having two open fronts and two upright slabs, it does not materially differ from the tombs of the martyrs as described by Cardinal Bona.

"I pronounce for the appeal, reverse the sentence appealed from, and I am bound in justice to Mr. Faulkner to condemn the churchwardens in the costs of the proceedings on the appeal."

[The foregoing report was communicated to the Editor by the learned Reporter of the Ecclesiastical Notes of Cases.]

(1) *Concerning whom there may exist scandal or evil report*:—An ecclesiastical court may entertain a suit against a clergyman for the purpose of deprivation of or suspension from his ecclesiastical preferment, by reason of a public scandal existing against him; although the scandal originates from a charge which, if true, would constitute a criminal offence cognizable solely in a common law court; and although no conviction by the common law is pleaded. Thus, in the office of the Judge promoted by *Barber v. —*, (3 Curt. 822,) which was a cause of office and a proceeding under Stat. 3 & 4 Vict. c. 86, and was brought into the court of Arches by letters of request from the Bishop of —, it appeared by the decree, which had issued in pursuance, and on acceptance of these letters, that the reverend gentleman therein named was called on to answer to certain articles, heads, positions, or interrogatories, touching or concerning his deprivation of or suspension from his ecclesiastical offices and preferment. The object sought was not *pro salute animæ*, or *pro reformatione morum*, but the court was asked to pronounce a sentence of suspension from, or deprivation of his clerical functions as against this gentleman.

The articles were given in, and stood for admission; the party cited then undertook to shew cause, why he should not be suspended or deprived from the exercise of his ecclesiastical offices and preferments, and so the matter came before the court. The articles were eighteen in number; in the first place, they set forth that, by the general laws ecclesiastical, all clerics and ministers in holy orders were enjoined to abstain from all immorality, obscenity, and indecency whatever. The second article pleaded, that the party cited was a priest or minister in holy orders; and was, in the year, &c., duly elected one of the perpetual priests, vicar choral, or minor canons of the said cathedral church. The third article exhibited the proper instruments of appointment to these offices. The fourth article pleaded, that the same party was in the year — licensed by the Bishop of — to perform the office of lecturer in the parish church of, &c.; that he entered upon the duties of such lectureship, and had ever since continued to act, and acted as lecturer to the said church. The fifth article exhibited the episcopal license. The sixth pleaded that the party was, on &c., duly admitted and instituted to the vicarage of —. The seventh exhibited the usual document in supply of proof. The eighth, that the party was, on, &c., duly appointed chaplain to the county gaol. The remaining articles set forth the charge brought against this gentleman, and detailed the facts and particular circumstances, which were, when proved, to subject him to deprivation or suspension.

It was contended that these articles were not admissible, because the court was incompetent to try the charge on which this suit was founded, and was therefore prohibited from entertaining the suit. That temporal offences, of whatever nature they be, were not examinable in the spiritual courts, which decided on written evidence, and that if the court had jurisdiction, every archdeacon had the same authority. That the court of Arches could take no cognizance whatever, either for examining into a charge, or punishing a party if convicted in a temporal court; as regarded a clergyman, the court of Arches had no jurisdiction to examine into a temporal crime, in the first instance, but that if the party be convicted in a temporal court, there arose out of that conviction a fame or scandal, which the ecclesiastical court might take cognizance of, in order to found a suit for punishing the party by ecclesiastical censures, by suspension, or by deprivation. That the scandal in the latter case arose out of the conviction, not out of the charge; and that the law considered every party charged to be innocent until he be proved guilty, and that the only legal proof of guilt was a conviction by oral evidence in a temporal court. *Nash v. Nash*, 1 Consist. 140. *Searle's case*, Bosh. 121; 1 Consist. 141, in *not.* *Bromby v. Bromby*, *Ibid.* *Slader v. Smalbrooke*, 1 Lev. 138; 1 Sid. 217. *Hart v. Marsh*.

committed, on the application of any party complaining thereof, or if he shall think fit of his own mere motion to issue a commission under his hand and seal to

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5 A. & E. 602. *Pawlet v. Head*, 2 Lee (Sir G.), 565. *Townsend v. Thorpe*, 2 Ld. Raym. 1507. *Mogg v. Mogg*, 2 Add. 292. *Price v. Clark*, 3 Hagg. 271. *Galtzard v. Rigault*, 2 Salk. 552.

It was contended by the counsel in support of the articles: That all ecclesiastical jurisdiction might be comprised under three heads: 1st, *ratione privilegii*, or *personarum*; 2nd, *ratione causarum*; 3rd, *ratione loci*. That as a general proposition, the amotion or expulsion of a member was incident to a corporation aggregate, (*Newcombe v. Higges*, Fitzg. 169.) such privilege being incident to the established church, and was exercised by the ecclesiastical courts. That this might be proved, first, by practice, Lyndw. l. 2, tit. 2, pp. 92, 96; l. 3, tit. 28, p. 260; tit. 29, p. 268; l. 5, tit. 5, p. 292; tit. 9, p. 308; tit. 14, p. 313; tit. 15, p. 315; secondly, by the statutes passed from Edward the First to Henry the Eighth relating to the purgation of clerks convict, which were collected in Gibson, pp. 1120 to 1132. That *Searle's case*, (Hob. 121,) was a solitary case, which occurred at a time when the ecclesiastical courts were struggling for their very existence; (see the conference between Archbishop Bancroft and Lord Coke, 2 Inst. 598.) *Slader v. Smalbrooke*, (1 Lev. 138; 1 Sid. 217,) occurred after the Restoration; in that case the ecclesiastical court was proceeding to try a forgery, and yet a prohibition was denied: that *Higgon v. Coppinger*, (Jon. Sir W. 320,) illustrated the principle, so did *Lucy v. Watson* (Dr.), *Bishop of St. David's*, (Ld. Raym. 447; 14 St. Tr. 447,) which shewed, that the bishop might punish his clergy by deprivation or ecclesiastical censures for offences contrary to their ecclesiastical duties and vows. That an indictment at law for an offence similar to that under consideration would not lie if framed in the mode used in the articles: that *Regina v. Rowed*, (3 Q. B. 180,) *the Bishop of Clogher's case*, (Annual Register for the year 1822,) and *Free v. Burgoyne*, (5 B. & C. 404; 1 Dow & C. 115; 2 Bligh N. S. 65,) had completely established the jurisdiction of the ecclesiastical courts to proceed, in a case of this nature, for the purposes of deprivation of or suspension from clerical functions or offices: and that the proceedings were not for punishment, but were brought *diverso intuitu et diversis rationibus*.

Counsel in reply argued, that the case in *Levinz's Reports* was a proceeding as to which the ecclesiastical courts had undoubted jurisdiction; and that the question of forgery was incidental to the inquiry; therefore, a prohibition was well denied, that it might with equal reason be contended that the ecclesiastical court could not take cognizance of a question of granting probate, because a will was opposed on the ground of forgery. And that the court had no jurisdiction in the matter. *Price v. Clark*, 3 Hagg. 270.

Upon such facts and arguments, Sir Herbert Jenner *Fust* observed: "In support of

the objection, that the ecclesiastical courts have no jurisdiction in the present case, the court has been referred to several cases, recording instances, where it has been held, that this court is not at liberty to proceed, for the punishment of offenders, for charges for which they are liable to be proceeded against and convicted in criminal courts; several of these instances being cases against clergymen, or persons holding spiritual or ecclesiastical offices. As a general proposition, this doctrine must be acceded to; the question is, whether, for the purpose for which this suit is brought, this court has not jurisdiction where the party proceeded against is a clergyman? As against laymen, whatever may be the nature of the charge, undoubtedly the court has no jurisdiction to entertain a criminal suit; but it is by no means so clear, that, for the purpose of suspension from clerical offices, the court cannot proceed against a clergyman. The distinction arises from the different object of the proceedings against a layman and a clergyman; and, admitting the general rule, that the ecclesiastical court cannot proceed against either a layman or a clerk in orders for the purpose of punishment, the question is, whether, as against the latter person, it may not proceed to try the charge for the purpose of suspending or depriving the offender from clerical duties and preferment?

"The case of *Free v. Burgoyne*, (5 B. & C. 404; 1 Dow & C. 115; 2 Bligh N. S. 65,) both in the King's Bench and the House of Lords, proceeded on this ground,—that the spiritual court had no cognizance of a crime punishable in the temporal courts, except for the purpose of deprivation from ecclesiastical offices; I confess it appears to me to go a great length in support of the proceedings in the present case, which are instituted against this gentleman, not for punishing him for a temporal offence, but to prevent him retaining possession of the ecclesiastical preferment which he now holds.

"I was referred, in the course of the argument, to the case of *the Bishop of Clogher*; (Annual Register for the year 1822;) I have not a copy of the proceedings in that case, nor have I been able to obtain them; the bishop certainly was outlawed, but still, it was held, that as bishop he was liable to be proceeded against and deprived of his see for the offence imputed to him; the outlawry might have been equivalent to a conviction, and so far this would be a different case. Reference was also made to another case; it was not described by any title, but as a case before the judicial committee, on an appeal from the island of Jersey [since reported, nom. *The Dean of Jersey v. The Rector of —*, 3 Moore's P. C. Ca. 299]. A writ, in the nature of a writ of prohibition, issued from the royal court in that island, to the ecclesiastical court, whereby that former court annulled certain proceedings in the ecclesiastical court, and ordered, that all the acts

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five persons, of whom one shall be his vicar-general, or an archdeacon or rural dean within the diocese, for the purpose of making inquiry as to the grounds of such

which referred thereto should be erased from the records of the court. From this last sentence there was an appeal to her majesty in council; and I may here say, that the royal court in Jersey corresponds, to some extent, with the court of Queen's Bench in this country. The judicial committee came to the opinion, that the writ had issued wrongfully, and they reversed it; in the result it was held, that the ecclesiastical court in Jersey was at liberty to institute that particular proceeding. When that case was before the judicial committee, I sat as one of the judges, and I pronounced the judgment of their lordships; the case turned on the construction of the canons by which the ecclesiastical law in the island of Jersey is governed, and on one canon in particular, the 17th. It provides, 'That every one of the ministers shall be careful to observe that decency and gravity of apparel which becomes his profession, and may preserve due respect to his person; and they shall be very circumspect in the whole course of their lives, to keep themselves from such company, actions, and haunts, as may bring any blame or blemish upon them. Nor shall they dishonour their calling by games, taverns, usuries, trades, or occupations not befitting their functions, but shall study to excel all others in purity of life, gravity, and virtue.' The 22nd Canon is directed against particular offences, and, amongst them, fornication, and applies equally to the clergy as to the laity. It was held, by the court royal, that, under this general canon, the ecclesiastical court had no power to take cognizance of offences triable in the temporal courts; but the judicial committee held, that, under the 17th Canon, and another, (the 46th,) the ecclesiastical court had power to proceed against members of the church and clerks in holy orders; for the purpose of restraining them in such habits of life. The result of the judgment of the Privy Council was to relax the prohibition, and to allow the ecclesiastical court in Jersey to proceed.

"That case is somewhat of a similar description with the present, for it was there alleged, 'That rumours of a most serious nature had for some time past been publicly circulated touching the conduct of ———; accusing him of leading a most scandalous life, and of having committed indecent as well as criminal acts; to the great scandal of religion, and especially of the established church of which he is a minister.'

"That case does seem to me to go the length of declaring, that the ecclesiastical court has jurisdiction over clerks in holy orders, for the purpose of deprivation and suspension; although, to a certain extent, that may be punishment; but still punishment is not the object of the proceeding; the object is to remove the party from the office in relation to which he has so misconducted himself. I am of course now considering that the facts charged in these articles may be established in proof; and the court does

not mean to go in detail through these articles; I do not understand them to charge an actual offence, but a series of acts obscure and indecent in themselves. This person was the chaplain of a jail, and in the course of that duty a person was committed to his care and superintendence; and the charge is that of vicious propensities existing, and to be proved by overt acts. In the case from Jersey it was argued, that as the offence was laid, evidence of actual guilt might be given, but that objection was disallowed, and it was said, it was a proceeding to remove a scandal, and that the possibility of such evidence being given, was no ground for issuing the prohibition. Surely! no clergyman can be suffered to remain in the cure or possession of an ecclesiastical benefice whilst labouring under such an imputation as these articles charge; it may be mere report, but still it is a scandalous report, and it arises out of conduct. I should like to know how parishioners can receive the communion, hear the prayers of the church read, or receive consolation in their dying moments, from a person labouring under such imputations as are here charged? Are his parishioners to receive advice or consolation at the hour of death from this party? Must not the effect of the ecclesiastical court has no jurisdiction to interfere in such a case, be, that the parishioners, from the actual disgust which must arise even from the imputation whilst unfuted, will abstain from any communication with the party; and, if he be allowed to remain in his benefice, will not the effect be virtually to deprive the parishioners of all of those spiritual offices and benefits which they are entitled to expect and require at the hands of their minister?

"I am, therefore, of opinion, both upon principle, and the authority of the cases to which I have referred, that there is no ground whatever for concluding the jurisdiction of this court; and I consider that this court has jurisdiction to examine into this case for the purpose of deprivation and suspension; and not only to entertain the suit, but to pronounce a sentence either of suspension or deprivation as may seem meet to this court, and according to the magnitude of the offence, to be shown by the evidence to be produced against the clergyman against whom these charges are made; provided the charges be substantiated in evidence. I am, therefore, of opinion, that these articles are admissible and accordingly, I admit them to proof."

(2) *Scandal or evil report*.—*In Barrie v. ———*, (3 Cart. 838,) it was held, that the minutes of the resolution of vestry justices respecting the improper conduct of the chaplain to a jail were not evidence against the chaplain; Sir *Herbert Jenner* thus stating:—

"I think, however, that there is one of the concluding articles which is not admissible. This reverend person appears, in addition to his other preferment, to hold the office of chaplain of a jail, and it is against

charge or report: provided always, that notice of the intention to issue such commission under the hand of the bishop (1), containing an intimation of the nature of the offence (2), together with the names, addition, and residence of the

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Notice to be

him in the discharge of his duties of that office, that this offence is imputed. The article is the seventeenth, and it refers to inquiries made privately by the visiting justices of the jail; and the conclusion to which they came, namely, that the party should be suspended from his office, whereupon he resigned his appointment; and the article has annexed a paper purporting to be a true copy of the minutes of the resolution of the visiting justices, as entered upon the journals of the jail. I cannot see how this can be made evidence in any way; I cannot see how, because these justices take upon themselves to inquire into a certain report, and upon the evidence they receive in the course of that investigation, feel bound to exercise the discretionary power reposed in them, and to suspend this party from his office of chaplain, that can be evidence against the party in this cause. With respect to the evidence to be adduced, this is not the time to enter upon a discussion of, or to give any opinion upon that point; the parties by whom these charges are to be proved, may, as has been said, be persons whose testimony will not be entitled to receive any credit; it may prove so, but the court cannot determine, *à priori*, whether they are or not competent to give evidence; or whether their testimony will or will not be sufficient.

"Therefore, at the present moment, I content myself with rejecting the seventeenth article; admitting the rest of the articles to proof; and reserving all questions until hearing of the cause."

(1) *Notice of the intention to issue such commission under the hand of the bishop*:—In reference to the foregoing language, Sir Herbert Jenner Fust, in *Sanders v. Head*, (3 Curt. 48,) observed:

"I consider the notice as a preliminary proceeding, in order to institute further proceedings before the commissioners, which further proceedings are themselves only preliminary proceedings. I think in this case, the notice is not to be considered as part of the proceedings, but merely as preliminary."

"It is stated in the sixteenth section of the act, 'Provided always, that the archbishop or bishop who shall have issued the commission hereinbefore mentioned in any such case, or who shall have heard any such case, or shall have sent any such case by letters of request to the court of appeal of the province, shall not sit as a member of the judicial committee on an appeal in that case.' So that any bishop or member of the Privy Council who has issued a commission could not sit, but any bishop who has sent the notice might: there is nothing to prevent him from sitting."

"I consider this, as only a preliminary step to inform the party, that proceedings may be issued against him, but as no part of the proceedings whatever. I think this same interpretation applies with reference to the other sections of the act of parliament."

The following is the form of commissions issued in the diocese of Norwich, when clergymen refuse and neglect to perform their ministerial duties [*Ex relat.* J. Kitson, Esq., secretary of the Bishop of Norwich]:

"Edward, by divine permission, Bishop of Norwich, to our beloved in Christ, the Reverend C—— C——, clerk, vicar of ——, one of the rural deans of the deanery of ——; the Reverend R—— H——, clerk, vicar of ——; the Reverend E—— E——, clerk, rector of ——; the Reverend A—— M——, clerk, rector of ——; and the Reverend T—— T—— U——, clerk, rector of ——, all in the county of Norfolk, and within our diocese of Norwich, greeting. Whereas the Reverend A. B. clerk, rector of the rectory and parish church of M——, in the said county of Norfolk and our said diocese of Norwich, is charged with an offence against the laws ecclesiastical, to wit, by refusing and neglecting to perform his ministerial duty: and whereas we, rightly and duly proceeding under the authority and in conformity with the provisions of a certain act of parliament passed in the session of parliament held in the third and fourth years of the reign of her present majesty, entitled, 'An Act for the better enforcing Church Discipline,' did on the —— day of —— now last past, being fourteen days at the least before the issuing of this our commission, send notice under our hand to the said A. B., that it was our intention to issue a commission under our hand and seal to five persons, one of whom should be our vicar-general, or an archdeacon or rural dean within our diocese, for the purpose of making inquiry into the grounds of such charge: We therefore, by virtue and in further pursuance of the said recited act, do of our own mere motion issue this our commission to you the said C—— C——, the rural dean aforesaid, R—— H——, E—— E——, A—— M——, and T—— T—— U——, for the purpose of making inquiry as to the grounds of the aforesaid charge: and we do hereby authorize and empower you to make such inquiry, and to proceed in the execution of this commission in the manner directed by the said recited act. Given under our hand and seal the —— day of ——, in the year of our Lord one thousand eight hundred and ——, and in the —— year of our consecration."

"EDWD. NORWICH." (L.S.)

(2) *Intimation of the nature of the offence*:—Doubts have existed whether a general intimation of the offence will be sufficient, or whether time and place ought to be named and adhered to. The inquiry is in every respect preliminary, not final or conclusive; and it seems no greater degree of particularity is positively required, than that which is generally observed in a ministerial summons.

But it is respectfully submitted, that, in proceedings under Stat. 3 & 4 Vict. c. 86, the

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sioners.

party on whose application or motion such commission shall be about to issue, shall be sent by the bishop to the party accused fourteen days at least before such commission shall issue.

“IV. And be it enacted, that it shall be lawful for the said commissioners or any three of them to examine upon oath, or upon solemn affirmation in cases where an affirmation or declaration is allowed by law instead of an oath, which oath or affirmation or declaration respectively shall be administered by them to all witnesses who shall be tendered to them for examination as well by any party alleging the truth of the charge or report as by the party accused, and to all witnesses whom they may deem it necessary to summon for the purpose of fully prosecuting the inquiry, and ascertaining whether there be sufficient *prima facie* ground for instituting further proceedings; and notice of the time when and place where every such meeting of the commissioners shall be holden shall be given in writing under the hand of one of the said commissioners to the party accused seven days at least before the meeting; and it shall be lawful for the party accused, or his agent, to attend the proceedings of the commission, and to examine any of the witnesses; and all such preliminary proceedings shall be public, unless, on the special application of the party accused, the commissioners shall direct that the same or any part thereof shall be private; and when such preliminary proceedings, whether public, or private, shall have been closed, one of the said commissioners shall, after due consideration of the depositions taken before them, openly and publicly declare the opinion of the majority of the commissioners present at such inquiry, whether there be or be not sufficient *prima facie* ground for instituting further proceedings.

Report of the
commissioners.

“V. And be it enacted, that the said commissioners or any three of them shall transmit to the bishop under their hands and seals the depositions of witnesses taken before them, and also a report of the opinion of the majority of the commissioners present at such inquiry whether or not there be sufficient *prima facie* ground for instituting proceedings against the party accused; and such report shall be filed in the registry of the diocese; and that if the party accused shall hold any preferment in any other diocese or dioceses, the bishop to whom the report shall be made shall transmit a copy thereof, and of the depositions, to the bishop or bishops of such other diocese or dioceses, and shall also, upon the application of the party accused, cause to be delivered to such party a copy of the said report and of the depositions, on payment of a reasonable sum for the same, not exceeding two pence for each folio of ninety words.

Bishop may
pronounce
sentence, by
consent, with-
out further
proceedings.

“VI. And be it enacted, that in all cases where proceedings shall have been commenced under this act against any such clerk, it shall be lawful for the bishop of any diocese within which such clerk may hold any preferment, with the consent of such clerk and of the party complaining, if any, first obtained in writing, to pronounce, without any further proceedings, such sentence as the said bishop shall think fit, not exceeding the sentence which might be pronounced in due course of law; and all such sentences shall be good and effectual in law as if pronounced after a hearing according to the provisions of this act, and may be enforced by the like means.

Articles and
depositions to
be filed.

“VII. And be it enacted, that if the commissioners shall report that there is sufficient *prima facie* ground for instituting proceedings, and if the bishop of any diocese within which the party accused may hold any preferment, or the party complaining, shall thereupon think fit to proceed against the party accused, *articles shall be drawn up* (1), and, when approved and signed by an advocate practising in

bishops are bound by the principles of impartial justice to forward every information which they possess to the respondents, fourteen days before the issuing of the commission; and that the appellants should be strictly confined to the charges upon which the commission issued.

In the office of the judge promoted by *Steward v. Francis*, (3 Curt. 209,) it was

held, that a citation in a case of office must describe sufficiently the offence charged against the party, so as to show, that it is a matter of ecclesiastical cognisance, but that it need not minutely specify all the particulars of the offence which are to be charged in the articles.

(1) *Articles shall be drawn up*.—It seems that the articles must be exclusively drawn

Doctors Commons, shall, together with a copy of the depositions taken by the commissioners, be filed in the registry of the diocese of such last-mentioned bishop; and any such party, or any person on his behalf, shall be entitled to inspect without fee such copies, and to require and have, on demand, from the registrar, (who is hereby required to deliver the same,) copies of such depositions, on payment of a reasonable sum for the same, not exceeding two pence for each folio of ninety words.

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"VIII. And be it enacted, that a copy of the articles so filed shall be forthwith served upon the party accused, by personally delivering the same to him, or by leaving the same at the residence house belonging to any preferment holden by him, or if there be no such house, then at his usual or last known place of residence; and it shall not be lawful to proceed upon any such articles until after the expiration of fourteen days after the day on which such copy shall have been so served.

Service of copy
of the articles
on the party.

"IX. And be it enacted, that it shall be lawful for the said last-mentioned bishop, by writing under his hand, to require the party to appear, either in person or by his agent duly appointed, as to the said party may seem fit, before him at any place within the diocese, and at any time after the expiration of the said fourteen days, and to *make answer to the said articles* (1) within such time as to the bishop shall seem reasonable; and if the party shall appear, and by his answer admit the truth of the articles, the bishop, or his commissary specially appointed for that purpose, shall forthwith proceed to pronounce sentence thereupon according to the ecclesiastical law.

Bishop may
require the
party to appear
before him;

and may pro-
nounce judg-
ment on ad-
mission.

"X. And be it further enacted, that every notice and requisition to be given or made in pursuance of this act shall be served on the party to whom the same respectively relate in the same manner as is hereby directed with respect to the service of a copy of the articles on the party accused.

How notice
and requisition
to be served.

"XI. And be it enacted, that if the party accused shall refuse or neglect to appear and make answer to the said articles, or shall appear and make any answer to the said articles other than an unqualified admission of the truth thereof, the bishop shall proceed to hear the cause, with the assistance of three assessors, to be nominated by the bishop, one of whom shall be an advocate who shall have practised not less than five years in the court of the archbishop of the province, or a sergeant at law, or a barrister of not less than seven years standing, and another shall be the dean of his cathedral church, or of one of his cathedral churches, or one of his archdeacons, or his chancellor; and upon the hearing of such cause the bishop shall determine the same, and pronounce sentence thereupon according to the ecclesiastical law.

Proceedings on
a hearing
before the
bishop.

"XII. And be it enacted, that all sentences which shall be pronounced by any bishop or his commissary in pursuance of this act shall be good and effectual in law, and such sentences may be enforced by the like means as a sentence pronounced by an ecclesiastical court of competent jurisdiction.

Sentence of
bishop to be
effectual in
law.

"XIII. Provided always, and be it enacted, that it shall be lawful for the bishop of any diocese within which any such clerk shall hold any preferment, or if he hold no preferment then for the bishop of the diocese within which the offence is alleged to have been committed, in any case, if he shall think fit, either *in the first instance* (2) or after the commissioners shall have reported that there is

Bishop may
send the cause
to the court of
appeal of the
province.

up from the evidence given before the commissioners.

(1) *Make answer to the said articles*:—The respondent cannot be examined as a witness upon oath; but he can object against the illegal reception of evidence, and exercise all the rights of counsel. It likewise seems, that the respondent can claim to be heard by counsel.

(2) *In the first instance*:—In the office of the judge promoted by *Sanders v. Head*, (3 Curt. 32,) it appeared that the Bishop of Exeter gave notice of his intention of issuing

a commission for the purpose of making inquiry as to the grounds of certain charges against a clerk in orders, under Stat. 3 & 4 Vict. c. 86, s. 3; and without withdrawing such notice, his lordship issued letters of request to the Arches court of Canterbury. It was held, that the letters of request were sent to the Arches in the *first instance*, as required by the 13th section of the statute. Sir Herbert Jenner Fust observing: ". . . Considering the notice as not a commencement of the proceedings, so as to bar the bishop of the right of sending the case to this court;

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Judge of the court may make orders for expediting such suits.
No appeal from interlocutory decree.

Bishop empowered to inhibit party accused from performing services of the church, &c.

sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case by letters of request to the court of appeal (1) of the province, to be there heard and determined according to the law and practice of such court: provided always, that the judge of the said court may and he is hereby authorized and empowered from time to time to make any order or orders of court for the purpose of expediting such suits or otherwise improving the practice of the said court, and from time to time to alter and revoke the same: provided also, that there shall be no appeal from any interlocutory decree or order not having the force or effect of a definitive sentence, and thereby ending the suit in the court of appeal of the province, save by the permission of the judge of such court.

“XIV. And be it enacted, that in every case in which, from the nature of the offence charged, it shall appear to any bishop within whose diocese the party accused may hold any preferment, that great scandal is likely to arise from the party accused continuing to perform the services of the church while such charge is under investigation, or that his ministration will be useless while such charge is pending, it shall be lawful for the bishop to cause a notice to be served on such party at the same time with the service of a copy of the articles aforesaid, or at

considering it not necessary that the letters of request should contain the name and description of the person on whose application or at whose mere motion the case was commenced in the first instance: I overrule the protest. I entertain no difficulty whatever in the case. I assign the party to appear absolutely.”

The decision was appealed from, but was affirmed by the judicial committee of the Privy Council, and the cause remitted to the Arches court.

(1) *Court of appeal*.—Where, after a commission of inquiry, a case is sent, under Stat. 3 & 4 Vict. c. 86, s. 13, to the court of appeal of the province by the bishop of the diocese, within which the clerk proceeded against holds preferment, the articles must be confined to offences committed within that diocese; and commissioners, under the 3rd section, are bound to confine their inquiry within the diocese of the bishop who issues the commission.

Thus, in the office of the judge promoted by *Homer & Bloomer v. Jones*, (9 Jurist, 167,) which was a question as to the admissibility of certain articles against a clergyman for incontinency, the case was brought before the court by letters of request from the Bishop of Worcester. The requisite proceedings under the statute had taken place, and the commissioners reported, that there was *prima facie* ground for instituting further proceedings. The articles then brought in, pleaded several acts of incontinency committed within the diocese of Worcester, but the 6th pleaded an act of adultery committed in the city of Lichfield.

It was urged, in opposition to the articles, that this 6th article was inadmissible under Stat. 3 & 4 Vict. c. 86, as it charged a clergyman holding preferment in one diocese with the commission of an offence in another. And that the article was not only inadmissible in itself, but that it vitiated the rest of the articles, because the whole of the present proceeding was founded upon the report of the commissioners, and *non constat*, that they did not make their report

upon the evidence given in support of the particular charge, into which they had no business to have inquired. But it was contended upon the opposite side, that although the Bishop of Worcester could not have investigated this charge, yet the court, which had jurisdiction over the whole of the province, might, and, therefore, the article was admissible. Upon such facts and arguments, Sir *Herbert Jenner* *Past* observed: “This is a criminal proceeding under an act of parliament, intitled, ‘An Act for better enforcing Church Discipline,’ the 23rd section of which enacts, ‘that no criminal suit or proceeding against a clerk in holy orders of the united church of England and Ireland for any offence against the laws ecclesiastical, shall be instituted in any ecclesiastical court, otherwise than as hereinbefore enacted or provided.’ It is, therefore, quite clear, that these proceedings must be strictly according to the statute. The 6th of the articles contains a charge of adultery against this clergyman, and this act of adultery is alleged to have been committed in the city of Lichfield. The diocese of Lichfield, I must presume, extends over the city of Lichfield. The party proceeded against holds preferment in the diocese of Worcester, and the commission was issued by the Bishop of Worcester. It is very certain that he, the Bishop of Worcester, could not take any notice under the statute of the offence, which was committed beyond his jurisdiction. But it is said, that, although the bishop could not, yet that this court, as possessing jurisdiction throughout the whole province of Canterbury, might receive the charge. Now, the case is sent here by letters of request, which letters embody the proceedings before the commissioners, and these proceedings are the very foundation of the case before this court. I am of opinion, that the commissioners can proceed only within the diocese of the bishop who issues the commission; and I must presume that they have bounded their inquiries, as they ought to have done, within that limit; and I, therefore, reject this article.”

any time pending any proceedings before the bishop or in any ecclesiastical court, inhibiting the said party from performing any services of the church within such diocese from and after the expiration of fourteen days from the service of such notice, and until sentence shall have been given in the said cause: provided that it shall be lawful for such party, being the incumbent of a benefice, within fourteen days after the service of the said notice, to nominate to the bishop any fit person or persons to perform all such services of the church during the period in which such party shall be so inhibited as aforesaid; and if the bishop shall deem the person or persons so nominated fit for the performance of such services he shall grant his licence to him or them accordingly, or in case a fit person shall not be nominated the bishop shall make such provision for the service of the church as to him shall seem necessary, and in all such cases it shall be lawful for the bishop to assign such stipend, not exceeding the stipend required by law for the curacy of the church belonging to the said party, nor exceeding a moiety of the net annual income of the benefice, as the said bishop may think fit, and to provide for the payment of such stipend, if necessary, by sequestration of the living: provided also, that it shall be lawful for the said bishop at any time to revoke such inhibition and licence respectively.

“XV. And be it enacted, that it shall be lawful for any party who shall think himself aggrieved by the judgment pronounced in the first instance by the bishop, or in the court of appeal of the province, to appeal from such judgment; and such appeal shall be to the archbishop, and shall be heard before the judge of the court of appeal of the province, when the cause shall have been heard and determined in the first instance by the bishop, and shall be proceeded in in the said court of appeal in the same manner and subject only to the same appeal as in this act is provided with respect to cases sent by letters of request to the said court; and the appeal shall be to the queen in council, and shall be heard before the judicial committee of the Privy Council, when the cause shall have been heard and determined in the first instance in the court of the archbishop.

“XVI. And be it enacted, that every archbishop and bishop of the united church of England and Ireland, who now is or at any time hereafter shall be sworn of her majesty's most honourable Privy Council, shall be a member of the judicial committee of the Privy Council for the purposes of every such appeal as aforesaid; and that no such appeal shall be heard before the judicial committee of the Privy Council unless at least one of such archbishops or bishops shall be present at the hearing thereof; provided always, that the archbishop or bishop who shall have issued the commission hereinbefore mentioned in any such case, or who shall have heard any such case, or who shall have sent any such case by letters of request to the court of appeal of the province, shall not sit as a member of the judicial committee on an appeal in that case.

“XVII. And be it enacted, that it shall be lawful in any such inquiry for any three or more of the commissioners, or in any such proceeding for the bishop, or for any assessor of the bishop, or for the judge of the court of appeal of the province, to require the attendance of such witnesses, and the production of such deeds, evidences, or writings, as may be necessary; and such bishop, judge, assessor, and commissioners respectively shall have the same power for these purposes as now belong to the Consistorial court and to the court of Arches respectively (1).

“XVIII. And be it enacted, that every witness who shall be examined in pursuance of this act shall give his or her evidence upon oath or upon solemn affirmation in cases where an affirmation is allowed by law instead of an oath, which

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What appeals
may be.

Archbishops
and bishops,
members of
the Privy
Council, to be
members of
the judicial
committee on
all appeals
under this act.

Attendance of
witnesses, and
production of
papers, &c.
may be com-
pelled.

Witnesses to
be examined
on oath, and

(1) *The same power . . . as now belong to the Consistorial court and to the court of Arches respectively*:—The jurisdiction of the ecclesiastical court in matters ecclesiastical does not depend on any particular canon or statute, but on the general ecclesiastical law, and on the universal consent by which some matters are exclusively

of ecclesiastical, and not of temporal cognizance.

And it appears, that unless it be the intention to proceed solely under a particular statute, for a particular penalty pointed out by that statute, it is competent to plead the general ecclesiastical law, as contained in the canons or constitutions.

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to be liable to
punishment
for perjury.

Provisions of
act not to
interfere with
persons insti-
tuting suits to
establish a civil
right.

23 Hen. 8,
c. 9.

Suits to be
commenced
within two
years.

oath or affirmation respectively shall be administered by the judge of the court or his surrogate, or by the assessor of the bishop, or by a commissioner; and that every such witness who shall wilfully swear or affirm falsely shall be deemed guilty of perjury.

“XIX. Provided always, and be it enacted, that nothing hereinbefore contained shall prevent any person from instituting as voluntary promoter, or from prosecuting, in such form and manner and in such court as he might have done before the passing of this act, any suit which, though in form criminal, shall have the effect of asserting, ascertaining, or establishing any civil right, nor to prevent the archbishop of the province from citing any such clerk before him in cases and under circumstances in and under which such archbishop might, before the passing of this act, cite such clerk under and in pursuance of a statute passed in the twenty-third year of the reign of King Henry the Eighth, intituled, ‘An Act that no Person shall be cited out of the Diocese where he or she dwelleth, except in certain Cases.’”

“XX. And be it enacted, that every suit or proceeding against any such clerk in holy orders for any offence against the laws ecclesiastical shall be commenced within two years after the commission of the offence (1) in respect of which the suit

(1) *Every suit or proceeding . . . shall be commenced within two years after the commission of the offence.*—In the office of the judge promoted by *Titchmarsh v. Chapman (Clerk)*, (3 Curt. 703,) it appeared that on the 20th of May, 1843, a decree, founded on letters of request from the Bishop of Ely, issued from the court of Arches, citing the Reverend William Herbert Chapman, clerk in holy orders, rector of Bassingbourn, in the county of Cambridge, to appear, and answer to certain heads, positions, or interrogatories, and more especially, for having within the diocese of Ely, offended against the laws ecclesiastical, by refusing a second time, on the 26th of May, 1841, to bury the corpse or body of Jane Rumbold, spinster, (an infant,) a parishioner of the parish of Bassingbourn, when duly applied to on that behalf, after convenient notice or warning given on both occasions, (the first whereof occurred on or about the 17th of February, 1840,) without any just or sufficient cause on either occasion.

The party cited appeared under protest, by reason, that the 20th section of Stat. 3 & 4 Vict. c. 86, provides, “that every suit or proceeding against any clerk in holy orders, for any offence against the laws ecclesiastical, shall be commenced within two years after the commission of the offence in respect of which the suit or proceeding shall be instituted, and not afterwards.” That by the first refusal, in February, 1840, the offence, if any, was complete, and that the time limited by the statute, for proceeding in such case, expired before the service of the citation.

Upon these facts, Sir Herbert Jenner *Just* delivered judgment in the following language: “I have, since the last court day, looked into all the cases and authorities, and have considered the arguments, addressed to the court, upon the principles and decisions of those cases; the result I have arrived at is this, that in the present stage of the cause, there is not sufficient to stop the proceedings *in limine*. I am, therefore, prepared to overrule the protest; but I do not think it

advisable to enter into a discussion of the principles of the several cases, because, under the peculiar circumstances of this case, I may possibly be forestalling the arguments at the hearing, either for the prosecution, or for the defence. I will, therefore, merely state the grounds on which I think I ought to require an absolute appearance by the party cited.

“This is a proceeding against the Rev. W. H. Chapman, clerk in holy orders of the united church of England and Ireland, rector of the rectory and parish church of Bassingbourn, in the county of Cambridge, diocese of Ely, and province of Canterbury: and the charge is, for having offended against the ecclesiastical laws, by refusing a second time, to wit, on the 26th of May, 1841, to bury the corpse or body of Jane Rumbold, spinster, a parishioner of the parish of Bassingbourn, aforesaid, when duly applied to on that behalf, after convenient notice or warning given on both occasions, the first whereof occurred on or about the 17th of February, 1840, and without any just or sufficient cause on either occasion. This is the tenor of the offence which the citation sets forth as the charge against this gentleman.

“The question comes before the court by letters of request, which were presented to, and accepted by the court, from the Bishop of Ely; and a decree, founded on them, issued, which was returned on the 11th of May in the present year. The second application for the burial of the child was on the 26th of May; the citation, founded on the letters of request, called on Mr. Chapman to answer for having offended against the laws ecclesiastical. (The court read the citation.) Therefore, the citation recites, that two applications have been made to this gentleman to bury the corpse of a child of one of the parishioners of the parish of which he is rector, and it states his refusal to do so on both occasions, alleging both refusals to be without just or sufficient cause.

“An appearance was given to this citation under protest; the grounds of the protest

or proceeding shall be instituted, and not afterwards; provided always, that whenever any such suit or proceeding shall be brought in respect of an offence for which

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being, that according to the true intent and construction of the act of parliament, Stat. 3 & 4 Vict. c. 86, s. 20, the offence was committed and depending on the refusal to the first application, namely, on the 17th of February, 1840; the words of protest are, 'That it appears on the very face of the citation, that the actual offence, if any, was committed without the period prescribed by the limitations of the statute, namely, on the 17th of February, 1840, on which day the wrongful act, if any, must be holden to have been done, according to the true intent and legal interpretation of the statute aforesaid;' this is, the statute limiting proceedings for offences of an ecclesiastical nature; it is known as the act 'For better enforcing Church Discipline;' by it, all proceedings of this nature must be commenced within two years after the commission of the offences, therefore, the ground of protest is, that the offence was committed in February, 1840; and the citation was not served until May, 1843. If the construction contended for at the bar be the true construction and interpretation of the statute, this court has no jurisdiction to inquire into the offence; but the question for the court to decide is, whether a fresh offence was not committed by this gentleman on the 26th of May, 1841, consequently, within the period limited by the act for proceeding against clergymen for offences against the ecclesiastical laws, in ecclesiastical courts. There is some degree of difficulty on the first appearance of this citation; it recites the application made on the 17th of February, 1840; and it recites that such application was not attended to, namely, that the rector refused to bury the corpse on that day, without reasonable cause; on the first blush of the case it might appear that it was intended to proceed against this gentleman for an offence committed in February, 1840, as well as for the offence in May, 1841; this was the doubt and difficulty I felt in this case, not whether an offence was committed in 1841, but whether in truth and fact it was not to be inferred, that it was intended to proceed for both offences. On consideration, however, of the language of the citation, I think that such is not the true construction, for, by the citation itself, the offence is 'for having refused a second time, to wit, &c., being within two years.' I take this to be the true interpretation of the charge contained in the citation.

"Then is this an offence which is capable of being repeated? In that lies the whole strength of the argument in support of the protest. My attention was called, and properly called, by Dr. Phillimore, to the language of the citation, as being deficient in clearness, and authorities were stated, and instances adduced from the Digest and other civil law authorities, to shew, that a citation must be clear and specific;—no doubt it must; and I think, on a due consideration of this whole instrument, that the charge

is sufficiently clear, and that the party is only called on to answer for the offence, of having, in 1841, refused to bury this child; which is an offence within the time limited by the statute. The question really is, was this an offence on the 26th of May, 1841? The whole strength of Dr. Harding's argument turns on this; I am clearly of opinion as at present advised, to hold that it is so. It would be, in my opinion, wrong, certainly contrary to anything I have heard, to stop these proceedings *in limine*, at least without having first heard the circumstances under which the application to bury this child was made a second time. Dr. Harding's argument was founded on cases at common law, actions of trover, trespass, and on the case; I have looked into all the cases cited, and there seems to me to be this distinction, in all these instances the actions arising out of them were limited by act of parliament, and the question turned on this, from what time the particular limitation by statute began to run; there is no necessity to go into the cases,—on principle, when once the cause of suit arises, when that is complete, the statute runs from that time; the only question has been, whether the cause of action was complete at an early period, or at a subsequent time.
Saunders v. Saunders, 2 East, 255. *Godin v. Ferris*, 2 Hen. Black. 14. *Wordsworth (Clerk) v. Harley*, 1 B. & Ad. 391.

"In all these cases, in trover, trespass, and action on the case, it must be recollected that the question respects a claim to property between two individuals; that when once the property has been converted, the wrongful act is complete; and that the statute runs from the period, when the offence is complete. These suits regard private rights between two individuals; here the offence is a public offence, a public scandal. It must be borne in mind, that the court knows nothing of the ground for the refusal to bury this corpse; for all the court can know, the child may have been baptized by a clergyman of the church of England; by the rector of this very parish himself: the refusal is not for the reason, that the child was unbaptized: but is a general refusal, as to the cause, of which the court can at present know nothing.

"It seems to me, at present, to be too much to say, that a clergyman may refuse to bury the corpse of a parishioner, and that, because proceedings are not instituted within a certain time, he is to be at liberty to persist in such refusal. The 68th Canon imposes the same punishment for refusing to christen a child, as for refusing to bury a corpse. But, can it be said, that if a child be brought to be baptised, and the minister refuses on one Sunday, and it is brought a second time, that a second refusal would not be an offence; I see, at present, no distinction between the two cases; but, as before said, I will not forestall any arguments which may hereafter be offered. What is the differ-

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a conviction shall have been obtained (1) in any court of common law, such suit or proceeding may be brought against the person convicted at any time within six

ence between the two cases? Here is a child, for anything that appears, properly baptized, over whose body the clergyman of the parish is bound to read the church burial service: and that child, so far as appears on the citation, is unbaptized; this is a public scandal; and the wrong-doer, as appears on the citation, is the minister of the parish, whose duty it is to bury the child, and, until that is done, as it appears to me, the offence continues. Something was said as to the length of time between the first and second application; that may be matter proper to be hereafter considered, but I do not think, because the corpse was not brought within a definite or specific time, that, therefore, the minister may refuse to bury it; I do not know that there is any specific time, within which a body is to be brought for interment. I well remember a case, (*Office of the judge promoted by Gilbert v. Buzzard*, 2 Consist. 333,) where the dispute was as to the fees payable for the interment of a corpse in an iron coffin; the party died on the 2nd of March, 1819; proceedings in this court were not taken until July, 1820; and the sentence of the judge was not given until May, 1821. Lord *Stowell* recommended that the body, which had, to use his own expression, 'remained so long unhonoured,' should be buried without prejudice to the right of the parish, as to the fees to be paid. Therefore, I see no reason in this respect why the rites and services of the church should not have been performed at the period of the second application.

"Under these circumstances, as at present advised, on this citation and letters of request, the charge against this gentleman being for having refused to bury this child in 1841, therefore, within the period of two years limited by the act of parliament; although there is a recital, that the party had, in the first instance, when applied to to bury the corpse, refused, I cannot, in this stage of the proceedings, hold that this is an offence which cannot be committed a second time. The party has apparently not performed a duty incumbent on him. I think the offences may be separated from each other, and that the second refusal may be an offence for which he may be proceeded against; although the first offence may have been committed in February, 1840.

"I overrule the protest, assign the party to appear absolutely, and reserve the costs until the final hearing, or other disposal of the cause."

In *Titchmarsh v. Chapman (Clerk)*, (1 D. & L. 732,) the defendant, as previously stated, was cited in the court of Arches of Canterbury, for refusing a second time, on the 26th of May, A.D. 1841, to bury a corpse, the first refusal appearing on the face of the citation to have been made on the 17th of February, 1840:—it was held, upon a motion for a prohibition, that the decision of the court of Arches, that these refusals constituted distinct offences, was a question involv-

ing the construction of the 68th Canon, and, therefore, the ground of an appeal; and not simply a misconstruction of Stat. 3 & 4 Vict. c. 86, s. 20, and that, consequently, no prohibition could be granted:—

Mr. Justice *Wightman* observing: "It appears to me that the ecclesiastical court has proceeded on the ground, either that the was a continuing offence, or that the second refusal was a distinct offence in itself against the 68th Canon. If so, that is a question of ecclesiastical cognizance, and the proper remedy is by appeal, if they have proceeded wrongly. The defendant, therefore, seeks to bring before this court, not the construction to be put upon the act of parliament, but that to be put upon the 68th Canon; and were I to consider this as a fit case for a prohibition to issue, I can scarcely conceive any case in which a similar application might not be made."

(1) *Offence for which a conviction shall have been obtained*.—The following case will tend to illustrate the law of evidence in proving the degradation of a clergyman. In *Sandys' case*, (1 Irish Circ. Rep. 10,) which was a prosecution upon Stat. 12 Geo. 1, c. 3 s. 1 (Ir.), against a degraded clergyman for marrying two protestants; it was held, that the entry of the sentence of degradation in the book of acts of the Consistorial court, was sufficient proof of the degradation of the prisoner.

The indictment contained several counts: the first of which stated, that Richard Sandys, gentleman, was a degraded clergyman of the united church of England and Ireland, as by law established, and that the said Richard Sandys being then and there such degraded clergyman, "and there, that is to say, on the day and year aforesaid, with force and arms, at Cloneneagh aforesaid, in the county aforesaid, feloniously and unlawfully did celebrate a marriage between one John Lalor, then being a protestant, and one Sarah Howard, then also being a protestant," against the peace and statute.

The other counts varied the charge, by describing the defendant as a degraded clergyman of the "church of Ireland," by describing the parties married as "reputed protestants," by describing the defendant as "a layman, pretending to be a clergyman of," &c., and by charging that he "took upon himself to celebrate," &c.

The statute under which the prisoner was indicted, was 12 Geo. 1, c. 3 (Ir.), entitled, "An Act to prevent Marriages by degraded Clergymen and Popish Priests, and for preventing Marriages consummated from being avoided by Pre-Contracts, and for the more effectual punishing of Bigamy." The first section, after reciting that "clandestine marriages are for the most part celebrated by popish priests and degraded clergymen, to the manifest ruin of several families within this kingdom," for remedy thereof enacts, "that if any popish priest, or reputed popish priest, or person pretending to be a

calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence in respect of which such suit or proceeding shall be so brought. STAT. 3 & 4
VICT. c. 86.

popish priest, or any degraded clergyman, or any layman, pretending to be a clergyman of the church of Ireland, as by law established, shall, after the 25th of April, 1726, celebrate or take upon him to celebrate any marriage between two protestants or reputed protestants, or between a protestant or reputed protestant and a papist, such popish priest, or reputed popish priest, and such degraded clergyman, and layman, pretending to be a clergyman, shall be, and is hereby declared to be, guilty of felony, and shall suffer death as a felon, without benefit of the clergy or of the statute."

Stat. 3 & 4 Gul. 4, c. 102, s. 1, repeals so much of the foregoing enactment, "as declares or enacts that any Roman catholic clergyman who shall celebrate any marriage between two protestants or reputed protestants, or between a protestant or reputed protestant and a Roman catholic, shall be guilty of felony, and suffer death as a felon, without benefit of clergy or of the statute." But the 3rd section enacts, that nothing in this act shall extend, or be construed to extend, "to the repeal of any enactments now in force for preventing the performance of the marriage ceremony by degraded clergymen."

The fact of the defendant having, about twenty years ago, frequently officiated at divine service in the parish church of Maryborough, of which he was curate, and of his name being in the registry-book, certifying births and marriages, was proved. The Rev. T. Harpur, incumbent of Maryborough, proved that he was in Carlow, and took a part in the proceedings when sentence of degradation was pronounced upon the defendant by the Bishop of Leighlin and Ferns.

Mr. Henry Davis, clerk of the registrar of the diocese of Leighlin, produced the book of acts, (the book was entitled thus, in the first page, "Acts had and done in the Consistorial Court of the Diocese of Leighlin, before the Rev. S. T. Roberts, Surrogate of the Worshipful Alexander Hamilton, Esq., LL.D., Vicar-General,") of that diocese from the registrar's office in Carlow, which contained the following entry, after a recital of certain prior proceedings: "On reading over the foregoing answers, his lordship the Lord Bishop of Leighlin and Ferns did pronounce sentence of degradation against the said Richard Sandys, as a priest and deacon of the established church.

"P. PRESTON,

"Registrar of the Consistorial Court of Leighlin, and Notary Public."

The witness stated the signature to be that of Mr. Preston, the registrar, and being cross-examined, stated, that he was clerk to the registrar since 1833; did not know of any sentence being pronounced within his time; did not know whether sentences were or not usually made up in any form, and knew of no other sentence in this case.

The celebration of the marriage was then

proved by the parties married, viz., John Lalor and Sarah Lalor, otherwise Howard, who both stated they were protestants.

The defendant, who had no counsel, then produced letters of the orders of a priest, granted on parchment, under seal, by the Bishop of Killala, and submitted that no valid sentence of degradation had been passed upon him, as he had not been duly cited to appear before the Consistorial court of Leighlin, and that even if such sentence had been passed, it had not been sufficiently proved by a mere minute in a book without the production of any document under seal.

Chief Justice *Doherty* stated, "as to the first objection, it is quite untenable; for where a judgment of a court is given in evidence, it must be taken to have been given after proceedings duly had. As to the second, some difficulties do seem to exist."

It was suggested by *amicus curiæ*, that, according to the ordinary practice of ecclesiastical courts, the sentence is, and should be made out in form, and certified under seal, and that a mere entry by the registrar, in a book, of the pronouncing such sentence, was not admissible in evidence, for the purpose of proving such sentence, any more than an entry in the book of the clerk of the crown is evidence of a judgment at the assizes, which must be proved by a record regularly made up.

Counsel for the prosecution contended, that the proof given was sufficient, and then mentioned that the defendant had been already twice tried and convicted of similar offences; once before Baron Smith, and once before Chief Baron Joy, on both of which occasions the degradation was proved in the manner now resorted to, and had been each time held sufficient; whereupon

Chief Justice *Doherty* ruled the evidence to be sufficient, and left the case to the jury, who found the defendant guilty, and sentence of death was recorded.

It would seem to be the practice of the ecclesiastical courts in general, to have sentences made up in regular form, and such a form of sentence in a cause of degradation may be seen in Cunningham, 338. In such a cause the sentence, if made out, would probably be in the hands of the proctor of office who conducted the proceedings against the defendant in the Consistorial court of Leighlin. No search for the sentence was proved, nor was any evidence given to lay a foundation for the reception of the entry in the book of acts, as secondary evidence; it must, therefore, be considered to have been admitted as primary evidence of the defendant's degradation. The small quantity of business transacted in some of the diocesan courts in Ireland, and the consequent want of experience in the officers, may account for the existence of inartificial practice in their proceedings, if such be sometimes discovered.

In the *Duchess of Kingston's case*, (20 How. St. Tr. 355,) a sentence in a cause of

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the sentence of degradation were not given in evidence, was not made at the trial. If it had been, it would probably have been found difficult to sustain, as a general proposition, that the sentence of a spiritual court is admissible in evidence, without reading the proceedings upon which it is founded. Is the particular instance of a sentence of degradation, the reason of requiring the superior proceedings to be read, may not be very obvious, or may not apply, but the rule of evidence depend upon general principles not to be forsaken in particular cases. The judgment of a court of law is proved by the record which contains in full the allegations of the parties, showing clearly what is in issue between them. Decrees of courts of equity, as at present framed, and sentences in spiritual courts are drawn in a short form, not reciting the proceedings in a way to show the questions at issue between the parties, and in most cases, it will, perhaps, be found, that a decree or sentence when sought to be given in evidence, will require, to make it admissible, that the bill and answer, or final and answer, be read likewise. 1 Irish Civ. R. p. 13, 14, in not.

(1) No criminal suit or proceeding against a clerk in holy orders . . . shall be maintained.

enacted, that when any act, save sending a case by letters

STAT. 3 & 4
VICT. c. 86.

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charge. On the appointed day the dean attended, but disclaimed the jurisdiction, obstructed the proceedings, was pronounced in contempt, withdrew contumaciously, and did not appear again. The commissary decreed to proceed *in person* in his absence, and heard counsel and evidence on the charge, refused to hear counsel for the dean till he should purge his contempt, which was not done, and the commissary gave judgment, that the charge proved, and that satisfaction must be passed. The commissary passed sentence, by which he annulled the proceedings, and adjudged the dean committed and was committed to prison, as he was in contempt; deposed him from office and place of dean, and ordered him not in future to use the same, on pain of the same. The visitation was

prohibited to the bishop, and the commissary against proceeding further in the matter of the said charge of simony, executing or giving effect to the sentence: it was held, 1. That the inquiry before the commissary was not a mere incident to the visitation, but became a distinct criminal proceeding when the commissary entered upon the examination of proofs, as above stated, with a view to punishment.

2. That such inquiry was a "criminal proceeding" within Stat. 3 & 4 Vict. c. 86, s. 23, those words not being restrained by the recital of the first section, which mentions only "proceeding in *causes* for the correction of clerks."

3. That an archbishop or bishop, exercising his general authority as visitor of an ecclesiastical body, (and not visiting under the statutes of a particular foundation,) acts, not personally, but as judge in a court, and must follow established forms of process and inquiry; at least in hearing accusations with a view to punishment. And, therefore,

4. That the proceeding in question was not within the reservation in Stat. 3 & 4 Vict. c. 86, s. 25, of any authority which the archbishops or bishops may exercise personally, and without process in court. Consequently,

5. That the proceeding could not legally be instituted otherwise than as Stat. 3 & 4 Vict. c. 86, directs.

6. That a prohibition could not properly have been moved for before the visitor proceeded to sentence; but that it might well be applied for afterwards, as the sentence had a continuing operation; and as the court did not appear to have been dissolved at the time of the motion.

Upon such facts a prohibition was granted, without calling upon the applicant to appear; Lord Denman, after stating the facts, delivering the judgment of the court as follows:

"Prohibition is claimed on various grounds; and that which requires to be first considered is the late act of parliament, 3 & 4 Vict. c. 86, 'for better enforcing Church Discipline,' which recites 'that the manner of proceeding

STATUTA VICTORIÆ. A.D. 1837—1844.
by the parties married, viz. John
Sarah Laker, otherwise Howard,
and they were Protestant, that
the orders of a priest,
and that no
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of
4 Vict.
of York,
canons, registrar,
ence might be re-
at a visitation of the dean
monically to receive and sub-
archbishop's intended "metropo-
visitation, examinations, due correc-
s," &c., to exhibit their statutes, &c., if
required, pay the due procurations, and fur-
ther to do and receive what the business and
nature of such a visitation require. He also
appointed a commissary for holding the vi-
sitation in his absence, for correcting and
punishing by ecclesiastical censures whoever
should be contumacious, for administering
articles in writing to the dean and chapter,
and receiving their presentments and answers,
and for adjourning and proroguing such vi-
sitation from time to time and place, and
completing and dissolving the same, and for
doing every thing else appertaining to the
nature and quality of the said visitation.
The visitation was holden, and articles of
inquiry delivered to the dean and chapter,
touching the administration of their funds,
performance of divine service, &c. A canon,
in reply to an article as to the repair of
chancels, sent in a statement imputing si-
mony to the dean, which was afterwards
communicated to the dean by a private letter
from the commissary. At an adjourned
meeting, of which the dean had notice, but
which he (unavoidably as he said) did not
attend, the canon delivered a fuller statement
of the charge from a paper, which was after-
wards deposited with the actuary. The com-
missary appointed a day for hearing evi-
dence; and the dean was requested, by letter,
written at the archbishop's desire by his se-
cretary, to attend and meet the accusation.
No formal articles or libel were ever exhibited;
nor was the dean ever cited to answer any

STAT. 3 & 4
VICT. c. 86.
27 Geo. 3, c. 44,
not to apply to
suits against
spiritual persons
for certain
offences.

Power of arch-
bishops and
bishops as to
exempt or pec-
uliar places or
preferments.

No suit to be
instituted
except as here-
in provided.

"XXI. And be it declared and enacted, that the act passed in the twenty-seventh year of the reign of his late majesty King George the Third, intituled, 'An Act to prevent frivolous and vexatious Suits in the Ecclesiastical Courts,' does not and shall not extend to the time of the commencement of suits or proceedings against spiritual persons for any of the offences in the said act named.

"XXII. And be it enacted, that every archbishop and bishop within the limit of whose province or diocese respectively any place, district, or preferment, exempt or peculiar, shall be locally situate, shall, except as herein otherwise provided, have, use, and exercise all the powers and authorities necessary for the due execution by them respectively of the provisions and purposes of this act, and for enforcing the same with regard thereto respectively, as such archbishop or bishop respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop; and where any place, district, or preferment, exempt or peculiar, shall be locally situate within the limits of more than one province or diocese, or where the same, or any of them, shall be locally situate between the limits of the two provinces, or between the limits of any two or more dioceses, the archbishop or bishop of the cathedral church to whose province or diocese the cathedral, collegiate, or other church or chapel of the place, district, or preferment respectively shall be nearest in local situation shall have, use, and exercise all the powers and authorities which are necessary for the due execution of the provisions of this act, and enforcing the same with regard thereto respectively, as such archbishop or bishop could have used if the same were not exempt or peculiar, but were subject in all respects to the jurisdiction of such archbishop or bishop respectively, and the same, for all the purposes of this act, shall be deemed and taken to be within the limits of the province or diocese of such archbishop or bishop; provided that the peculiars belonging to any archbishopric or bishopric, though locally situate in another diocese, shall continue subject to the archbishop or bishop to whom they belong, as well for the purposes of this act as for all other purposes of ecclesiastical jurisdiction.

"XXIII. And be it enacted, that *no criminal suit or proceeding against a clerk in holy orders* of the united church of England and Ireland for any offence against the laws ecclesiastical *shall be instituted in any ecclesiastical court, otherwise than is hereinbefore enacted or provided* (1) (2).

jactitation of marriage was proposed to be read in evidence on behalf of the defendant, when the attorney-general, for the prosecution, insisted that the libel, allegations, answers, &c., on which the sentence was founded, should also be read, objecting to the reading of the sentence abstractedly from the allegations and other matters upon which that sentence proceeded. Whereupon Lord Camden asked the counsel for the prisoner, whether they meant to object to the whole proceedings in the jactitation cause being read. To which Mr. Wallace, her grace's counsel, said: "I have not, upon the part of the noble prisoner, the least objection that all the proceedings should be brought before your lordships. I conceive that what the officer has now brought before the court, was what is usually given in evidence in such case. I do not recollect any other in any case I have found, being produced, but the sentence, which states in short the proceedings had in that court, but I understand the proceedings are here, and on the part of the noble prisoner there is not the least objection to the whole being laid before the court." The proceedings were then put in. 20 How. St. Tr. 377. The objection, that the proceedings in the cause upon which was founded

the sentence of degradation were not given in evidence, was not made at the trial. If it had been, it would probably have been found difficult to sustain, as a general proposition, that the sentence of a spiritual court is admissible in evidence, without reading the proceedings upon which it is founded. In the particular instance of a sentence of degradation, the reason of requiring the anterior proceedings to be read, may not be very obvious, or may not apply, but the rules of evidence depend upon general principles not to be forsaken in particular cases. The judgment of a court of law is proved by the record which contains in full the allegations of the parties, showing clearly what is in issue between them. Decrees of courts of equity, as at present framed, and sentences in spiritual courts are drawn in a short form, not reciting the proceedings in a way to show the questions at issue between the parties, and in most cases, it will, perhaps, be found, that a decree or sentence when sought to be given in evidence, will require, to make it intelligible, that the bill and answer, or libel and answer, be read likewise. 1 Irish Civ. R. p. 13, 14, in not.

(1) *No criminal suit or proceeding against a clerk in holy orders . . . shall be insti-*

"XXIV. And be it enacted, that when any act, save sending a case by letters

Stat. 3 & 4
Vict. c. 86.

tuled in any ecclesiastical court, otherwise than is hereinbefore enacted or provided:—

All offences against the laws ecclesiastical, by a clerk in holy orders, are henceforth to be proceeded against according to the regulations prescribed by the Church Discipline Act, and in no other way whatsoever. The mode of procedure before the passing of such statute was by articles in the diocesan or peculiar court, or by letters of request to the court of the metropolitan. Any person, it has been held, may prosecute a clergyman for a neglect of his clerical duty. Nor have the Marriage Acts deprived the ordinary of the power of correcting any of his clergy who may offend against the order of the church in publishing banns, or solemnizing matrimony, in any other manner than that prescribed by law; and also, as it would seem, for refusing to solemnize a marriage after the preliminary conditions required by the law have been satisfied. 3 Burn's E. L. by Phillimore, 364, 365. *Vide* Sir George Lee's remarks, in *Argar v. Holdsworth* (ante 1228); *Wynn v. Davies*, 1 Curt. 69.

In the matter of the Dean of York, (2 Q. B. 2,) it appeared that the Archbishop of York, after the passing of Stat. 3 & 4 Vict. c. 86, cited the Dean and Chapter of York, (enjoining them to cite the canons, registrar, and officers whose presence might be required,) to appear at a visitation of the dean and chapter, canonically to receive and submit to the archbishop's intended "metropolitan visitation, examinations, due corrections," &c., to exhibit their statutes, &c., if required, pay the due procurations, and further to do and receive what the business and nature of such a visitation require. He also appointed a commissary for holding the visitation in his absence, for correcting and punishing by ecclesiastical censures whoever should be contumacious, for administering articles in writing to the dean and chapter, and receiving their presentments and answers, and for adjourning and proroguing such visitation from time to time and place, and completing and dissolving the same, and for doing every thing else appertaining to the nature and quality of the said visitation. The visitation was holden, and articles of inquiry delivered to the dean and chapter, touching the administration of their funds, performance of divine service, &c. A canon, in reply to an article as to the repair of chancels, sent in a statement imputing simony to the dean, which was afterwards communicated to the dean by a private letter from the commissary. At an adjourned meeting, of which the dean had notice, but which he (unavoidably as he said) did not attend, the canon delivered a fuller statement of the charge from a paper, which was afterwards deposited with the actuary. The commissary appointed a day for hearing evidence; and the dean was requested, by letter, written at the archbishop's desire by his secretary, to attend and meet the accusation. No formal articles or libel were ever exhibited; nor was the dean ever cited to answer any

charge. On the appointed day the dean attended, but disclaimed the jurisdiction, obstructed the proceedings, was pronounced in contempt, withdrew contumaciously, and did not appear again. The commissary decreed to proceed *in personam* in his absence, and heard counsel and evidence on the charge, but refused to hear counsel for the dean till he should purge his contempt, which was not done, and the commissary gave judgment, declaring the charge proved, and that sentence of deprivation must be passed. The archbishop then passed sentence, by which he recited the above proceedings, and adjudged that the dean had committed and was convicted of simony, and was in contempt; deprived him of the dignity and place of dean, &c., and monished him not in future to use the dress or ensigns of a dean, on pain of the greater excommunication. The visitation was then adjourned.

On motion for a prohibition to the bishop and commissary against proceeding further in the matter of the said charge of simony, or executing or giving effect to the sentence: it was held, 1. That the inquiry before the commissary was not a mere incident to the visitation, but became a distinct criminal proceeding when the commissary entered upon the examination of proofs, as above stated, with a view to punishment.

2. That such inquiry was a "criminal proceeding" within Stat. 3 & 4 Vict. c. 86, s. 23, those words not being restrained by the recital of the first section, which mentions only "proceeding in *causes* for the correction of clerks."

3. That an archbishop or bishop, exercising his general authority as visitor of an ecclesiastical body, (and not visiting under the statutes of a particular foundation,) acts, not personally, but as judge in a court, and must follow established forms of process and inquiry; at least in hearing accusations with a view to punishment. And, therefore,

4. That the proceeding in question was not within the reservation in Stat. 3 & 4 Vict. c. 86, s. 25, of any authority which the archbishops or bishops may exercise personally, and without process in court. Consequently,

5. That the proceeding could not legally be instituted otherwise than as Stat. 3 & 4 Vict. c. 86, directs.

6. That a prohibition could not properly have been moved for before the visitor proceeded to sentence; but that it might well be applied for afterwards, as the sentence had a continuing operation; and as the court did not appear to have been dissolved at the time of the motion.

Upon such facts a prohibition was granted, without calling upon the applicant to appear; Lord Denman, after stating the facts, delivering the judgment of the court as follows:

"Prohibition is claimed on various grounds; and that which requires to be first considered is the late act of parliament, 3 & 4 Vict. c. 86, 'for better enforcing Church Discipline,' which recites 'that the manner of proceeding

If a bishop is
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STAT. 3 & 4
VICT. c. 86.

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of request to the court of appeal of the province, is to be done or any authority is

in causes for the correction of clerks requires amendment,' repeals the act 1 Hen. 7, c. 4, prescribes the course of proceeding which shall hereafter be observed 'in every case of any clerk in holy orders,' 'who may be charged with any offence against the laws ecclesiastical,' and finally enacts 'that no criminal suit or proceeding against a clerk in holy orders' 'for any offence against the laws ecclesiastical, shall be instituted in any ecclesiastical court otherwise than' according to the provisions of that act. These enactments are, however, qualified by a proviso, 'That nothing in this act contained shall be construed to affect any authority over the clergy of their respective provinces or dioceses, which the archbishops or bishops of England and Wales, may now according to law exercise personally and without process in court.'

"The twenty-third section, enacting that no criminal suit or proceeding shall be instituted in any other manner than this act requires, was relied on as a decisive bar against the trial that has taken place. The counsel for the dean argued, that he, being a clerk in holy orders, was prosecuted in a criminal proceeding for the offence of simony, a known offence against the laws ecclesiastical, and that the authority which assumes to deprive him is an ecclesiastical court, the court of the ordinary holding his visitation. Two answers to this argument are offered. 1. That what has been done is not a criminal proceeding within the meaning of the act. 2. That the proceedings were in virtue of authority exercised by the archbishop, according to the law as it then stood, over a clerk of his province, personally, without process in court.

"The learned counsel against the prohibition observed, in the first place, that the statute applied to *causes*, a word said to be well understood, and to import suits regularly promoted in the spiritual courts. But the employment of that word in the short preamble affords a most inadequate reason for an arbitrary restriction of the whole act to that form of proceeding which in the ecclesiastical law may be with technical propriety described as a *cause*. It might as well be restricted to causes promoted for incontinency, the only class punishable under Stat. 1 Hen. 7, of which the repeal is the only object of the same section, after a recital that the manner of proceeding for correction of clerks ought to be amended. But, although the first section is thus limited, the general enactments are extended to all offences; and in like manner, though *causes* are the only proceedings mentioned in the preamble, the twenty-third section clearly provides, that the cause enjoined by the statute shall be pursued in every criminal suit or proceeding against a clerk in holy orders in the courts ecclesiastical.

"But is this a criminal proceeding, or is it merely an incidental fact arising out of the visitation, in the course of which it is brought to the ordinary's knowledge, and, properly,

in the discharge of that duty, inquired into by him, but not instituted as a criminal proceeding? The answer appears to be that, as soon as the visitor proceeds to examine the proofs of an ecclesiastical offence committed by a clerk for the purpose of punishment by deprivation, more especially, as in this case, at the instance of an accuser who avails himself of the aid of a professional advocate, a criminal proceeding is undoubtedly instituted and in full progress.

"There is yet another term in the description of suits or proceedings given by the twenty-third section. They must be in some 'ecclesiastical court.' The ordinary's visitation is said not to be an ecclesiastical court, but to range within the proviso (sect. 23) which prevents the statute from applying to authority personally exercised by the bishop without process in court.

"This brings us directly to the question, whether the bishop, as visitor of a dean and chapter, is legally invested with power to deprive the dean of his office for an ecclesiastical offence without process in court. If he has the power, he must derive it from the general words above cited; but they can scarcely be expected to receive this construction without proof that they have habitually, and in former times, when church discipline was much more active than of late, been so construed, or at least that the learned writers on ecclesiastical law have put that meaning upon them.

"Now, in the first place, there is no example of such a power being exercised by the bishops over their clergy, even in their regular and solemn visitations. They are, indeed, exempted from the forms required by the common law, and are to proceed in the language found in many books and copied in Com. Dig., *Visitor* (C): 'Summarie, amplexiter, et de plano sine strepitu aut figura judicii;' that is (adds Comyns) according to mere law and right. But some forms, as involving the opportunity of knowing and answering the charges, are absolutely necessary for securing this object. The report of the ecclesiastical commissioners was appealed to on both sides; on the one, for proof that the late statute was not meant to apply to the visitatorial power, because no recommendation to that effect is given. We have frequently had occasion to observe, that the courts have no right to look at similar reports for the direct purpose of construing the statutes founded upon them, which must speak for themselves. On the other hand, the report was referred to as a depository of the former law, which is not, however, there said to have trusted the visitor with the power now claimed. It states that the ordinary was to proceed in the correction of clerks in a kind of *forum domesticum*. However these words are to be understood, it was still a forum. Spiritual persons who offended were presented by the churchwardens, on whom this duty was cast; if they neglected it, others might present; or, even if common fame were the only accusor, the

to be exercised by a bishop under this act, such act shall be done or authority

STAT. 3 & 4
VICT. c. 86.

ordinary might make his inquiries. Different modes of dealing with the charges are enumerated: *inquisitio*, *accusatio*, *denunciatio* articles were exhibited; and the party had time and place given to answer them. Sentence was at length passed by the ordinary, personally, perhaps, but (according to all our experience) in his court, and, in no usual sense of the words, without process. And, on this head of argument, the question was asked, and not satisfactorily answered, why, if the ordinary possessed this power personally and without process, such great difficulties had been encountered, and such enormous expenses incurred in bringing notorious spiritual delinquents to justice by deprivation. It is well known, that the assumed want of the power now claimed formed one strong motive for introducing the new law.

"The saving clause may not improperly have been intended to apply to some other powers of regulation and control, vested by law in the archbishops and bishops; but, if none such could be surmised, still the effect of no such saving clause can be greater than the protection of something that is shewn to have existed, it cannot create authority in any one to act personally and without process in a particular case, by merely saying that the act does not deprive him of such authority in general terms. The precaution secures what the law recognised before; but the question remains—what did the law recognise?"

"We are aware, that the jurisdiction of visitors has been described in most comprehensive terms by common lawyers of high authority. Lord Holt himself is cited as allowing them an arbitrary power, in his often reported judgment on the case of *Philips v. Bury*, (1 Ld. Raym. 5.) That copy of it taken from his own manuscript, and now printed in 2 T. R. (346) agrees almost word for word with that which is recorded by Skinner (475). Scarcely any other remark upon it requires to be made, than that the case arose out of the visitation of a charitable foundation. Holt's strong language is all applied to that case. The founder might do as he would with his own: the parties deriving benefit from his endowment must abide by the conditions which he has annexed. *Cujus est dare ejus est disponere*. The *Bishop of St. David's v. Lucy*, (1 Ld. Raym. 447, 539; 1 Salk. 134; 3 Ibid. 90; 12 Mod. 237; and see 14 How. St. Tr. 447; 1 Burn's E. L. by Phillimore, 231,) where the Archbishop of Canterbury gave sentence of deprivation against one of his suffragan bishops for simony and other ecclesiastical offences, was supposed to shew that power to reside in the breast of the archbishop, without any rules or forms. Prohibition was claimed, on the ground that the citation was to appear at Lambeth, not in the usual place of holding the metropolitan court, and it was answered here by Lord Holt and his brethren, that the archbishop 'may hold his court where he pleases'; that 'the spiritual court might proceed to punish him for any offence done against the duty of his office as bishop;'

adding, 'as the clergy are under different rules and duties, it is but reasonable that, if an ecclesiastical person offend in his ecclesiastical duty, he should be punishable for it in the ecclesiastical court.' These expressions all occur in Salkeld's Report (1 Salk. 134). The bishop was called by citation to answer for his delinquency. The form and mode of proceeding were objected to in no other particular than the place of sitting. We scarcely need say, that this case supplies no evidence of the right to proceed personally without process in court.

"Another case was cited for the same purpose, *The Bishop of Kildare v. The Archbishop of Dublin*, (2 Bro. P. C. 179, 2nd ed.) brought by writ of error to the House of Lords, 1724. The bishop, as dean of the church of the Holy Trinity, complained that the archbishop proceeded against him in the court Christian for a contempt committed during the visitation. The principal question intended to be raised was, whether the king or the archbishop was the visitor of the dean and chapter of that cathedral; and this being decided in favour of the archbishop, all others respecting the mode of proceeding were comparatively unimportant; nor indeed does the case furnish us with a very full detail of what took place. Enough, however, appears, to shew that the offence was contumacy, committed by shutting the doors of the cathedral against the archbishop, and not appearing in his visitation; and that the archbishop 'impleaded' the plaintiff as dean 'in the court Christian, in caused visitationis ordinarii ipsius archiepiscopi,' 'under pretence of a contempt.' The House of Lords held that the right of the archbishop to visit the dean and chapter was established, and that the manner of his doing so was not at all material, because any error or defect in the manner might be remedied by appeal, and was no foundation for a prohibition: and this is the marginal note appended to the report, the general point being perfectly clear, that, when there is jurisdiction, the manner of exercising it affords no ground for prohibition. But the declaration, instead of alleging that the visitor proceeded to sentence, (whatever that sentence might be, for it is not set forth,) personally and without process, leads to the contrary inference. The words above extracted from it are rather descriptive of a suit afterwards commenced by the archbishop in his court as ordinary; and this even where the offence was a direct contempt of his person and authority. But it is enough to say, and indisputably true, that this case does not establish the proposition, for which alone it was wanted, that the visitor has lawful power to deprive personally, and without process in court.

"So in the *Bishop of Exeter's case*, (*Philips v. Bury*, 1 Ld. Raym. 5; Skin. 447; 2 T. R. 346,) the acts of the bishop, having been performed within his jurisdiction as visitor of Exeter college by appointment of the founder, were held to be uncontrollable by it. Such decisions can have no bearing on the present case, unless it were shewn, that all

party, arch-
bishop to act

STAT. 3 & 4
VICT. c. 86.

in his stead.

exercised by the archbishop of the province in all cases *where the bishop who would*

the powers which any founder has conferred on his visitor grow out of the relation of an ordinary to his clergy on his holding a visitation of them. It is highly probable, that the use of the same word on two such different occasions has led to the belief that such was the law. The opinion is thus accounted for; but the law can only be established by practice and precedent. Both are wanting here.

"Some of the books speak of a *court of visitation*; and the phrase is not incorrect. It is an authority acting with certain forms of procedure and inquiry, suspending its proceedings from time to time by adjournment, making certain orders and decrees. Whether or not these acts are of necessity judicial, those done in the course of establishing a charge against a party accused, bear that undoubted character.

"The authority now challenged declared the party in contempt for withdrawing himself after citation, and required him to purge his contempt before he could be heard in his defence against charges preferred. It proceeded then with the examination of witnesses in support of those charges, and finally adjudged him guilty, and awarded sentence of deprivation. All these are assuredly the acts of a court. It is admitted that they may be appealed against; and we are at a loss to conceive an appeal against any proceedings, but those of a court. That court, however, the late statute has divested of all such jurisdiction. It is not within the saving clause, which leaves untouched the ordinary's power over his clergy, as it might then be exercised by law without process in court, because this power does not appear to have been ever exercised by law. We are constrained to conclude, that the most reverend prelate, in so far as he proceeded at his visitation to deprive the dean, has acted without jurisdiction.

"Finding that this preliminary obstacle is not to be surmounted, we decline to enter upon the consideration of the numerous points raised in certain portions of the proceedings, by the learned commissary. But there is one not unfit to be disposed of. The sentence being final, and executed, it was argued that nothing now remained which this court could prohibit from being done, and not even a continuing court to which our writ could be addressed. These arguments, for obvious reasons, require to be narrowly watched, for they would give effect to unlawful proceedings, merely because they were brought to a conclusion. But to the present case they are inapplicable. For, on looking at the sentence, we find that it admonishes the dean not to exercise the functions of dean on pain of the greater excommunication, and that the court was adjourned only when this motion was made. The infliction of that pain would be the mode of enforcing the sentence; and this we may prohibit; and we find in some of the entries that this court has enjoined revocation of the sentence. The dean could not apply

before sentence; for the sentence of deprivation is the only thing done which is beyond the jurisdiction of the archbishop. Up to that point he had unquestionably power, for it was his duty to inquire with a view to ulterior proceedings; and it seems, that the lord chancellor discharged an application for prohibition which had been made to him before sentence, on that very ground.

"Our clear conviction is not embarrassed by an opposite judgment formed by the learned commissary; for he does not appear to have adverted to the statute during the whole proceedings. We cannot but believe that it escaped his attention, occupied as it was with a vast variety of unusual circumstances, and not assisted, (as indeed it could not be according to the view which he took of the duties of his office,) by advocates on both sides.

"If we felt any doubt, we should be bound to invite further discussion by calling upon the Dean of York to declare in prohibition: but, after the full and deliberate, long prepared and maturely digested arguments which we have heard enforced with consummate ability, by counsel of the greatest learning, and of the highest reputation, no additional light can be expected. We owe it to all the parties, to save them the inconvenience and anxiety of fruitless delay; we owe it to the public, and in a peculiar manner to the church, to encourage no doubt, when we fail none, on subjects of such immense importance, and so deeply affecting its interests, its rights, and its duties."

In *Black v. Rackham*, (*Ex rel. the learned Reporter of the Ecclesiastical Notes of Cases: Arches court of Canterbury, February 18th, 1845.*) which was originally a proceeding in the Consistorial court of Norwich, against a beneficed clergyman, the rector of Walsoken, in that diocese, to recover the penalty imposed by Stat. 1 & 2 Vict. c. 106, for having been absent from his benefice, without licence or exemption, for more than three and not exceeding six months in one year, whereby he had forfeited, under the 32nd section of the statute, one third of the annual value of his benefice, which annual value was pleaded to be at least 1100*l.*: upon the party being cited, he did not appear; he was pronounced in contempt, and a *significavit* issued, whereupon an absolute appearance was given; an allegation was prayed, brought in by the party proceeding, and admitted without objection, a decree for the answers of the party cited was taken out, and the answers not being brought in, a prayer was made to have the allegation taken *pro confesso*, when the rector for the party cited appeared under protest, alleging that his party was not compelled to give in his answers upon oath, inasmuch as this was a criminal proceeding, and further alleging that all the proceedings had been erroneous, null, and void. The judge in the court below overruled the objections, and pronounced that the allegation had been proved and the forfeiture incurred.

otherwise do the act or exercise the authority *is the patron*(1) of any preferment held by the party accused.

"XXV. And be it enacted, that nothing in this act contained shall be construed to affect any authority over the clergy of their respective provinces or dioceses which the archbishops or bishops of England and Wales may now according to law exercise personally and without process in court; and that nothing herein contained shall extend to Ireland.

"XXVI. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament."

STAT. 3 & 4
VICT. c. 86.

Saving of arch-
bishop and bi-
shop's powers.

Act may be
amended this
session.

LXXIII. STAT. 3 & 4 VICTORIÆ, CAP. LXXXVIII. A.D. 1840.

"*An Act to amend the several Acts relating to the Belfast Charitable Society.*"

STAT. 3 & 4
VICT. CAP.
LXXXVIII.

whereupon the party cited appealed to the Arches court.

On the part of the appellant, it was contended that the proceedings should have been by articles, and under Stat. 3 & 4 Vict. c. 86; that it was vitiated by errors throughout, and that the proof of non-residence was insufficient. This was a criminal proceeding to punish the party for an ecclesiastical offence, and such a proceeding must be instituted under the Church Discipline Act, according to the doctrine of the court of Queen's Bench, in *The Dean of York's case*. The proceeding for a penalty made the suit a criminal one: so Lord Hardwicke held in *Middleton v. Croft*, (2 Atk. 650.) Independent of this general objection, the errors in the proceedings had rendered it a nullity; no proxy was given by the party proceeding in the court below, and the proof of non-residence was limited to evidence of the absence of the party from the rectory house.

On behalf of the respondent, it was argued that none of the objections affected the substantial merits of the case. The proceedings had been perfectly correct, and the proof of non-residence was so full that it could not be carried further. The argument that the proceedings should have been under Stat. 3 & 4 Vict. c. 86, was equivalent to saying there could be no proceeding at all, for this act made no provision for such a proceeding. The Act 1 & 2 Vict. c. 106, was not repealed by the Church Discipline Act. Neither could the proceeding have been by articles, for if so, it must have been under the Church Discipline Act, by which, however, there could be no proceeding against a clerk for non-residence, in "the court of the bishop," in which court, and in no other, the penalties and forfeitures incurred under the Non-Residence Act, could be recovered. The offence was not dealt with as a criminal act, but as a particular offence, under a particular statute, affixing a particular penalty. It was never intended that this should be treated as a criminal proceeding, though, under the canon law, non-residence is a highly penal offence. The Act 3 & 4 Vict. c. 86, was passed for the correction of clerks; but this proceeding is to recover a penalty under Stat. 1 & 2 Vict. c. 106.

Sir Herbert Jenner *Post* said, this being the first proceeding to recover a penalty

under the statute, the question was too important to be disposed of at the moment of hearing. He would not say that the case was entirely without difficulty; but he agreed that the question was, whether Stat. 1 & 2 Vict. c. 106, was repealed, by implication, by Stat. 3 & 4 Vict. c. 86. He must consider the case. [The judgment in this case was not delivered at the time that the foregoing report was sent to press, but it will be published in the Supplement to these volumes, of January, 1846.]

(2) *Otherwise than is hereinbefore enacted or provided*:—Although section 23 takes away the visitor's power of punishing an offence against the general law of the church, it would probably be held, that he would still be able to enforce the *particular statutes* of the cathedral subject to his visitation. 3 Burn's E. L. by Phillimore, 364. According to the decision, *In the matter of the Dean of York*, (2 Q. B. 31,) this clause has taken away any power which the ordinary *quid* visitor *might* have possessed of depriving a clerk *summarie et sine figura judicii*.

(1) *Where the bishop . . . is the patron*:—"Two courses are open to a bishop who is patron of the preferment of the accused clerk. 1. To send the complaint by letters of request to the court of the province. 2. To substitute, in the first instance, what may be called the personal authority (given by this act) of the archbishop in the place of his own.

"There does not seem to be any provision for a case where the archbishop is himself both patron of the preferment and ordinary of the party accused. The court of Delegates were not capable of accepting letters of request, and it is presumed the judicial committee of the Privy Council are in the same condition. It would appear therefore, that there is a *casus omissus* in this statute, unless it be held that, as by sect. 1 of this act, the word 'bishop' is to comprehend 'archbishop,' the archbishop, when ordinary and patron, may send the case by letters of request to the judge of the court of appeal of the province, that is, send letters of request to his own chancellor. But this would appear to be a very forced and improbable construction of the act." 3 Burn's E. L. by Phillimore, 364.

STAT. 3 & 4
VICT. CAP.
XCI.

LXXIV. STAT. 3 & 4 VICTORIÆ, CAP. XCI. A.D. 1840.

"An Act to amend an Act for enlarging the present or providing a new Workhouse for the use of the Parish of Stroud, in the County of Kent; for better governing, maintaining, and employing the Poor of the said Parish; and also for repairing or rebuilding the Church and Tower of the same Parish, and for other Purposes relating thereto."

STAT. 3 & 4
VICT. C. 92.

LXXV. STAT. 3 & 4 VICTORIÆ, C. 92. A.D. 1840.

"An Act for enabling Courts of Justice to admit Non-Parochial Registers as Evidence of Births or Baptisms, Deaths or Burials, and Marriages."

"Whereas by a commission under the great seal, bearing date the thirteenth day of September, in the seventh year of the reign of his late majesty, certain persons therein named were appointed commissioners for inquiring into the state, custody, and authenticity of any registers or records of births or baptisms, deaths or burials, and marriages lawfully solemnized, as had been kept in England and Wales, other than the parochial registers, and the copies thereof deposited with the diocesan registrars, and for inquiring whether any and what measures could be beneficially adopted for collecting and arranging and depositing such registers or records, and for considering and advising the proper measures to be adopted for giving full force and effect as evidence in all courts of justice to all such registers as were found accurate and faithful, and for facilitating the production and reception of the same: and by another commission under the great seal, issued in the first year of her present majesty, the powers and duties of the said commissioners were continued; and whereas there are now about seven thousand registers in the custody of the said commissioners, which by their report to her majesty, bearing date the eighteenth day of June one thousand eight hundred and thirty-eight, they have recommended to be kept together in some secure place of deposit, and to be deemed to be in legal custody, and to be receivable in evidence in all courts of justice, subject to certain conditions and restrictions therein recommended; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the registrar-general of births, deaths, and marriages in England shall receive, and deposit at the general register office, all the registers and records of births, baptisms, deaths, burials, and marriages now in the custody of the commissioners appointed by her majesty as aforesaid, and which they have by their said report recommended to be kept in some secure place of deposit, and also the several registers and records mentioned in the schedules (H), (I), (P), and (Q), annexed to the said report of the said commissioners, and also such other registers as are hereinafter directed to be deposited with him; provided that none of the said registers or records already in the custody of the said commissioners shall be received by the registrar-general, unless the person or persons now having the custody thereof shall, within three calendar months from the passing of this act, send the same to the said commissioners for examination by them.

Certain registers to be deposited in the custody of the registrar-general.

Proviso as to registers not received.

Continuance of commissioners for twelve months.

Their duty.

"II. And be it enacted, that such of the said commissioners as are now living shall be continued commissioners for the purposes hereinafter mentioned for the space of twelve calendar months from the passing of this act, and they are hereby authorized, from time to time during the said twelve months, to inquire into the state, custody, and authenticity of every register or record of birth, baptism, naming, dedication, death, burial, and marriage which shall be sent to them within three calendar months from the passing of this act, and such as they shall find accurate and faithful they shall certify under the hands and seals of three or more of them (of whom the registrar-general shall not be one) as fit to be placed with the other registers and records hereby directed to be deposited in the said office; and the registrar-general, upon receiving the said certificate of the said commissioners, accompanied by an order of one of her majesty's principal secretaries of

state, shall receive such registers and records, and deposit them with the registers and records which are now in the custody of the said commissioners.

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VICT. c. 92.

“III. And be it enacted, that every office or place where any registers or records which by this or any other act are directed to be in the custody of the registrar-general, shall be deposited by direction of the registrar-general, with the approval of the lord high treasurer, or three or more commissioners of her majesty’s Treasury, shall be deemed to be a branch or part of the general register office, so long as such registers or records shall remain therein, and the execution of this act shall be deemed to be a part of the business of the general registrar office.

Declaratory provisions as to the general register office.

“IV. And be it enacted, that the said commissioners shall from time to time deliver to the registrar-general a descriptive list or lists of all the registers and records now in their custody, and also of all the registers and records which shall be so certified as fit to be placed with the other registers and records in the general register office, containing such particulars, and referring to the registers and records in such manner, as in the opinion of the registrar-general shall be sufficient to identify every such register and record; and three or more of the said commissioners, (of whom the registrar-general shall not be one,) shall certify under their hands, upon some part of every separate book or volume containing any such register or record, that it is one of the registers or records deposited in the general register office pursuant to this act, and in every case in which the commissioners shall certify to the registrar-general as aforesaid that certain parts only of such registers or records appear to them to be original or authentic, the commissioners shall refer in the descriptive list or lists, and also in the certificate upon such book or volume, to those parts, in such manner as to identify them to the satisfaction of the registrar-general.

Commissioners to identify the registers deposited.

“V. And be it enacted, that the registrar-general shall cause lists to be made of all the registers and records which may be placed in his custody by virtue of this act; and every person shall be entitled, on payment of the fees hereinafter mentioned, to search the said lists, and any register or record therein mentioned, between the hours of ten in the morning and four in the afternoon of every day, except Sundays and Christmas day and Good Friday, but subject to such regulations as may be made from time to time by the registrar-general, with the approbation of one of her majesty’s principal secretaries of state, and to have a certified extract of any entry in the said registers or records, and for every search in any such register or record shall be paid the sum of one shilling; and for every such certified extract the sum of two shillings and sixpence and no more.

Lists to be made; which shall be open to search;

“VI. And be it enacted, that all registers and records deposited in the general register office by virtue of this act, except the registers and records of baptisms and marriages at the Fleet and King’s Bench prisons, at May Fair, at the Mint in Southwark, and elsewhere, which were deposited in the registry of the bishop of London in the year one thousand eight hundred and twenty-one, as hereinafter mentioned, shall be deemed to be in legal custody, and shall be receivable in evidence in all courts of justice, subject to the provisions hereinafter contained; and the registrar-general shall produce or cause to be produced any such register or record, on *subpoena* or order of any competent court or tribunal, and on payment of a reasonable sum, to be taxed as the court shall direct, and to be paid to the registrar-general, on account of the loss of time of the officer by whom such register or record shall be produced, and to enable the registrar-general to defray the travelling and other expenses of such officer.

and certified extracts had therefrom.

Registers deemed in legal custody and shall be receivable in evidence.

“VII. And be it enacted, that every sum received under the provisions of this act by or on account of the registrar-general shall be accounted for and paid by the registrar-general, at such times as the commissioners of her majesty’s Treasury of the United Kingdom of Great Britain and Ireland from time to time shall direct, into the Bank of England, to the credit of her majesty’s exchequer, according to the provisions of an act passed in the fourth year of his late majesty King William the Fourth, intituled, ‘An Act to regulate the Office of the Receipt of His Majesty’s Exchequer at Westminster.’

Fees to be accounted for.

4 & 5 Gal. 4
c. 15.

“VIII. And be it enacted, that every person who shall wilfully destroy or

Wilful injury

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or forgery of
registers,
felony.

injure, or cause to be destroyed or injured, any register or record of birth or baptism, naming or dedication, death or burial, or marriage, which shall be deposited with the registrar-general by virtue of this act, or any part thereof, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or record, or shall wilfully insert or cause to be inserted in any of such registers or records any false entry of any birth or baptism, naming or dedication, death or burial, or marriage, or shall wilfully give any false certificate, or shall certify any writing to be an extract from any register or record, knowing the same register or record to be false in any part thereof, or shall forge or counterfeit the seal of the said office, shall be guilty of felony.

Extracts from
registers to be
stamped with
the seal of
office.

"IX. And be it enacted, that the registrar-general shall certify all extracts which may be granted by him from the registers or records deposited or to be deposited in the said office, and made receivable in evidence by virtue of the provisions herein contained, by causing them to be sealed or stamped with the seal of the office; and all extracts purporting to be stamped with the seal of the said office shall be received in evidence in all civil cases, instead of the production of the original registers or records containing such entries, subject nevertheless to the provisions hereinafter contained.

Extracts to
describe the
register whence
taken.

"X. And be it enacted, that every extract granted by the registrar-general from any of the said registers or records shall describe the register or record from which it is taken, and shall express that it is one of the registers or records deposited in the general register office under this act; and the production of any of the said registers or records from the general register office, in the custody of the proper officer thereof, or the production of any such certified extract containing such description as aforesaid, and purporting to be stamped with the seal of the said office, shall be sufficient to prove that such register or record is one of the registers and records deposited in the general register office under this act, in all cases in which the register or record, or any certified extract therefrom, is herein respectively declared admissible in evidence.

Production of
register shall
be sufficient.

Certified ex-
tracts may be
used in courts
of law and
sessions, upon
notice given.

"XI. And be it enacted, that in case any party shall intend to use in evidence on the trial of any cause in any of the courts of common law, or on the hearing of any matter which is not a criminal case at any session of the peace in England or Wales, any extract, certified as hereinbefore mentioned, from any such register or record, he shall give notice in writing to the opposite party, his attorney or agent, of his intention to use such certified extract in evidence at such trial or hearing, and at the same time shall deliver to him, his attorney or agent, a copy of the extract, and of the certificate thereof; and on proof by affidavit of the service or on admission of the receipt of such notice and copy, such certified extract shall be received in evidence at such trial or hearing, if the judge or court shall be of opinion that such service has been made in sufficient time before such trial or hearing to have enabled the opposite party to inspect the original register or record from which such certified extract had been taken, or within such time as shall be directed by any rule to be made as hereinafter provided.

If the original
be used, notice
must never-
theless be
given.

"XII. And be it enacted, that in case any party shall intend to use in evidence on such trial or hearing any original register or record, (instead of such certified extract,) he shall, nevertheless, within a reasonable time, give to the opposite party notice of his intention to use such original register or record in evidence, and deliver to such opposite party a copy of a certified extract of the entry or entries which he shall intend to use in evidence.

Certified ex-
tracts may be
used in evi-
dence on exa-
mination of
witnesses, or at
the hearing of
the cause in
courts of
equity, upon
notice.

"XIII. And be it enacted, that in case any party shall intend to use in evidence on any examination of witnesses, or at the hearing of any cause in any court of equity, any extract, certified as hereinbefore mentioned, he shall, ten clear days at the least before publication shall pass in any cause where no commission has issued for the examination of the witnesses of the party intending to give such evidence, or where such commission shall issue then seven clear days at the least before the opening of such commission, deliver to the clerk or clerks in court of the opposite party or parties a notice in writing of his intention to use such certified extract in evidence on the examination of witnesses or at the hearing of the cause, (as the

case may be,) and shall at the same time deliver to the clerk or clerks in court of the opposite party or parties a copy or copies of such extract, and of the certificate thereof, and thereupon such certificated extract shall be received in evidence; provided that at the hearing of the cause the service of such certified copy and notice be admitted or proved by affidavit.

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VICT. c. 92.

“XIV. And be it enacted, that in case any party shall intend to use in evidence, on such examination or hearing in any court of equity, any original register or record, (instead of such certificated extract,) he shall nevertheless, within the number of days hereinbefore respectively mentioned, deliver to the clerk or clerks in court of the opposite party or parties a notice of his intention to use such original register or record in evidence, together with a copy of a certified extract of the entry or entries which he shall intend to use in evidence.

If the original be used, notice must nevertheless be given.

“XV. And be it enacted, that in case any party shall intend to use in evidence, upon any petition, motion, or other interlocutory proceedings in any court of equity or in the master's office, any extract, certified as hereinbefore mentioned, he shall produce to the court or master (as the case may be) an extract, certified as hereinbefore mentioned, accompanied by an affidavit stating the deponent's belief that the entry or entries in the original register or record is correct and genuine.

Certified extract to be used in interlocutory proceedings, and in the master's office.

“XVI. And be it enacted, that in case any party shall intend to use in evidence in any ecclesiastical court, or in the high court of Admiralty, any extract, certified as hereinbefore mentioned, he shall plead and prove the same in the same manner to all intents and purposes as if the same were an extract from a parish register, save and except that any such extract, certified as hereinbefore mentioned, shall be pleaded and received in proof without its being necessary to prove the collation of such extract with the original register or record: provided always, that the judge of the court, on cause shown by any party to the suit, (or of his own motion when the proceedings are *in pœnam*,) may, after publication, issue a monition for the production at the hearing of the cause of the original register or record containing the entry to which such certified extract relates.

Certified extract to be used in ecclesiastical courts;

and the judge may order the production of the original.

“XVII. And be it enacted, that in all criminal cases in which it shall be necessary to use in evidence any entry or entries contained in any of the said registers or records, such evidence shall be given by producing to the court the original register or record.

In criminal cases the originals to be produced.

“XVIII. And be it enacted, that at any time within three years from the passing of this act such rules may be made, by the authority hereinafter specified, for regulating the mode of reception of the said registers or records, or certified extracts therefrom, in evidence in the courts hereinafter mentioned, and for regulating the notice hereinbefore directed to be given, and the costs of producing such registers or records or extracts, as shall seem expedient, which rules, orders, and regulations shall be laid before both houses of parliament, and shall take effect within six weeks after the same shall have been so laid before parliament, and shall thereupon be binding and obligatory upon the said courts respectively, and be of the like force and effect as if the provisions contained therein had been herein expressly enacted.

Rules to be made to regulate the practice as to admission of registers.

“XIX. And be it enacted, that such rules shall be made for the high court of Chancery by the lord high chancellor and the master of the rolls, and for the courts of Queen's Bench, Common Pleas, and Exchequer, by eight or more judges of the last-mentioned courts, of whom the chiefs of each of the last-mentioned courts shall be three, and for the high court of Admiralty by the judge of the court of Admiralty, and for the ecclesiastical courts in England and Wales by the official principal of the court of Arches, with the chancellor of the diocese of London, or with the commissary of the diocese of Canterbury.

Who shall make such rules.

“XX. And be it enacted, that the several registers and records of baptisms and marriages performed at the Fleet and King's Bench prisons, at May Fair, and at the Mint in Southwark, and elsewhere, which were deposited in the registry of the Bishop of London in the year one thousand eight hundred and twenty-one, by the authority of one of his late majesty's principal secretaries of state, shall be transferred from the said registry to the custody of the registrar-general, who is hereby

Fleet and May Fair registers, &c.

STAT. 3 & 4
VICT. c. 92.

directed to receive the same for safe custody: provided nevertheless, that none of the provisions hereinbefore contained respecting the registers and records made receivable in evidence by virtue of this act shall extend to the registers and records so deposited in the registry of the Bishop of London in the year one thousand eight hundred and twenty-one as aforesaid.

Act may be
amended this
session.

“XXI. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.”

STAT. 3 & 4
VICT. c. 93.

LXXVI. STAT. 3 & 4 VICTORIÆ, c. 93. A.D. 1840.

“An Act to amend the Act for the better Regulation of Ecclesiastical Courts in England.”

Privy council
may order dis-
charge of per-
sons in custody
under writ *de*
contumace
capiendo.

“Whereas it is expedient to make further regulations for the release of persons committed to gaol under the writ *de contumace capiendo*: be it therefore enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the passing of this act it shall be lawful for the judicial committee of her majesty’s most honourable Privy Council, or the judge of any ecclesiastical court, if it shall seem meet to the said judicial committee or judge, to make an order upon the gaoler, sheriff, or other officer in whose custody any party is or may be hereafter, under any writ *de contumace capiendo* already issued or hereafter to be issued, in consequence of any proceedings before the said judicial committee or the judge of the said ecclesiastical court, for discharging such party out of custody; and such sheriff, gaoler, or other officer shall on receipt of the said order forthwith discharge such party: provided always, that no such order shall be made by the said judicial committee or judge without the consent of the other party or parties to the suit: provided always, that in cases of subtraction of church rates for an amount not exceeding five pounds where the party in contempt has suffered imprisonment for six months and upwards, the consent of the other parties to the suit shall not be necessary to enable the judge to discharge such party, so soon as the costs lawfully incurred by reason of the custody and contempt of such party (1) shall have been discharged, and the sum for which

Proviso. *

(1) *Costs lawfully incurred by reason of the custody and contempt of such party*:—Under such words, costs in the ecclesiastical court only are intended. Thus, in *Baker v. Thorogood*, (2 Curt. 632,) Dr. Lushington observed:—

“I am now, for the first time, to carry into effect a new act—totally different from any other—passed with a view of authorizing the release of a person in custody; and in consequence it becomes the duty of the court to be guided by the true meaning of the act.

“In order to ascertain the true construction of the statute, I think it necessary, in the first instance, to consider the state of the law prior to the passing of it, and then to see how far the law has been altered by the statute.

“The person committed in this case for contempt was sued in the ecclesiastical court, for church rate, a subject over which the court had undoubted jurisdiction. He refused to appear, or to submit to the judgment of the court; he was consequently pronounced in contempt, his contempt was signified, and he has been for a considerable time past in custody. If no such statute had passed, the course of proceeding would have been this: the court would have been called upon, at the instance of the party imprisoned for contempt, to allow his contempt to be

purged, and that could only be done on the payment of the costs incurred in this court in consequence of his contempt, and on his taking the usual oath to submit to the lawful commands of his ordinary. Now, let us see whether, under these extraordinary circumstances, the court would have required anything more to be done on the part of Mr. Thorogood. Suppose application had been made, either for a writ of *habeas corpus*, or for the purpose of quashing the writ *de contumace capiendo*, to a court of common law, and that court had been of opinion, that the Consistorial court of London had properly exercised its jurisdiction, and it had refused the application; unquestionably, the other party must have incurred certain costs. Now, whatever those costs may have been, it is perfectly clear that, previous to the statute, I could have taken no cognizance of them at all; because the proceedings would have been before another jurisdiction, which was alone competent to decide whether a party was liable to the costs, and to cause the costs to be paid. I now consider the provisions of the present statute, and to what extent it has altered the antecedent law.

“I have observed that, prior to the passing of this statute, it was requisite for a party to submit himself to the jurisdiction of the court, and to take an oath of obedience. I apprehend that, unless under very peculiar

he may have been cited into the ecclesiastical court shall have been paid into the registry of the said court, there to abide the result of the suit; and the party so discharged shall be released from all further observance of justice in the said suit.

"II. And be it enacted, that any such order may be in the form given in the schedule annexed to this act.

"III. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament."

STAT. 3 & 4
VICT. c. 93.

Form of order.

Act may be
amended this
session.

circumstances, it would not have been competent to this court to allow a party to purge his contempt without taking the oath of obedience. This is a question which I have endeavoured to investigate to the utmost of my ability, and I do not find it has ever been done, unless under very peculiar circumstances. This having been the state of the law, what change has been made by the present act? It empowers the judicial committee of the Privy Council, or the judge of an ecclesiastical court, if it shall seem meet to the said committee or judge, to make an order for the discharge of a party out of custody; so that the act confers a discretionary power, which the court, under ordinary circumstances, had no right to exercise. It then provides, that no such order shall be made without the consent of the other party: that is, that the court can dispense with the oath of obedience if the other party consent. The next proviso, which is applicable to the present case, is, 'that, in cases of subtraction of church rate, for an amount not exceeding five pounds, where the party in contempt has suffered imprisonment for six months and upwards, the consent of the other party to the suit shall not be necessary to enable the judge to discharge such party, so soon as the costs lawfully incurred by reason of the custody and contempt of the party shall have been discharged, and the sum for which he may have been cited into the ecclesiastical court shall have been paid into the registry of the said court.' The effect of this proviso is to give the court a power, where these circumstances concur, namely, in a church-rate case, where the amount does not exceed five pounds, and the party in contempt has been imprisoned for six months; to discharge the contumacious person without the consent of the other party; but it requires that the costs lawfully incurred by reason of such custody and contempt shall be previously paid. The question, then, is narrowed to this: whether the costs taxed by the registrar are the costs intended by the statute; or whether I am bound to take into my consideration the costs alleged to have been incurred in the proceedings adverted to by the queen's advocate?

"I think it is obvious that, 'costs lawfully incurred by reason of the custody and contempt,' must mean, primarily at least, costs incurred in this court; because it is over such costs alone, that this court had jurisdiction before the passing of the act; and it is with respect to these costs alone that this court has the means of ascertaining their due and proper amount. It would be singular if this court had conferred upon it the extraordinary power of ascertaining, and not only ascer-

taining, but of deciding upon a party's liability to the costs in another court. I do not know, in this case, whether the court of Queen's Bench has condemned the party in the costs, or what is the amount of the costs, if it has so condemned him, and I do not possess the means of ascertaining either question. Again, it would be singular if this court should be invested with the power of keeping a person in prison till the costs in another court were paid, that other court being invested with power infinitely superior, and able to exercise it, for enforcing the payment of any costs it may condemn a party in. Therefore, it does appear to me, that, unless the words of the statute were so extremely strong as to leave the court in no doubt as to their meaning, I should act most in accordance with the ancient practice of these courts, if I were to confine their meaning to the costs incurred in this court. I do not think, indeed, that it is consistent with the object and intention of the legislature that these words should include the costs of an opposition to an application for a writ of *habeas corpus*, or for a rule to quash a writ of *contumace capiendo*.

"Then the single question is, what I ought to do in this case with reference to the discretionary power conferred upon me by this statute. The amount of the rate sued for is 9s. 2d. It is admitted that the party; not only refusing to pay but setting the authority of the court at defiance; has been in prison for a period twice the length of time mentioned in the act. In exercising the discretion conferred upon me by the statute, I must act according to its true meaning and intention, without reference to any opinion which may be entertained as to the propriety or impropriety of the conduct of the party in any part of the case. I think it is clear, from a perusal of the act, that under ordinary circumstances, considering that the amount of rate sued for in this case is considerably under 5*l*. and that the party has been imprisoned for much longer than six months, the court (unless under very peculiar circumstances) is bound by the words of the act, and will, in this case, exercise a just discretion in directing the party to be released from confinement.

"The course I shall adopt is this: on the amount of the costs, as taxed by the registrar, being paid into court, and also the charge incurred for the warrant, and also the amount of the rate sued for, as stated in the libel, to direct John Thorogood to be released from prison, without any further order."

STAT. 3 & 4
VICT. C. 93.

"SCHEDULE.

"Warrant of Discharge.

"To the sheriff [gaoler, or keeper, as the case may be] of _____ in the county of _____

"Forasmuch as good cause hath been shown to us [or me] [here insert the description of the judicial committee or judge, as the case may be], wherefore *A. B.*, of _____, now in your custody, as it is said, under a writ *de custonia capiendo*, issued out of [here insert the description of the court out of which the writ issued], in a suit in which [here insert the description of the parties to the suit], should be discharged from custody under the said writ; we [or I], therefore, with the consent of the said [here insert the description of the parties consenting], command you, on behalf of our sovereign lady the queen, that if the said *A. B.* do remain in your custody for the said cause and no other, you forbear to detain him [or her] any longer, but that you deliver him [or her] thence, and suffer him [or her] to go at large, for which this shall be your sufficient warrant.

"Given under the seal of _____ at _____ the _____ day of _____ in the year of our Lord _____

"*A. B.*, registrar or deputy registrar
" [or, as the case may be]."

STAT. 3 & 4
VICT. C. 101.
[I.R.]

LXXVII. STAT. 3 & 4 VICTORIÆ, C. 101. [IRELAND.] A.D. 1840.

"An Act to amend several Acts relating to the Temporalities of the Church in Ireland."

3 & 4 Gul. 4,
c. 37.
4 & 5 Gul. 4,
c. 90.
6 & 7 Gul. 4,
c. 99.

The consent of the curate or officiating minister of any suspended benefice shall be good for certain purposes.

The valuation made for the assessment of the tax under 3 & 4 Gul. 4, c. 37. shall be amended, and relief given in respect of arrears.

1 & 2 Vict.
c. 109.

"Whereas an act was passed in the session of parliament holden in the third and fourth years of the reign of his late majesty, intituled, 'An Act to alter and amend the Laws relating to the Temporalities of the Church in Ireland,' which act was amended by two acts passed respectively in the sessions of parliament holden in the fourth and fifth and sixth and seventh years of the same reign: and whereas it is expedient to amend the said acts in certain respects, be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in every case in which the appointment, presentation, or collation of a clerk to any benefice or parish shall have been suspended, pursuant to the said first-recited act, and a curate or other minister shall have been appointed to officiate within such benefice or parish, the consent of such curate or officiating minister shall, for all purposes for which the consent of the rector, vicar, or incumbent of such benefice or parish may by law be required, be as valid and effectual, during such suspension, as if such curate or officiating minister were the rector, vicar, or incumbent of such benefice or parish.

"II. And whereas the said ecclesiastical commissioners for Ireland did, pursuant to the provisions of the hereinbefore first-recited act, cause a valuation to be made of the revenues of the several dignities and benefices liable, under the provisions of the said act, to the payment of the tax, rate, or assessment in such act mentioned, and did, according to such valuation, compute and impose such tax, rate, or assessment, on the several dignities and benefices respectively liable thereto, but, by reason of the opposition to the payment of tithes in Ireland, it was in many cases found impossible to enforce payment of the same; and the said commissioners have, in the exercise of the discretion in that behalf vested in them by the said act, extended the time for the payment thereof: and whereas by an act passed in the session of parliament holden in the first and second years of the reign of her present majesty, intituled, 'An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-Charges in lieu thereof,' the right of all persons in and to all tithes and composition for tithes theretofore accrued, or at any time thereafter to accrue due in Ireland, wholly ceased and determined, with certain exceptions in the said act mentioned; and by the said act a certain fund was appropriated to the relief of the several persons who, if the said act had not been made, would have been entitled to compositions for tithes accrued due for certain years in the said

act mentioned, and further provision was made for the payment to the parties theretofore entitled to certain tithes and composition for tithes vested in her majesty by the said act of such sums as should be paid or recovered by her majesty's attorney-general for Ireland on account thereof: and whereas it is reasonable that the parties whose right to the arrears of tithe or tithe composition due to them has so ceased and determined should be relieved from the payment of the said tax in respect of such portion of the revenues of their benefices or promotions as by the operation of the said act may have been lost to them, or shall not be hereafter paid to them, and that for the purpose of computing the amount of tax justly payable by them, the valuation and assessment of their respective dignities or benefices heretofore made by the said ecclesiastical commissioners shall be amended; be it therefore enacted, that it shall and may be lawful for the said ecclesiastical commissioners, when and as they shall think necessary, to alter and amend the valuation heretofore made by them of the revenues or emoluments of all or any of such dignities or benefices, under the rank of bishoprics, as were or are now liable to the said tax, rate, or assessment, or any arrears thereof, for any of the years preceding the year one thousand eight hundred and thirty-eight; and in altering or amending such valuation the said commissioners shall have regard to and include all or any such payments as may or shall be made to any dignitary or incumbent, pursuant to the provisions of the said recited act of the first and second years of her present majesty's reign; and they shall assess and compute the tax or arrears thereof to which every such dignity or benefice, under the rank of a bishopric, was or shall be deemed to be or have been liable for any year or portion of any year, preceding the year one thousand eight hundred and thirty-eight, upon such altered or amended valuation, according to the several rates or scales specified in the schedule (A) annexed to the said hereinbefore first-recited act, in like manner as if such altered or amended valuation had been the valuation of each such dignity or benefice originally made, pursuant to the provisions of the said act; and all arrears of the said tax so assessed and computed, if any, now remaining unpaid, shall and may be recovered by all such ways and means as are in and by the said act provided for enforcing payment of the said tax, rate, or assessment: provided always, that it shall and may be lawful for the said ecclesiastical commissioners, if they shall so think fit, in any case to direct the payment of the whole or any portion of the arrears of the said tax, rate, or assessment, by instalments, of such amount, and to be paid at such times, and subject to such conditions for securing the payment thereof, as they shall deem reasonable, but so nevertheless that the whole shall be paid within five years next after the passing of this act; provided further, that in any case where it shall appear to the said commissioners that any party shall have paid on account of such tax any sum with which he would not have been justly chargeable under such amended valuation, or any sum greater than, under such amended valuation, he would have been justly chargeable with, the said commissioners shall repay and refund to such party the sum or overplus so paid.

“III. And be it enacted, that in all cases in which application shall be made to the said ecclesiastical commissioners, pursuant to the said recited acts or any of them, to pay or apply any sum or sums of money for or towards the rebuilding, enlarging, or repairing of any church or chapel, now or which may be hereafter erected or appropriated and endowed by virtue of an act passed in the session of parliament holden in the sixth and seventh years of the reign of his late majesty, intituled, ‘An Act to amend an Act of His late Majesty King George the Second, for the Encouragement of building of Chapels of Ease in Ireland,’ or for or towards the providing of things necessary for the celebration of divine service in any such church or chapel, or for or towards the payment of the salaries for maintenance of the clerks or sextons thereof, the person or persons so making such application shall, and he and they is and are hereby required to furnish to the said ecclesiastical commissioners a statement in writing, in such form and for such period, and verified in such manner, as the said commissioners shall direct, of the annual or periodical income belonging to or derived or produced by such church or chapel, or received by the minister or ministers thereof, whether the same shall arise from any endowment or endowments, or from the sale or letting of pews, or the amount of

STAT. 3 & 4
VICT. c. 101.
[1R.]

In cases of proprietary chapels, commissioners to have a discretion as to contributing towards repairs, &c.
6 & 7 Gul. 4, c. 31.

STAT. 3 & 4
VICT. c. 101.
[1a.]

Fund to be
provided for
repairs of
church or
chapel, in
addition to
that set apart
for support of
minister.

collections made in such church or chapel, or from any other source or sources whatsoever, and how such income has been theretofore applied, and is in future intended to be applied; and that it shall and may be lawful for the said commissioners, having regard to the amount and application of such income, to pay or contribute such sum or sums as under or by virtue of the said recited acts, or any of them, they might or ought to have paid or contributed for or towards the providing of things necessary for the celebration of divine service in such church or chapel, as required and authorized by any rubric or canon in force in England or Ireland, or for or towards payment of the salaries for maintenance of the clerks or sextons of such church or chapel, or for or towards the rebuilding, enlarging, or repairing of the same, or, at their discretion, to withhold, in case of any such church or chapel, the payment of any sum or sums of money for or towards the several objects and purposes aforesaid, or any of them.

"IV. And whereas it was by the hereinbefore recited act passed in the sixth and seventh years of the reign of his late majesty, amongst other things, enacted, that upon any lands set apart for that purpose as in the said reciting act mentioned it should and might be lawful to and for any person or persons, bodies politic or corporate, to erect and build a church or chapel, or to appropriate as a church or chapel any building already erected on such land, in which the liturgy and rites of the united church of England and Ireland as by law established was to be used and observed, who should first settle and assure lands, tenements, or hereditaments held in fee-simple or for lives with covenant for perpetual renewal thereof, or for a term of ninety-nine years, of which sixty years at the least should be then unexpired, free from incumbrances, and of the clear yearly value of fifty pounds at the least, or money in any of the government funds amounting at the least to one thousand two hundred and fifty pounds, as a provision or maintenance for a minister to officiate in such church or chapel, and his successors for ever, as a perpetual endowment of such church or chapel: and whereas it is expedient that a fund shall be provided for the repairs of every such church or chapel in like manner as is by law required in respect of churches and chapels built or appropriated under similar enactments in England; be it therefore enacted, that in addition to the endowment required to be made for the support or maintenance of the minister and his successors to officiate in any church or chapel built or appropriated under the provisions of the said recited act, it shall, from and after the passing of this act, be necessary also to provide a fund for the repair of the said church or chapel in manner following; (namely,) one sum equal in amount to three pounds upon every one hundred pounds of the original cost of erecting and fitting up or of purchasing such chapel or building, to be secured upon lands or money in the funds as aforesaid, and also a further sum to be reserved annually out of the pew rents of the said church or chapel, after the rate of three pounds for every one hundred pounds of the sum so to be provided as last aforesaid.

4 & 5 Gul. 4,
c. 90, s. 5,
recited and in
part repealed.

"V. And whereas it was by the hereinbefore recited act of the fourth and fifth years of the reign of his late majesty, among other things, enacted, that where there shall not be any vicar or curate in any parish which, or the tithes or any portions of the tithes and glebes whereof, may be appropriated or united to any archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, it shall and may be lawful for the lord lieutenant of Ireland and the privy council there, if they shall so think fit, by and with the consent and approbation of the archbishop, bishop, dean, archdeacon, dignitary, prebendary, or canon thereof, or whensoever such archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry shall be void, to disappropriate, disunite, and divest such parish, and of tithes, portions of tithes, or glebes thereunto belonging, from and out of such archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, and, if they shall so think fit, to order and direct that such tithes or portions of tithes, or glebes, so disunited, shall from thenceforward be united and annexed to any neighbouring rectory, vicarage, or perpetual curacy, as in the said act after mentioned, or shall be and become for ever a separate benefice and parish: and whereas it is expedient to repeal part of the said recited enactment, and to make other provisions in lieu thereof; be it therefore enacted, that so much of the said recited

enactment as empowers the said lord lieutenant and council to unite and annex any parish, tithes or portions of tithes, or glebes, so disunited, to any neighbouring rectory, vicarage, or perpetual curacy, shall be and the same is hereby repealed.

“VI. And be it enacted, that in lieu of uniting and annexing any parish, tithes or portions of tithes, or glebes, so disunited, to any neighbouring rectory, vicarage, or perpetual curacy, it shall be lawful for such lord lieutenant and council, if they shall not think fit to erect the same into a separate benefice or parish, to order and direct that such parish, tithes or portions of tithes, or glebes, so disunited, shall be transferred to the said ecclesiastical commissioners, and the right and interest in and to the same, and all arrears thereof, shall thereupon vest in the said commissioners, and be by them carried to the general fund under their administration, after making thereout such provision, if needed, for the due performance of the occasional duties of such parish or place, as the said commissioners may think fit: provided nevertheless, that it shall and may be lawful for the said commissioners, from and out of the monies hereafter accruing to the said fund by the means aforesaid, and in preference to any other purposes to which the said fund may be by law now primarily applicable, to appropriate such sum or sums as they may think fit, not exceeding one thousand pounds in any one year, to the like purposes and uses as the monies bequeathed by Dr. Hugh Boulter and Dr. Richard Robinson, formerly Archbishops of Armagh, and now vested in the said commissioners, are by law applicable.

“VII. And whereas the said last-recited act contains a further enactment, which it is expedient, with regard to the provisions hereinbefore made, shall also be repealed; be it therefore enacted, that the enactment of the said recited act of the third and fourth years of his late majesty's reign hereinafter following shall be and the same is hereby repealed; (that is to say,) so much of the said recited act as enacts, that in any case in which the said lord lieutenant and council shall have power and authority, under the provisions of the said recited act, or under the provisions of the said act of the fourth and fifth years of the same reign, and shall think fit to disappropriate, disunite, and divest any rectory, vicarage, tithes or portion of tithes, and glebes or part or parts thereof, from and out of any archbishopric, bishopric, deanery, archdeaconry, dignity, prebend, or canonry, it shall and may be lawful for such lord lieutenant and council, if they shall so think fit, to unite and annex to any adjoining or neighbouring rectory, vicarage, or perpetual curacy as aforesaid, such rectory, vicarage, tithes or glebes, or any part or parts or portions thereof respectively, so disappropriated, disunited, or divested as aforesaid, together with the actual cure of souls within such rectory or vicarage, or such part or parts thereof so united or annexed respectively, or within such place or places respectively, whereof the tithes or glebes shall be so united and annexed.

“VIII. And whereas it was by the hereinbefore recited act of the first and second years of the reign of her present majesty, among other things, provided, that in every case in which no applotment of a composition for tithes had been hitherto made, pursuant to the provisions of the several acts for establishing such compositions therein referred to, it should be lawful for any person or persons in any parish who would have been, in case such act had not been made, individually or collectively liable to the payment of more than one fourth part of the amount of the whole composition established in and for such parish, to apply for the making of such applotment to the lord lieutenant or the chief governor or governors of Ireland in council, and that such application should be made by memorial to be lodged with the clerk of the council before the first day of October then next, and notified by public advertisement, and otherwise, as in the said act mentioned: and whereas it is expedient to make further provision for the applotment of such compositions in parishes in which no such applotment has been made under the said acts or any of them: be it enacted, that in any case in which no applotment of the said composition for tithes shall have been hitherto made, it shall be lawful for any person or persons in any parish who would have been, in case the said act had not been made, entitled to the receipt of the composition established in and for such

STAT. 3 & 4
VICT. c. 101.
[1a.]

Disappropriated tithes, &c. shall be carried to the general fund of the ecclesiastical commissioners, but charged with a sum not exceeding 1000*l.* per annum for augmentation of small livings.

4 & 5 Gul. 4,
c. 90, s. 7,
recited and
repealed.

1 & 2 Vict.
c. 109, s. 15.

In any case where no applotment of tithe composition has been

STAT. 3 & 4
VICT. C. 101.
[1a.]

made, any person who would have been entitled to the receipt or liable to the payment of such composition, may apply to have such applotment made.

- * Persons liable to tithe or tithe rent-charge may oppose the application for an applotment by a counter memorial. Proceedings thereon respectively.

Lord lieutenant and council empowered, at their discretion, to cause such applotment to be made.

The expense to be defrayed by grand jury presentment.

Applotment to be subject to appeal, &c.

parish, or any portion thereof, or for any person or persons in any parish who shall be individually or collectively liable to the payment of more than one fourth of the whole amount of the rent-charges charged under the provisions of the said recited act upon the lands theretofore subject to the payment of the said compositions for tithes in such parish, to apply to the said lord lieutenant in council for the making of such applotment; and that such application shall be made by memorial, to be lodged, at any time before the first day of October now next, with the clerk of the said council: and notice of every such memorial shall be posted at the door of every church and chapel within such parish, and at the usual place or places of posting grand jury notices in the barony or half barony, baronies or half baronies, in which the parish to which such memorial may refer is situated; and shall be once published in some newspaper circulating within such parish; such posting and publication to be made by the memorialist within ten days after such memorial shall be so lodged as aforesaid.

“IX. And be it enacted, that it shall be lawful for any person or persons, liable to the payment of any rent-charge in such parish under the said recited act, to apply by counter-memorial to the lord lieutenant in council to be heard in opposition to such memorial, such counter-memorial to be lodged with the clerk of the council within twenty days after such notice shall have been published as aforesaid, or within such further time as such lord lieutenant in council shall order; and it shall be lawful for the lord lieutenant in council to examine into the merits of any such memorial or counter-memorial, and for that purpose to receive such evidence on oath and otherwise as to him shall seem meet, and to make such order whether for dismissing such memorial, or for directing an applotment to be made or respecting the manner in which such applotment shall be made, or respecting the omission therefrom of any lands which may appear to be tithe free, or otherwise, as to the said lord lieutenant in council shall seem meet; and it shall be lawful for the said lord lieutenant and council, for the better informing them upon any matter relating to the subject of the prayer of such memorial or counter memorial, to direct any such matter to be inquired into before the judge or judges of assize for the county in which such parish shall be situate, with or without a jury, as the lord lieutenant and council shall order, and such judge or judges shall so inquire accordingly, and shall receive evidence on such inquiry, as in cases of trials by nisi prius, and shall certify the result of such inquiry to the lord lieutenant in council.

“X. And be it enacted, that in every such case it shall and may be lawful for the said lord lieutenant in council, if he shall so think fit, to appoint one or more skilful person or persons to make such applotment, who shall therein, (subject to any order or orders of the lord lieutenant in council made under this act,) have and exercise the like powers, privileges, and authorities, and observe, as far as may be, the like regulations, as are given and directed to be observed by the said act for establishing compositions of tithes; and the said lord lieutenant shall cause to be paid to the person or persons employed for the purposes aforesaid such remuneration as he shall think reasonable, and the expenses thereof shall be repaid by grand jury presentment on or off the parish in which such expenses shall have been incurred; and a certificate of the amount so expended in respect of each such parish shall be transmitted, under the hand of the paymaster of civil services in Ireland, to the treasurer of the county in which such parish may be situate, and such treasurer shall insert the sum specified in such certificate in his warrant for the collection of the money to be raised and levied off such parish by presentment of the grand jury at the assizes next succeeding, and such sum shall be applotted, (if need be by a separate applotment,) and raised and levied off the lands liable to rent-charge in such parish, in like manner, and by the like ways and means, as if such sum had been presented by the said grand jury at such assizes, to be levied off such lands, and shall be paid over by the said treasurer, when and as by him received, to such bank or person, and in such manner, as the commissioners of her majesty's Treasury, or any three or more of them, shall direct.

“XI. And be it enacted, that every such applotment made under the authority of this act shall be subject to such appeal, alteration, and amendment, and shall

be as good, valid, and effectual as any applotment made under the authority of the said acts for establishing compositions for tithes in Ireland, or any of them: provided nevertheless, that it shall be lawful for the said lord lieutenant or other chief governor or governors in council to fix and declare the time from which each such applotment to be made under the authority of this act shall take effect, or to which the same shall relate, and to make such orders and regulations in each such case, and from time to time to rescind or vary the same, as to him and them shall seem just and necessary; and all such orders and regulations shall be good, valid, and effectual, as if the same had been inserted in this act; and the enactments herein made in respect of the applotments to be made under the authority of this act shall be construed together with the said recited act of the first and second years of her majesty's reign, and as part thereof, to all intents and purposes.

"XII. And be it enacted, that in the construction of this act the words 'lord lieutenant' shall be construed to mean the lord lieutenant, lords justices, or other chief governor or governors of Ireland.

"XIII. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament."

STAT. 3 & 4
VICT. c. 101.
[Ire.]

Lord lieutenant and council shall declare from what time such new applotments shall take effect.

Construction of act.

Act may be amended this session.

LXXVIII. STAT. 3 & 4 VICTORIÆ, c. 108. [IRELAND.] A.D. 1840.

"An Act for the Regulation of Municipal Corporations in Ireland."

"CXII. And whereas it is expedient that the administration of any real or personal estate of which any body corporate now stands seised or possessed, in trust as to the whole or in part for certain charitable trusts, be kept distinct from that of the public stock and borough fund; be it enacted, that in every borough in which the body corporate, solely, or together with any one or more of the members of such body corporate in his or their corporate capacity, or with any person or persons elected from among or out of the members or any of the members of such body corporate, or any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, now stands seised or possessed, for any estate or interest whatsoever, of any hereditaments, or any sums of money, chattels, securities for money, or any other personal estate whatsoever, in whole or in part, in trust or for the benefit of any charitable uses or trusts whatsoever, or is or are empowered to direct the application of the rents, profits, or produce of any hereditaments, or any sum or sums of money, chattels, securities for money, or other personal estate whatsoever, for any charitable purpose, all the estate, right, interest, and title, and all the powers of such trustee or trustees, shall, on the day on which this act shall come into operation in any such borough, be vested in the persons who shall on the same day have been the mayor, aldermen, and common council, or other governing officers of such body corporate, alone, or together with the person or persons who shall have been seised or possessed of, or entitled to exercise the same together with such body corporate, (as the case may be,) and shall continue vested in such persons until the first day of October in the year one thousand eight hundred and forty-one, or until parliament shall otherwise order; and if any vacancy shall be occasioned among such charitable trustees for any borough before any other provision shall be made by parliament, it shall be lawful for the lord chancellor of Ireland then for the time being, upon petition, in a summary way to appoint a fit person to be trustee to supply such vacancy; and all the estate, right, interest, and title, at law and in equity, of and in such trust estates, hereditaments, and premises shall forthwith, without any conveyance or assignment thereof, pass to and be vested in the trustee so appointed, jointly with the other trustee or trustees: and if parliament shall not otherwise direct on or before the said first day of October, the lord chancellor then shall make such orders as he shall see fit for the appointment of a trustee or trustees, and the administration of such trust estate, subject to such charitable uses or trusts as aforesaid; and thereupon the trustee or trustees so appointed shall come in the room of the persons heretofore

STAT. 3 & 4
VICT. c. 108.
[Ire.]

Charitable trustees.

STAT. 3 & 4
VICT. c. 108.
[1R.]

named or continued as trustees, and all the estate, right, interest, and title, at law and in equity, of and in such trust estates, hereditaments, and premises shall forthwith, without any conveyance or assignment thereof, pass to and be vested in the trustees so appointed by the lord chancellor: provided always, that where any hereditaments, or any sums of money, debts, or securities for money, or any other personal estate, held upon any charitable uses or trusts as aforesaid, or any part thereof, shall be exclusively applicable to or towards the establishment, maintenance, or support of religious education or religious worship according to the principles of the protestant church of the United Kingdom of Great Britain and Ireland, or for the benefit of any person or persons of any other religious class or denomination of her majesty's subjects, no person except a member of the said united church, or, as the case may be, who shall not profess the principles of such other religious class or denomination for the promoting of whose education or worship, or for whose benefit any such property as aforesaid may be applicable, shall be appointed by the lord chancellor to be a trustee of such hereditaments or personal estate, or any part thereof; and if any person who shall be appointed such trustee shall at any time thereafter become a convert to or profess the religious principles of any class or denomination different from the religious principles of the class or denomination for the promoting of whose education or worship, or for whose benefit any such property as aforesaid may be applicable, he shall thereupon be removed from being such trustee by the lord chancellor, for whom it shall be lawful, upon petition, in a summary way, to appoint a fit person to be a trustee to supply such vacancy; and all his estate, right, title, and interest, power and authority, in, to, over, and upon such real and personal estate shall thereupon vest, in like manner as if he had died, in the trustee so appointed jointly with the other trustee or trustees: provided always, that no use or trust for cleansing, lighting, paving, or supplying with water any city, town, or borough shall be deemed a charitable use or trust within the meaning of this enactment: provided also, that nothing herein contained shall extend or be construed to extend to the president and assistants of the charitable society of Belfast, or to the hospital and free school of King Charles the Second, Dublin, commonly called the Blue Coat Hospital, or to any real or personal estate belonging thereto.

Standing governors of the blue-coat hospital, Dublin, at the time of this act coming into operation, to be constituted a body politic, in place of the lord mayor, sheriffs, &c.

"CXIII. And whereas by letters patent of King Charles the Second, bearing date the fifth day of December, in the twenty-third year of his reign, the lord mayor, sheriffs, commons, and citizens of the city of Dublin, and their successors, are constituted a body politic and corporate, by the name of 'The Governors of the Hospital and Free School of King Charles the Second, Dublin:' and whereas the government, management, and direction of the said hospital and free school are now exercised by sixty-one standing governors (whereof four are the treasurer for the time being and three other governors of the schools founded by Erasmus Smith, esquire, appointed by the governors of the said last-mentioned schools, in pursuance of an act of the parliament of Ireland, made in the tenth year of the reign of King George the First): be it enacted, that from and immediately after this act shall come into operation in the said city of Dublin, the persons who at that time shall be the governors of the said hospital, and the survivors of them, and their successors, to be appointed in manner hereinafter mentioned, shall be and they are hereby constituted a body politic and corporate, by the aforesaid name of 'The Governors of the Hospital and Free School of King Charles the Second, Dublin,' in the place and stead of the said lord mayor, sheriffs, commons, and citizens of the said city of Dublin, who shall no longer be such body politic and corporate, in like manner, to all intents and purposes, as if the said sixty-one persons, and the survivors of them, and their successors, had been the persons appointed by virtue of the said letters patent, instead of the said lord mayor, sheriffs, commons, and citizens, and all and singular the hereditaments, sums of money, chattels, securities for money, and other personal estate of the said body corporate, constituted by the said letters patent, and all the estate, right, interest, and title, and all the rights, powers, privileges, and immunities of such body corporate, and all rights of action and suit vested in such body corporate, shall be and

are hereby vested in the body corporate hereby constituted in the place and stead thereof; and the body corporate hereby constituted shall be subject to the same liabilities, and governed according to the same regulations, as the body corporate appointed by the said letters patent shall be subject to and governed by: provided always, that the treasurer for the time being, and three other governors of the schools founded by the said Erasmus Smith, such as the governors of the said schools shall from time to time choose and appoint, shall and they are hereby declared to be standing governors of the said hospital, in like manner as by the said act of the tenth year of the reign of King George the First, they were made governors of the said hospital: provided also, that the governors of the said hospital hereby constituted shall never consist of less than fifty, and that when and so often as any of the governors hereby appointed, or to be appointed as hereinafter is mentioned, (other than the said treasurer and three other governors of the said schools founded by the said Erasmus Smith,) shall depart this life, then it shall be lawful for the lord archbishop of Armagh, the lord chancellor of Ireland, the lord archbishop of Dublin, and the lord bishop of Meath, for the time being, or the major part of them, and they are hereby empowered, by writing under their hands and seals, to appoint one or more person or persons in the place or places, and as a successor or successors of the deceased governor or governors, or any of them, so as to make up, with the surviving governors, the number at the least of fifty governors, including the said treasurer and three other governors of the said schools, founded by the said Erasmus Smith; and every person so appointed a governor shall be a governor jointly with the surviving governors for the time being, and shall have the same powers and authorities as if he had been appointed a governor by this act.

“CXIV. And be it enacted, that from and immediately after this act shall come into operation in the said city of Dublin, so much of the said act of parliament passed in the tenth year of the reign of King George the First as provides that the lord mayor and recorder of the city of Dublin, then and for the time being, and two of the aldermen of the said city, such as the governors of the schools founded by Erasmus Smith, esquire, should from time to time select and appoint, should for ever thereafter be standing governors of the said schools, shall be and the same is hereby repealed; and that four of the governors for the time being of the said hospital and free school of King Charles the Second, Dublin, such as the governors of the said schools founded by Erasmus Smith, shall from time to time select and appoint, shall for ever thereafter be standing governors of the said schools founded by the said Erasmus Smith.

“CXV. And be it enacted, that from and after the time when this act shall come into operation in any borough the body corporate of such borough shall be trustees for executing by the council of such borough the powers and provisions of all acts of parliament made before the passing of this act, (other than acts made for securing charitable uses and trusts, or acts relating to profitable trusts for shareholders or proprietors with respect to which provision is hereinafter made,) and of all trusts (other than charitable uses and trusts) of which the body corporate, or any member or members of the said body corporate in their corporate capacity, was or were sole trustees before the time of the first election of councillors in such borough under this act.

“CXVI. And be it enacted, that in every case in which any body corporate named in any schedule to this act annexed, or any person or persons elected by any such body corporate, is or are trustee or trustees authorized to exercise any powers or provisions of any acts of parliament for any purpose producing profits which, or part of which, is or are to be divided between shareholders or proprietors for their own benefit, then the powers and provisions of all such acts shall, from and after the time when this act shall come into operation, until parliament shall otherwise provide, be executed by such trustees as the lord chancellor of Ireland shall, by order to be from time to time made upon petition in a summary way, appoint and select, regard being had in such appointment to the rights of the several parties interested; and thereupon all the estate, right, interest, and title, at

STAT. 3 & 4
VICT. c. 108.
[Ira.]

Four governors of the blue coat hospital to be appointed governors of Erasmus Smith's schools in place of the lord mayor, recorder, &c.

Corporation to execute trusts.

Trusts producing money to be executed by trustees appointed by the lord chancellor.

STAT. 3 & 4
VICT. c. 108.
[1r.]

law and in equity, of the existing trustees, shall forthwith, without any conveyance or assignment thereof, pass to and become vested in the trustees so appointed; provided also, that it shall be lawful for the corporate body of any such borough, by their council or any committee appointed by the council, to purchase, with the consent of the respective shareholders, for the benefit of the inhabitants of such borough, any of the said shares not now held by the body corporate of such borough, and to pay for the same out of the borough fund; and if at any time it shall happen that the body corporate of such borough shall become possessed of the whole of the shares of such concern or undertaking, all the powers, rights, and estates and interests hereby vested in such trustees, shall revert to the body corporate of such borough, to be exercised by their council or any committee appointed by the council, for the benefit of the inhabitants of the said borough; and thereafter no further appointment of trustees shall be made under the provisions hereinbefore contained.

Sale of advow-
sons, &c.

“CXLVII. And be it enacted, that in every case in which a body corporate, or any particular class, number, or description of members, or the governing body of any body corporate, now is or are, in their corporate capacity, and not as charitable trustees, according to the meaning and provisions of this act, seized or possessed of any manors, lands, tenements, or hereditaments whereunto any advowson or right of nomination or presentation to any benefice or ecclesiastical preferment is appendant or appurtenant, or of any advowson in gross, or hath or have any right or title to nominate or present to any benefice or ecclesiastical preferment, every such advowson, and every such right of nomination and presentation, shall be sold at such time and in such manner as the ecclesiastical commissioners for Ireland may direct, so that the best price may be obtained for the same; and it shall be lawful for the council, commissioners, or guardians of such body corporate, and they are hereby authorized and required, with the consent of the said commissioners, or any three or more of them, in writing under their hands, to convey and assure, under the common seal of such body corporate, commissioners, or guardians, such advowson, or such right of nomination or presentation as aforesaid, to the purchaser or purchasers thereof respectively, his or their heirs, executors, administrators, and assigns, or to such uses as he or they shall direct; and the proceeds of every such sale shall be paid to the treasurer of the borough, or of the guardians respectively, whose receipt shall be a sufficient and effectual discharge to the purchaser or purchasers to whom the same shall be given for the amount of his or their purchase money; and it shall be lawful for the council, commissioners, or guardians of such borough to direct that such purchase money, or any part thereof, shall be applied towards the liquidation of any debt contracted before the passing of this act by the body corporate now seized or entitled to the property so sold, and if it shall not be so applied it shall be invested in government securities for the use of the body corporate, commissioners, or guardians, as in case of other property under this act, and the annual interest payable thereon shall be carried to the account of the borough fund: provided always, that in case of any vacancy arising before any such sale shall have taken place and been completed, such vacancy shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which such benefice or ecclesiastical preferment is situated.

Certain provi-
sions of 1 & 2
Vict. c. 31,
extended to
Ireland.

“CXLVIII. And be it enacted, that the several provisions contained in an act passed in the last session of parliament, intituled, ‘An Act for facilitating the Sale of Church Patronage belonging to Municipal Corporations in certain Cases,’ shall, so far as the same are applicable, be extended to every right of nomination similarly circumstanced which shall at the time of passing this act be vested in any municipal corporation in Ireland, or in any member of such corporation in virtue of his office as such; and every such right of nomination shall become a benefice presentative, and the curate or minister presented thereto shall be a body parson and corporate.

Provision re-
specting the

“CXLIX. Provided always, and be it enacted, that the body corporate, called ‘The Warden and Vicars Choral of the Royal College or Collegiate Church of

Galway,' shall continue in force unless and until the same shall be dissolved by the said ecclesiastical commissioners in manner hereinafter mentioned; and the vicars choral of the said college or collegiate church shall respectively continue to be such vicars choral during their respective lives, or until they respectively shall resign or be removed from such benefices respectively, or the said college shall be dissolved in manner hereinafter mentioned; and that any resignation made by the said present warden and vicars choral, or any of them, of their respective benefices, to the Bishop of Tuam for the time being, shall be valid and effectual; and the said ecclesiastical commissioners shall and they are hereby authorized and empowered, if they shall think proper, by any instrument in writing under their corporate seal, with the consent of the lord lieutenant and of her majesty's privy council in Ireland in council assembled (six at least consenting), and with the consent of the Bishop of Tuam, to declare that the said college and collegiate church of Galway shall be dissolved upon the death, resignation, or removal of the said present warden; and that the rectories and vicarages which now belong to the said college or collegiate church of Galway, shall thereupon be divided into such separate and distinct benefices or parishes as they shall think proper; and that all rent-charges in lieu of tithes, or portions or parcels of such rent-charges, churches, churchyards, and burial places, and other the revenues, profits, and emoluments now belonging to the said college or collegiate church of Galway, shall be divided among and united to the said distinct parishes or benefices respectively as they shall direct; and that such persons as shall be vicars choral of the said college or collegiate church at the time of such dissolution shall become the incumbents of such of the said distinct parishes and benefices respectively as the said ecclesiastical commissioners shall thereby direct; and if such dissolution shall be made as aforesaid the said college or collegiate church shall be dissolved upon the death, resignation, or removal of the said present warden, and the said vicarages and rectories shall thereupon become distinct benefices and parishes accordingly, and each of the persons who at the time of such dissolution shall be a vicar choral of the said college or collegiate church shall thereupon by virtue of this act, and without any presentation, induction, institution, or other ceremony, become rector or vicar of the distinct benefice or parish of which such vicar choral shall be directed as aforesaid to become the rector or vicar; and the advowson, right of presentation, and nomination to the said offices of warden and vicars choral of the said college or collegiate church of Galway, or in case the same shall be dissolved as aforesaid the advowson or right of nomination or presentation to each of the distinct benefices or parishes into which the rectories and vicarages aforesaid shall be divided shall be sold by the said ecclesiastical commissioners, and the purchase money shall be applied in like manner as in the case of any other advowson is hereby directed to be sold, and they are hereby empowered to make a valid grant and conveyance thereof to any purchaser or purchasers accordingly; and the purchase money shall be paid to the commissioners for the time being acting under the act of parliament made and passed in the sixth and seventh years of the reign of his late majesty King William the Fourth, intituled, 'An Act for regulating and improving the Town of Galway in the County of the same Town,' to be by them applied in the first place in or towards the payment of the compensations, pensions, stipends, and allowances to become payable to officers of or other persons connected with the borough of Galway in the cases hereinafter provided for; and in the next place in or towards the payment of debts due from the body corporate of that borough; and if any residue shall then remain of such purchase money it shall be applied by the said commissioners in aid of the funds or rates vested in or which shall or may become payable to the said last-mentioned commissioners; and in case of the dissolution of the said college or collegiate church all the ecclesiastical jurisdiction and powers belonging thereto, or to the warden thereof, shall be and are hereby vested in the Bishop of Tuam for the time being."

STAT. 3 & 4
VICT. C. 108.
[18.]

warden and
vicars choral
of Galway.

6 & 7 Gul. 4,
c. cxvii.

STAT. 3 & 4
VICT. c. 113.

LXXIX. STAT. 3 & 4 VICTORIÆ, c. 113 (1). A.D. 1840.

"An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues (2)."

6 & 7 Gul. 4,
c. 77.

"Whereas an act was passed in the seventh year of the reign of his late majesty, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' constituting the ecclesiastical commissioners for England to be one body politic and corporate for the purposes set forth in the said act: and whereas the commissioners first mentioned in the said act, in their fourth report to his late majesty, bearing date the twenty-fourth day of June, in the year one thousand eight hundred and thirty-six, made certain recommendations touching cathedral and collegiate churches, and other things in the said report specified: and whereas it is expedient that the said recommendations should be adopted, with certain alterations; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from henceforth all the members of chapter, except the dean, in every cathedral and collegiate church in England, and in the cathedral churches of St. David and Llandaff, shall be styled canons; and the precentor of the cathedral church of St. David and the warden of the collegiate church of Manchester shall be respectively styled dean.

Members of
chapters to be
deacons and
canons.

Number of
canons.

"II. And be it enacted, that, subject to the provisions hereinafter contained, the number of canons in the several cathedral and collegiate churches of the new foundation, and in the cathedral churches of St. David and Llandaff, and in the queen's free chapel of St. George within the castle of Windsor, and of canons residentiary in the several cathedral churches of the old foundation in England, shall be the number respectively specified in the schedule hereto annexed.

Residence of
dean and
canons.

"III. And be it enacted, that in every cathedral and collegiate church, the term of residence to be kept by every dean thereof hereafter appointed shall be eight months at the least in every year, and the term of residence to be kept by every canon thereof hereafter appointed shall be three months at the least in every year.

Six canonries
suspended at
Canterbury.

"IV. And be it enacted, that in the chapter of the cathedral church of Canterbury six canonries shall be suspended in the following order; that is to say, the canonry firstly vacant shall be suspended; and the canonry now held by the Archdeacon of Canterbury and the canonry secondly vacant shall be subject to the provisions hereinafter contained respecting the endowment of archdeaconries by the

(1) The powers of Stat. 3 & 4 Vict. c. 113, were extended to Stat. 5 & 6 Vict. c. 108, by Stat. 5 & 6 Vict. c. 108, s. 15; and to Stat. 5 & 6 Vict. c. 26, by Stat. 5 & 6 Vict. c. 26, s. 14. *Vide* Stat. 4 & 5 Vict. c. 39; and Stat. 6 & 7 Vict. c. 77.

(2) *Ecclesiastical Duties and Revenues*.—From the summary of a parliamentary return, which has been recently issued, containing a list of benefices and churches augmented by the ecclesiastical commissioners for England, and made up to the 1st of May, 1844, it appears, that under schedule A. the commissioners had in 496 livings, made by unconditional grants, an annual augmentation amounting to 25,779*l.*, which was divided under four branches in the following manner: In places where the population was 2000 and upwards, the income was raised to 150*l.* in 261 livings, which amounted to 16,722*l.*; where the population was 1000 and upwards, the income of 96 livings was raised to 120*l.*, making 4374*l.*; where the population was 500 and upwards, 80 livings

were augmented to 100*l.*, making 3253*l.*; and in instances where the population was below 500, in 59 livings the income was increased to 80*l.*, making a sum of 1430*l.* It further appears, that grants have been made by the commissioners to meet benefactions when the income was below 200*l.* in 48 livings. The commissioners have local claims upon tithes, &c., in 29 livings, and in 10 others the incumbents have claims for compensation for the loss of fees surrendered to new churches. The aggregate number of livings, after deducting 21 included in more than one schedule, which have been augmented, number 562, and the amount to 29,809*l.* It thus appears, that, under the provisions of the Cathedral Acts, 562 livings have already been augmented by the sum of 29,809*l.* per annum in perpetuity, and that sum is exclusive of money expended and promised to meet benefactions for building and purchasing houses of residence for incumbents whose annual incomes are below 200*l.*

annexation of canonries thereto, and the canonry thirdly vacant shall be suspended and the canonry fourthly vacant shall be filled up by her majesty; and the two canonries fifthly and sixthly vacant shall be suspended, and the then next vacant canonry shall be filled up by her majesty; and the two canonries which shall then next be vacant shall be suspended; and that thereafter, upon every fourth vacancy among the canonries not annexed to any archdeaconry, the Lord Archbishop of Canterbury shall appoint a canon, and all other vacancies among such last-mentioned canonries shall be filled up by her majesty.

STAT. 3 & 4
VICT. c. 113.

“V. And be it enacted, that in the chapter of Christchurch in Oxford, the first vacant canonry, not being one of the two canonries which are respectively annexed to regius professorships in the university of Oxford, shall immediately become and be permanently annexed and united to the Lady Margaret’s professorship of divinity in the said university, and shall and may be held by the present and every future Lady Margaret’s professor of divinity therein; and that upon such annexation as aforesaid the canonry in the cathedral church of Worcester, which is now annexed to the last-mentioned professorship, shall be *ipso facto* detached therefrom, and shall become vacant; and the canonry secondly vacant in the said chapter of Christchurch shall be subject to the provisions hereinafter contained respecting the endowment of archdeaconries by the annexation of canonries thereto.

Canonry at
Christchurch
annexed to a
professorship
instead of
canonry at
Worcester.

“VI. And whereas her majesty has graciously intimated to parliament her royal will and intention to found two new professorships in the said university of Oxford, and it is expedient that the same should be competently endowed; be it therefore enacted, that the two canonries in the said chapter of Christchurch, (not being either of them a canonry annexed or to be annexed to any of the professorships already founded in the said university,) which shall be thirdly and fourthly vacant shall, upon the vacancies thereof respectively, and the foundation of such professorships respectively, become and be permanently annexed and united thereto, in such order as her majesty shall, in and by her royal letters patent founding such professorships, direct and appoint; and if either of such last-mentioned canonries be vacant before the foundation of such professorships, the same shall not be filled up until after such foundation; and after such annexation the said canonries shall and may be held by the holders of such professorships respectively for the time being; provided that if the member of any college or hall in the said university except Christchurch shall hereafter accept any professorship to which a canonry of Christchurch is or shall be annexed, he shall thereby cease to be a member of such other college or hall.

Two canonries
at Christ-
church annexed
to new pro-
fessorships in
the university
of Oxford.

“VII. And be it enacted, that, except as herein particularly specified, nothing in this act contained shall in any manner affect or apply to the cathedral church of Christ in Oxford.

Act not to
apply other-
wise to Christ-
church.

“VIII. And be it enacted, that in the chapters of the cathedral churches of Durham and Worcester and of the collegiate church of Saint Peter, Westminster, respectively, six canonries shall be suspended in the following order; (that is to say,) the first two vacant canonries shall be suspended, and the canonry thirdly vacant shall be filled up; and the two canonries fourthly and fifthly vacant shall be suspended, and the then next vacant canonry shall be filled up; and the two canonries which shall then next be vacant shall be suspended.

Six canonries
suspended at
Durham,
Worcester,
and West-
minster.

“IX. And be it enacted, that in the chapter of the queen’s free chapel of Saint George within her castle of Windsor eight canonries shall be suspended in the following order; (that is to say,) the first two vacant canonries shall be suspended, and the canonry thirdly vacant shall be filled up; and the two canonries fourthly and fifthly vacant shall be suspended, and the then next vacant canonry shall be filled up; and the two canonries which shall then next be vacant shall be suspended, and the then next vacant canonry shall be filled up; and the two canonries which shall then next be vacant shall be suspended.

Eight canonries
suspended at
Windsor.

“X. And be it enacted, that in the chapter of the cathedral church of Winchester seven canonries shall be suspended in the following order; (that is to say,) the two canonries secondly and thirdly vacant shall be suspended, and the canonry

Seven canon-
ries suspended
at Winchester.

STAT. 3 & 4
VICT. c. 113.

to belong to the said two last-mentioned canonries, or the incumbents thereof respectively, and every such stipend or other sum of money so payable to such incumbents respectively, instead of being paid to such incumbents or either of them, shall, by the treasurer for the time being of the said chapter, be divided into twelve equal parts; and eight only of such parts shall be paid to or for the use of the incumbents for the time being of the said canonries respectively, and the remaining four parts shall be paid in such manner and to such uses as shall by the authority hereinafter provided be directed; provided always, that so much of the last-mentioned monies as shall appertain to the canonry now held by the said Henry Hart Milman shall be applied, in such proportions as by the like authority shall be determined, towards providing a house or houses of residence for the minister or ministers of one or more district church or churches in the said parish of Saint Margaret, and for endowing such minister or ministers, and the minister of Broadway Chapel in the same parish; and so much of the said monies as shall appertain to the canonry now held by the said John Jennings shall be in like manner applied towards providing a house or houses of residence for the minister or ministers of one or more district church or churches in the said parish of Saint John, and for endowing such minister or ministers.

New archdeacons and rural deaneries may be formed.

“XXXII. And whereas, under the first-recited act, certain new archdeaconries therein named may, by the authority thereby provided, be created, and districts may be assigned thereto, and the limits of the existing archdeaconries and rural deaneries may be newly arranged; and whereas it is expedient to extend the power of creating new archdeaconries and rural deaneries; be it enacted, that in any case in which it shall appear, upon the representation of the bishop, to be proper to divide any archdeaconry or rural deanery on account of the magnitude thereof, or any other peculiar circumstance connected therewith, such archdeaconry or rural deanery may, by the authority hereinafter provided, be divided into two or more portions, and each of such portions may be constituted a separate archdeaconry or rural deanery, as the case may be, and a district may be assigned thereto; provided always, that no such division shall be made without the consent of the bishop under his hand and seal.

Bishops of London and Lincoln may appoint an archdeacon to the new canonry of St. Paul's and Lincoln.

“XXXIII. And be it enacted, that the Bishops of London and Lincoln respectively may forthwith and from time to time appoint one of the archdeacons of their respective dioceses to the new canonries hereby added to the respective chapters of the cathedral churches of Saint Paul in London and of Lincoln; and that every archdeacon so appointed to a canonry shall thereupon become and be a canon of the cathedral church of Saint Paul or Lincoln, and a member of the chapter of such church, to all intents and purposes, and possessed of and entitled to the like rights, privileges, dignities, and emoluments as are possessed by other canons in the same church, subject nevertheless to the provisions herein contained.

Provision for archdeaconries.

“XXXIV.(1) And be it enacted, that, so soon as conveniently may be, and by the authority hereinafter provided, subject to the consent of the bishop, any archdeaconry may be endowed by the annexation either of an entire canonry or of a canonry charged with the payment of such portion of its income as shall be determined on towards providing for another archdeacon in the same diocese, or with such last-mentioned portion of the income of a canonry, or by augmentation out of the common fund hereinafter mentioned, provided that the said augmentation shall not be such as to raise the average annual income of any archdeaconry to an amount exceeding two hundred pounds; and that no canonry shall be so charged with the payment of a portion of the income thereof to any archdeacon, unless the average annual income of such canonry, after the payment of such portion as aforesaid, shall amount to or exceed five hundred pounds: provided always, that no archdeacon shall be entitled to hold any endowment or augmentation, or other emolument as such archdeacon under the provisions of this act, unless he shall be resident for the space of eight months in every year within

(1) *Vide Stat. 4 & 5 Vict. c. 39, s. 9.*

office in the university of Durham; but that if any canonry so held annexed or connected, or to be annexed, shall be vacant in such order as that according to the said last-mentioned provisions it would be one of the canonries to be suspended, the vacancy thereof shall not be counted as a vacancy subject to such provisions; and that upon the passing of this act all then subsisting vacancies of canonries shall be deemed vacancies within the meaning of the said last-mentioned provisions and of this proviso, and shall be counted, subject also to this proviso, in the numerical order in which they shall have occurred.

“XVI. Provided always, and be it enacted, that in any cathedral church in which by the suspension of canonries the number of canons shall be reduced to four, one of such suspended canonries may by the authority hereinafter provided, if it be deemed necessary for the purpose of endowing any archdeaconry or archdeaconries, be filled up, subject to the provisions hereinafter contained respecting the endowment of archdeaconries by the annexation of canonries thereto.

“XVII. And be it enacted, that in the chapters of the cathedral churches of Saint Paul in London and of Lincoln respectively there shall be a fourth canonry, and such canonry shall be in the patronage of the Bishops of London and Lincoln respectively, subject nevertheless to the limitation as to the exercise of such patronage hereinafter contained.

“XVIII.(1) And be it enacted, that in the collegiate church of Southwell the canonries now vacant, and all the other canonries except the canonry now held by the Archdeacon of Nottingham, as vacancies occur, shall be suspended.

“XIX. And be it enacted, that no appointment shall hereafter be made to any canonry in either of the cathedral churches of Saint David or Llandaff, excepting any canonry by the vacancy of which the canons shall be reduced below the number of two; and that all canonries vacant previously to such reduction shall be suspended.

“XX. And be it enacted, that a plan may from time to time be laid before the ecclesiastical commissioners for England by any of the said chapters of the several cathedral and collegiate churches, with the sanction of the visitors of the said churches respectively, for removing the suspension from and re-establishing any canonry or canonries which shall have been suspended by or under the provisions of this act, by assigning towards the re-endowment of any such canonry or canonries a portion of the divisible corporate revenues remaining to the said chapters respectively, after paying to the said ecclesiastical commissioners the profits and emoluments accruing to the said commissioners from the suspended canonry or canonries, so that the profits and emoluments of such suspended canonry or canonries be not diminished by the removal of such suspension; and also by accepting and assigning for the same purpose any further endowment in money, or in lands, tithes, or other hereditaments, such lands, tithes, or other hereditaments not exceeding in yearly value the sum of two hundred pounds for each canonry from which the suspension shall have been so removed; and also by annexing to any such canonry from which the suspension shall have been so removed any suitable benefice or other preferment in the patronage of the said chapters respectively, or of any other patron, with the consent of such patron, and where any bishop is patron, with consent of the archbishop; and any such plan may be carried into effect by the authority hereinafter provided, and such alterations may be made in the existing statutes and rules of the said chapters respectively, as the case may require, under the authority herein provided for making alterations in existing statutes.

“XXI. And be it enacted, that no new appointment shall be made to the deaneries of Wolverhampton, Middleham, Heytesbury, and Brecon respectively, but that the said deaneries shall, as to any which may be vacant at the passing of this act, immediately upon its so passing, and as to any other immediately upon the vacancy thereof, be suppressed.

“XXII.(2) And be it enacted, subject to the provisions hereinafter contained, that after the passing of this act no presentation, collation, donation, admission.

STAT. 3 & 4
VICT. c. 113.

One suspended canonry may be filled up to endow archdeaconries.

A fourth canonry founded at St. Paul's, London, and at Lincoln.

All canonries but one suspended at Southwell.

All canonries but two suspended at St. David's and Llandaff.

Power to remove the suspension from canonries under special circumstances.

Non-residential deaneries suppressed.

Non-residential prebends

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 12.

(2) *Vide* Stat. 4 & 5 Vict. c. 39, s. 7.

STAT. 3 & 4
VICT. C. 113.

Separate patronage of members of chapters to be vested in the bishops.

Spiritual person not to sell or assign any right of patronage.

Haseley rectory to be severed from the deanery of Windsor.

Exercise of patronage of chapters.

niently may be, the canons of the said church may be instituted or licensed, as the case may be, to the cure of souls in the parishes of Llandaff and Whitchurch respectively; and, after the reservation to the Lord Bishop of Llandaff of one seventh part (being his present share) of the whole divisible corporate revenues, the remainder thereof shall be divided among the three members of the chapter, in the proportions of one half to the dean, and one quarter to each of the canons.

“XLII. (1) And be it enacted, that, subject to the provisions hereinafter contained, the patronage of all benefices with cure of souls possessed by deans and other individual members of chapters in right of any separate estates held by them as such members, or possessed by prebendaries, dignitaries, or officers not residentiary, in right of their prebends, dignities, or offices respectively, shall be transferred to and vested in the respective bishops of the dioceses in which the benefices shall be respectively situate, subject nevertheless to all such provisions respecting the apportionment or exchange of ecclesiastical patronage as are contained in the first hereinbefore recited act: provided always, with respect to any benefice now or heretofore possessed by any dean in right of any separate estate held by him as such dean, that every future dean of the same deanery may, upon any vacancy of such benefice, present himself thereto; that with respect to benefices in the patronage of the prebendaries of the collegiate church of Southwell, the same shall, so soon as conveniently may be, and by the authority hereinafter provided, be transferred so as to become vested, as the prebends fall in respectively, partly in the Bishop of Ripon and partly in the Bishop of Manchester, in such proportion as shall be determined on; and that upon the vacancy of any such last-mentioned benefice before the patronage thereof shall have been so transferred as aforesaid, it shall be lawful for the Bishop of Ripon for the time being to present thereto.

“XLII. And be it enacted, that it shall not be lawful for any spiritual person to sell or assign any patronage or presentation belonging to him by virtue of any dignity or spiritual office held by him, and that every such sale or assignment shall be null and void to all intents and purposes.

“XLIII. And be it enacted, that in the construction of this act the said free chapel of Saint George in Windsor shall be held to be included in the term collegiate church, and that immediately upon the first vacancy of the deanery of the said free chapel so much of an act passed in the reign of Queen Anne, for annexing the rectory or parsonage of Haseley to the deanery of the said free chapel as relates to the rectory, parsonage, and parish of Haseley, shall be repealed, and the rectory of Haseley in the county of Oxford shall be absolutely detached and severed from the said deanery, and, subject to such appropriation of the revenues thereof as shall be determined on by the authority hereinafter provided, shall be in the patronage of the chapter of the said chapel: provided always, that such patronage shall in the first instance be exercised in favour of William Birkett, clerk, if at the time of such vacancy he shall be curate of the parish of Haseley.

“XLIV. (2) And be it enacted, that upon the vacancy of any benefice in the patronage of the chapter of any cathedral or collegiate church, the chapter shall present or nominate thereto either a member of such chapter, or one of the archdeacons of the diocese, or a non-residentiary prebendary or honorary canon, as the case may be, or any spiritual person who shall have served for five years at the least in the office of minor canon or lecturer of the same church, or of master of the grammar or other school (if any) attached to or connected with such church, or as incumbent or curate in the same diocese, or as public tutor in either of the universities of Oxford and Cambridge, or who, so far as relates to the cathedral church of Durham, shall have served for the like term in the office of professor, reader, lecturer, or tutor in the said university of Durham, or shall have been educated thereat and shall be a licentiate or graduate in theology therein, or who shall have served as incumbent or curate within the same diocese for the period aforesaid; and that every such office of minor canon, lecturer, schoolmaster, professor, reader, lecturer, or tutor, shall immediately upon the expiration of one year from

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 12.

(2) Amended by Stat. 4 & 5 Vict. c. 33, s. 15.

act shall have ceased to be such member, the canonries shall be in the direct patronage of the Bishop of Manchester for the time being, who may, upon the vacancy of any canonry, collate thereto a spiritual person, who shall thereupon be entitled to installation as a canon of the said last-mentioned church.

“XXVII. And be it enacted, that no person shall hereafter be capable of receiving the appointment of dean, archdeacon, or canon until he shall have been six years complete in priest's orders, except in the case of a canonry annexed to any professorship, headship, or other office in any university.

“XXVIII. And be it enacted, that in every cathedral or collegiate chapter wherein there exists any statute or custom for assigning to the dean or to any canon any land, tithes, or other hereditament, in addition to his share of the corporate revenues, or for appropriating separately to the dean or any canon during his incumbency the proceeds of any land, tithes, or other hereditament, part of the corporate property of the chapter, every such statute and custom, or every such part thereof as relates to such assignment or appropriation, shall be repealed and annulled as to all deans and canons hereafter appointed: provided nevertheless, that any small portion of land situate within the limits and precincts of any cathedral or collegiate church, or in the vicinity of any residentiary house, may be reserved to such church, or permanently annexed to such residentiary house, by the authority hereinafter provided.

“XXIX. And be it enacted, that the rectory of the parish of Saint Margaret in the city of Westminster shall immediately become and be permanently annexed and united to the canonry in the said collegiate church of Saint Peter, Westminster, held by Henry Hart Milman, clerk, master of arts, and the rectory of the parish of Saint John, in the same city, shall immediately become and be permanently annexed and united to the canonry in the same church held by John Jennings, clerk, master of arts; and the said Henry Hart Milman and his successors, and the successors of the said John Jennings, in the said respective canonries, shall, as canons of the said church, become *ipso facto* rectors of the said respective parishes and the parish churches thereof, to all intents and purposes; and the said parishes shall become and be part of the province of Canterbury, of the diocese of London, and of the archdeaconry of Middlesex; and the said parishes, and the rectors and other ministers and officers thereof, shall, in ecclesiastical matters, be subject only to the jurisdiction of the Archbishop of Canterbury, the Bishop of London, and the Archdeacon of Middlesex respectively, in the same manner as other parishes in the said province, diocese, and archdeaconry are respectively subject thereto, and be exempted and relieved from all other ecclesiastical jurisdiction whatsoever: provided always, that nothing herein contained shall in any manner affect or prejudice any of the rights, customs, or claims of the parishioners of the said parish of Saint Margaret, or the vestry or churchwardens thereof for the time being, nor render them liable to or chargeable with the repairs of the said Broadway Chapel, further or otherwise than as they now are or may become liable thereto by any law in force at the time of the passing of this act.

“XXX. And be it enacted, that such one of the prebendal houses belonging to the chapter of the said collegiate church of Saint Peter, Westminster, as shall be determined on by the authority hereinafter provided shall be, as soon as conveniently may be, exempted from the rule of option subsisting in the chapter thereof, and be permanently annexed to the said canonry now held by the said Henry Hart Milman, and shall thenceforth be the house of residence for the rector of the said parish of Saint Margaret for the time being.

“XXXI. (1) And be it enacted, that when and so often as, according to the statutes or usages of the chapter of the said collegiate church of Saint Peter, Westminster, any dividend or division shall be made of any profits or emoluments, from whatever source accruing, or any stipend or other sum of money shall become payable to the members of the said chapter as such members, the shares of such profits and emoluments, which, according to such statutes or usages, shall be found

STAT. 3 & 4
VICT. c. 113.

Qualification
of deans, arch-
deacons, and
canons.

Repeal of
statutes and
customs for
appropriating
separate es-
tates.

Annexation of
St. Margaret's
and St. John's
to two canon-
ries of West-
minster.

Rectory house
of St. Marga-
ret's.

Division and
application of
the revenues of
the two canon-
ries of West-
minster.

STAT. 3 & 4
VICT. c. 113.

as to all such rectories as may be vacant at the passing of this act immediately upon its so passing, and as to all others immediately upon the vacancies thereof respectively, be suppressed; and that as to any such ecclesiastical rectory without cure of souls, the advowson whereof or any right of patronage wherein shall belong to any person or persons or body corporate other than as aforesaid, the ecclesiastical commissioners for England shall be authorized and empowered to purchase and accept conveyance of such advowson or right of patronage, as the case may be, at and for such price or sum as may be agreed upon between them and the owner or owners of such advowson or right of patronage, and may pay the purchase money and the expenses of and attendant upon such purchase out of the common fund hereinafter mentioned; and that after the completion of such purchase of any such rectory, and upon the first avoidance thereof, the same shall be suppressed; and that upon the suppression of any such rectory as aforesaid all ecclesiastical patronage belonging to the rector thereof as such rector shall be absolutely transferred to and be vested in the original patron or patrons of such rectory.

Profits of suspended canonries to be paid to and their estates vested in the commissioners.

“XIX. (1) And be it enacted, that all the profits and emoluments of each and every canonry suspended by or under the provisions of this act, whether consisting of or arising from rents, fines, compositions, dividends, stipends, or other emoluments whatsoever, shall forthwith, as to every such canonry vacant at the passing of this act, and as to every other immediately upon and from the vacancy thereof, and from time to time, be paid to the ecclesiastical commissioners for England for the purposes of this act in like manner as the holder of such canonry, if he had remained in possession, or the successor thereto, if a successor had been appointed and had duly qualified himself by residence and otherwise according to the statutes and usages of his church to receive his full portion of the emoluments thereof, would have been entitled to receive the same; and that all the estate and interest, if any, which such successor would have had in any lands, tithes, and other hereditaments (except any right of patronage) annexed or belonging to or usually held and enjoyed with such canonry, or whereof the rents and profits have been usually taken and enjoyed by the holder of such canonry, as such holder separately and in addition to his share (if any) of the corporate revenues of such chapter, shall forthwith, as to all vacancies subsisting at the passing of this act, and as to all others immediately upon such vacancies respectively, accrue to and be vested absolutely in the ecclesiastical commissioners for England and their successors for the purposes of this act, without any conveyance thereof or any assurance in the law other than the provisions of this act; provided nevertheless, that the profits and emoluments arising from corporate revenues belonging to the canonries suspended in the chapters of the cathedral churches of Chester, Lichfield, and Ripon respectively shall become, as the vacancies occur, part of the divisible corporate revenues of the said chapters respectively; provided also, that nothing herein contained shall be construed to affect the right of any chapter, according to the statutes or customs of such chapter in force at the passing of this act, to make due provision out of the divisible corporate revenues for the maintenance of the fabric, the support of the grammar school, if any, and all other necessary and proper expenditure.

Separate estates of deaneries and canonries not suspended to vest in commissioners.

“L. (1) And be it enacted, that, subject to the provisions herein contained, all the estate and interest which the holder of any deanery or canonry not suspended by or under the provisions of this act, and his successors, have and would have in any lands, tithes, and other hereditaments whatsoever annexed or belonging to or usually held or enjoyed with such deanery or canonry, (except any right of patronage,) or whereof the rents and profits have been usually taken and enjoyed by the holder of such deanery or canonry as such holder separately and in addition to his share of the corporate revenues of such chapter, shall, without any conveyance or assurance in the law other than the provisions of this act, accrue to and be vested absolutely in the ecclesiastical commissioners for England, and their successors, for the purposes of this act.

Estates of non-

“LI. (2) And be it enacted, that all lands, tithes, and other hereditaments.

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 4.

(2) *Vide* Stat. 4 & 5 Vict. c. 39, s. 1, & 7.

the diocese in which his archdeaconry is situate, or as to any present archdeacon, within the diocese in which his archdeaconry was situate before the passing of the first-recited act, subject to the same provisions as to licences for non-residence which are enacted with respect to incumbents of benefices by an act passed in the second year of her present majesty, intituled, 'An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy.'

STAT. 3 & 4
VICT. c. 113.

1 & 2 Vict.
c. 106.

"XXXV.(1) And be it enacted, that instead of appointing one archdeacon to either of the new canonries respectively founded in the cathedral churches of Saint Paul in London and of Lincoln, or of annexing a canonry in any cathedral or collegiate church to an archdeaconry as aforesaid charged with any payment to another archdeacon in the same diocese, the rights, duties, and emoluments of any canonry, the average annual income of which may exceed eight hundred pounds, may, by the authority hereinafter provided, be annexed to two archdeaconries jointly within the same diocese, not otherwise competently endowed, each archdeacon taking his turn of residence for such time, and taking such share of the emoluments, as shall be directed by the scheme and order authorizing such annexation; and each archdeacon shall during his turn of residence have all the rights and privileges of a canon (except as to the division of the emoluments); and every future archdeacon whose archdeaconry shall be endowed as last aforesaid shall be deemed the holder of cathedral preferment within the meaning of the last recited act.

Further provision for archdeaconries.

"XXXVI.(2) And be it enacted, that, so soon as conveniently may be, and by the authority hereinafter provided, the canonry remaining in the collegiate church of Southwell shall be annexed to the archdeaconry of Nottingham, and a better provision shall be made for the cure of souls in the parish of Southwell by the application of so much of the revenues arising from the suspended canonries in the collegiate church of Southwell, and in such manner as shall by the like authority be determined on.

Provision for the archdeaconry of Nottingham and the parish of Southwell.

"XXXVII.(3) And be it enacted, that, so soon as conveniently may be, and by the authority hereinafter provided, such arrangements shall be made with respect to the deanery and canonries in the cathedral church of Durham, and their revenues, as, upon due inquiry and consideration of an act passed in the second year of the reign of his late majesty, intituled, 'An Act to enable the Dean and Chapter of Durham to appropriate Part of the Property of their Church to the Establishment of a University in connexion therewith for the Advancement of Learning,' and of the engagements entered into by William late bishop of Durham and the dean and chapter of Durham, shall be determined on, with a view to maintaining the said university in a state of respectability and efficiency; provided that in such arrangements due regard shall be had to the just claims of any existing officer of the said university.

Further provision for the university of Durham.

2 & 3 Gul. 4,
c. 19.

"XXXVIII.(4) And be it enacted, that the canonries of the cathedral church of Saint David shall be in the direct patronage of the Bishop of Saint David's, and that so soon as conveniently may be the canons may be respectively instituted or licensed, as the case may be, to the cure of souls in the parish of Saint David; and the whole divisible corporate revenues shall be divided into twenty-four parts, ten of which parts shall be assigned to the dean, and five to each canon, and the remaining four parts shall be assigned as an endowment to the Archdeacon of Cardigan.

Provision for the chapter of St. David's and the archdeaconry of Cardigan.

"XXXIX.(4) And be it enacted, that, so soon as conveniently may be, and by the authority hereinafter provided, due provision shall be made out of the endowments belonging to the prebends in the collegiate church of Brecon for the archdeaconries of Brecon and Carmarthen.

Provision for archdeaconries of Brecon and Carmarthen.

"XL.(4) And be it enacted that the Archdeacon of Llandaff shall from henceforth be also dean of the cathedral church of Llandaff, and that, so soon as conve-

Provision for the chapter of Llandaff.

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 9.

(2) *Vide* Stat. 4 & 5 Vict. c. 39, s. 12.

(3) *Vide* Stat. 4 & 5 Vict. c. 39, s. 13.

(4) Repealed by Stat. 4 & 5 Vict. c. 39,

s. 14.

STAT. 3 & 4
VICT. c. 113.

vicarage or vicarages, curacy or curacies, such annexation may be made, and any such vicarage or curacy may be constituted a rectory with cure of souls by the authority hereinafter provided; and that wherever any rectory heretofore deemed a rectory without cure of souls has been held together with the vicarage dependent thereon for the period of twenty years last past, the same shall not be construed to be a rectory without cure of souls within the meaning of this act, but such last-mentioned rectory and vicarage shall continue and be permanently united, and shall be a rectory with cure of souls; subject nevertheless to all the provisions of the thirdly-recited act, and to the provisions of this act which relate to the division of benefices, or the apportionment of the incomes thereof.

Estates of
newly endowed
archdeacons
vested in com-
missioners.

“LVI. And be it enacted, that upon the endowment of any archdeaconry by either of the modes of endowment herein provided, and with the consent of the bishop of the diocese and of any archdeacon in possession at the time of the passing of this act, all lands, tithes, and other hereditaments, (except any right of patronage,) belonging to such archdeaconry at the time of such endowment, may, by the authority hereinafter provided, be vested in the ecclesiastical commissioners for England, and their successors, for the purposes of this act; and any benefice annexed to such archdeaconry may be, by the like authority, disannexed therefrom, and the patronage of such benefice shall thenceforth revert to the patron to whom it belonged before such annexation, subject to any transfer of patronage provided by this act.

Commissioners
to have all
legal powers of
enforcing pay-
ments, &c.

“LVII. And be it enacted, that the ecclesiastical commissioners for England shall, for the purpose of enforcing payment of all profits and emoluments to be paid to them, and of obtaining possession of all lands, tithes, or other hereditaments vested in or accruing to them as aforesaid, and of recovering the rents and profits thereof, have and enjoy all rights, powers, and remedies, at law and in equity, which belonged or belong, or would belong or have belonged, to the holder of the deanery, canonry, prebend, dignity, or office, or the rector of the rectory, in respect of which such profits and emoluments, lands, tithes, and other hereditaments and endowments respectively, are, by or under the provisions of this act, to be paid or to accrue to and be vested in the said commissioners.

Appropriation
of residence
houses not
wanted.

“LVIII. (1) And be it enacted, that, so soon as conveniently may be, measures shall be taken by the deans and chapters of the several cathedral and collegiate churches for the disposal of such residence houses now under their control, and houses attached to any dignity, office, or prebend, in the precincts of the respective cathedral and collegiate churches as may no longer be required, in such way as they shall deem fit, according to plans to be from time to time prepared by the respective chapters, and when approved by the visitors, be submitted to the ecclesiastical commissioners for England, and may be confirmed by the authority hereinafter provided.

1 & 2 Vict.
c. 23, relating
to residence
houses, to ap-
ply to deans
and canons.

“LIX. (2) And be it enacted, that it shall be lawful for the said commissioners to authorize any dean or canon of any cathedral church to raise monies on his deanery or canonry, for the purpose of building, enlarging, or otherwise improving the residence house thereof, on such terms and conditions as the said commissioners, with the concurrence of the bishop and the chapter, shall approve; and all the provisions of an act passed in the first year of the reign of her present majesty, intituled, ‘An Act to amend the Law for providing fit Houses for the beneficed Clergy,’ shall be applied, *mutatis mutandis*, to all such cases in which any dean or canon shall be authorized as aforesaid to raise monies on his deanery or canonry for the purpose aforesaid.

Repeal of 5 & 6
Gul. 4, c. 30;
6 & 7 Gul. 4,
c. 67; and
2 & 3 Vict.
c. 55.

“LX. And be it enacted, that an act passed in the sixth year of the reign of his late majesty, intituled, ‘An Act for protecting the Revenues of vacant Ecclesiastical Dignities, Prebends, Canonries, and Benefices with Cure of Souls, and for preventing the Lapse thereof during the pending Inquiries respecting the State of the Established Church in England and Wales;’ and also another act passed in the seventh year of the reign of his late majesty, intituled, ‘An Act for suspending

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 18. applicable to Stat. 5 & 6 Vict. c. 26, by s. 3 of
(2) Provisions of this section made ap- such statute.

the time of his institution to such benefice, if not previously resigned, become and be vacant; and that if neither a member of the chapter nor an archdeacon of the diocese, nor a minor canon nor lecturer, nor such schoolmaster, incumbent, or curate, professor, reader, lecturer, tutor, licentiate, or graduate, as the case may be, shall be presented or nominated to such benefice within six calendar months from the time of the vacancy thereof, the bishop of the diocese in which the same is situate may within the next six calendar months collate or license thereto a spiritual person who shall have actually served within such diocese, as incumbent or curate, for five years at the least; and if no such collation or licence shall be granted within such time, the right of presentation or nomination to such benefice for that term shall lapse to the archbishop of the province.

“XLV.(1) And be it enacted, that from henceforth the right of appointing minor canons shall be in all cases vested in the respective chapters, and shall not be exercised by any other person or body whatsoever; and that so soon as conveniently may be, and by the authority hereinafter provided, regulations shall be made for fixing the number and emoluments of such minor canons in each cathedral and collegiate church; provided that there shall not in any case be more than six nor less than two; and that the stipend of each such minor canon hereafter to be appointed shall not be less than one hundred and fifty pounds per annum; and that arrangements may from time to time be made by the like authority for securing to any minor canon not otherwise competently provided for such annual sum as shall make up to him an income as minor canon, not exceeding in any case the said sum of one hundred and fifty pounds.

“XLVI.(1) And be it enacted, that no minor canon hereafter to be appointed in any cathedral or collegiate church shall be allowed to take and hold together with his minor canonry any benefice beyond the limit of six miles from such church.

“XLVII.(2) And be it enacted, that the chapters of the several cathedral and collegiate churches shall from time to time of their own accord, or upon being required by the visitors of the said churches respectively, propose to such visitors such alterations in the existing statutes and rules as shall provide for the disposal of the benefices in their patronage, so as to meet the just claims of the minor canons of such churches, and as shall make them consistent with the constitution and duties of the chapters respectively as altered under the authority of this act; and all such alterations, if approved, may be confirmed by the authority of such visitor; and that in any case in which such alterations shall not be approved, or in which such requisition shall not be complied with within twelve calendar months after the making thereof, the visitor shall be at liberty of himself to make the necessary alterations; and all such statutes and rules when so altered shall be submitted to the ecclesiastical commissioners for England, and may be confirmed by the authority hereinafter provided; and that as to any alteration made by a visitor alone, the said commissioners shall communicate a draft thereof to the chapter to be affected thereby, and shall, together with any scheme to be prepared by them under the authority hereinafter contained, lay before her majesty in council such remarks as may within three months have been made thereon by such chapter; and that out of the proceeds of the suspended canonries in any chapter provision may from time to time be made, by the authority hereinafter provided, for relieving the present canons of such chapter from the performance of any additional duty by reason of such suspension, by the employment of substitutes, to be approved by the respective bishops; provided always, that nothing herein contained shall be construed to affect any existing right of chapters with their visitors to make statutes.

“XLVIII.(3) And be it enacted, that all ecclesiastical rectories without cure of souls in the sole patronage of her majesty, or of any ecclesiastical corporation, aggregate or sole, where there shall be a vicar endowed or a perpetual curate, shall,

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Minor canons
to be appointed
by the chap-
ters.

Their number
and salary.

Minor canons
not to hold any
benefice beyond
six miles.

Chapters, or
visitors in their
default, to
propose altera-
tions in their
statutes.

Suppression of
sinecure rec-
tories.

(1) Amended by Stat. 4 & 5 Vict. c. 39, s. 15. (3) Vide Stat. 4 & 5 Vict. c. 39, ss. 4 & 17.

(2) Vide Stat. 4 & 5 Vict. c. 39, s. 16.

STAT. 3 & 4
VICT. C. 113.

as to all such rectories as may be vacant at the passing of this act immediately upon its so passing, and as to all others immediately upon the vacancies thereof respectively, be suppressed; and that as to any such ecclesiastical rectory without cure of souls, the advowson whereof or any right of patronage wherein shall belong to any person or persons or body corporate other than as aforesaid, the ecclesiastical commissioners for England shall be authorized and empowered to purchase and accept conveyance of such advowson or right of patronage, as the case may be, at and for such price or sum as may be agreed upon between them and the owner or owners of such advowson or right of patronage, and may pay the purchase money and the expenses of and attendant upon such purchase out of the common fund hereinafter mentioned; and that after the completion of such purchase of any such rectory, and upon the first avoidance thereof, the same shall be suppressed; and that upon the suppression of any such rectory as aforesaid all ecclesiastical patronage belonging to the rector thereof as such rector shall be absolutely transferred to and be vested in the original patron or patrons of such rectory.

Profits of suspended canonries to be paid to and their estates vested in the commissioners.

“XIX. (1) And be it enacted, that all the profits and emoluments of each and every canonry suspended by or under the provisions of this act, whether consisting of or arising from rents, fines, compositions, dividends, stipends, or other emoluments whatsoever, shall forthwith, as to every such canonry vacant at the passing of this act, and as to every other immediately upon and from the vacancy thereof, and from time to time, be paid to the ecclesiastical commissioners for England for the purposes of this act in like manner as the holder of such canonry, if he had remained in possession, or the successor thereto, if a successor had been appointed and had duly qualified himself by residence and otherwise according to the statutes and usages of his church to receive his full portion of the emoluments thereof, would have been entitled to receive the same; and that all the estate and interest, if any, which such successor would have had in any lands, tithes, and other hereditaments (except any right of patronage) annexed or belonging to or usually held and enjoyed with such canonry, or whereof the rents and profits have been usually taken and enjoyed by the holder of such canonry, as such holder separately and in addition to his share (if any) of the corporate revenues of such chapter, shall forthwith, as to all vacancies subsisting at the passing of this act, and as to all others immediately upon such vacancies respectively, accrue to and be vested absolutely in the ecclesiastical commissioners for England and their successors for the purposes of this act, without any conveyance thereof or any assurance in the law other than the provisions of this act; provided nevertheless, that the profits and emoluments arising from corporate revenues belonging to the canonries suspended in the chapters of the cathedral churches of Chester, Lichfield, and Ripon respectively shall become, as the vacancies occur, part of the divisible corporate revenues of the said chapters respectively; provided also, that nothing herein contained shall be construed to affect the right of any chapter, according to the statutes or customs of such chapter in force at the passing of this act, to make due provision out of the divisible corporate revenues for the maintenance of the fabric, the support of the grammar school, if any, and all other necessary and proper expenditure.

Separate estates of deaneries and canonries not suspended to vest in commissioners.

“L. (1) And be it enacted, that, subject to the provisions herein contained, all the estate and interest which the holder of any deanery or canonry not suspended by or under the provisions of this act, and his successors, have and would have in any lands, tithes, and other hereditaments or endowments whatsoever annexed or belonging to or usually held or enjoyed with such deanery or canonry, (except any right of patronage,) or whereof the rents and profits have been usually taken and enjoyed by the holder of such deanery or canonry as such holder separately and in addition to his share of the corporate revenues of such chapter, shall, without any conveyance or assurance in the law other than the provisions of this act, accrue to and be vested absolutely in the ecclesiastical commissioners for England, and their successors, for the purposes of this act.

Estates of non-

“LI. (2) And be it enacted, that all lands, tithes, and other hereditaments

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 4.

(2) *Vide* Stat. 4 & 5 Vict. c. 39, s. 4 & 7.

excepting any right of patronage, and all other the emoluments and endowments whatsoever belonging to the deaneries of Wolverhampton, Middleham, Heytesbury, and Brecon, and to the dignity or office of sub-dean, chancellor of the church, vice-chancellor, treasurer, provost, precentor, or succentor, and to any prebend not residentiary in any cathedral or collegiate church in England, or in the cathedral churches of Saint David's and Llandaff, or in the collegiate church of Brecon, or enjoyed by the holder of any such deanery, dignity, office, or prebend as such holder shall, as to all such of the said deaneries, dignities, offices, and prebends respectively as may be vacant at the passing of this act immediately upon its so passing, and as to all others immediately upon the vacancies thereof respectively, without any conveyance or assurance in the law other than the provisions of this act, accrue to and be vested absolutely in the ecclesiastical commissioners for England and their successors for the purposes of this act; provided always, that all other rights and privileges whatsoever now by law belonging to any of such dignities, offices, or prebends, except the said last-named deaneries, shall continue to belong thereto, except so far as any of such rights or privileges may be controlled or affected by any of the provisions of this act, respecting the right of election now exercised by any chapter: provided always, that nothing herein contained shall in any manner apply to or affect any dignity, office, or prebend which is permanently annexed to any bishopric, archdeaconry, professorship, or lectureship, or to any school or the mastership thereof, or the prebends of Burgham, Bursalis, Exceit, and Wyndham, in the cathedral church of Chichester.

“LII. (1) Provided nevertheless, and be it enacted, that so much and such parts of the lands, tithes, or other hereditaments annexed or belonging to or usually held and enjoyed with the respective deaneries or any of the dignities or canonries of the cathedral churches of York, Chichester, Exeter, Hereford, Lichfield, Salisbury, and Wells respectively, or belonging to the prebends not residentiary in such churches, as may be deemed proper, shall, by the authority herein-after provided, be from time to time, upon the vacancies of the said respective deaneries, dignities, prebends, or offices transferred to and vested in the chapters of the said last-mentioned churches respectively, so as to augment the divisible corporate revenues of such chapters, or be applied by the like authority to make such provision for the deans of the said cathedral churches respectively as by the like authority shall be deemed just and proper.

“LIII. (2) Provided also, and be it enacted, that in any cathedral church on the old foundation in which any contribution to the fabric fund of such church has heretofore, either usually or occasionally, been made out of the rents, profits, or proceeds of any lands, tithes, or other hereditaments so vested or to be vested in the ecclesiastical commissioners for England, it shall be lawful for the said commissioners to contribute to such fund such sum as they shall deem necessary, out of the rents, profits, or proceeds of the same lands, tithes, or other hereditaments, not exceeding in amount the proportion of such rents, profits, or proceeds which has usually been applied to like purposes.

“LIV. (3) And be it enacted, that upon the suppression of any ecclesiastical rectory without cure of souls all the estate and interest which the rector thereof, or his successor, has or had, or would have or have had, as such rector, in any lands, tithes, or other hereditaments or endowments whatsoever, shall, without any conveyance thereof, or any assurance in the law other than the provision of this act, accrue to and be vested in the ecclesiastical commissioners for England, and their successors for the purposes of this act.

“LV. And be it enacted, that if in any case it shall appear to be expedient, on account of the extent or population or other peculiar circumstances of the parish or district in which any such rectory without cure of souls shall be situate, or from the incompetent endowment of the vicarage or vicarages, or perpetual curacy or curacies, dependent on such rectory, to annex the whole or any part of the lands, tithes, or other hereditaments or endowments belonging to such rectory, to such

STAT. 3 & 4
VICT. c. 113.

residentiary
prebends, &c.
vested in com-
missioners.

Proviso re-
specting the
separate
estates.

Commissioners
may contri-
bute, in cer-
tain cases, to
fabric fund.

Endowments
of suppressed
secular rec-
tories vested in
commissioners.

As to certain
secular rec-
tories.

(1) *Vide* Stat. 4 & 5 Vict. c. 39, ss. 7 &
20.

(2) *Vide* Stat. 4 & 5 Vict. c. 39, s. 7.

(3) *Vide* Stat. 4 & 5 Vict. c. 39, s. 4.

STAT. 3 & 4
VICT. c. 113.

vicarage or vicarages, curacy or curacies, such annexation may be made, and any such vicarage or curacy may be constituted a rectory with cure of souls by the authority hereinafter provided; and that wherever any rectory heretofore deemed a rectory without cure of souls has been held together with the vicarage dependent thereon for the period of twenty years last past, the same shall not be construed to be a rectory without cure of souls within the meaning of this act, but such last-mentioned rectory and vicarage shall continue and be permanently united, and shall be a rectory with cure of souls; subject nevertheless to all the provisions of the thirdly-recited act, and to the provisions of this act which relate to the division of benefices, or the apportionment of the incomes thereof.

Estates of
newly endowed
archdeacons
vested in com-
missioners.

“LVI. And be it enacted, that upon the endowment of any archdeaconry by either of the modes of endowment herein provided, and with the consent of the bishop of the diocese and of any archdeacon in possession at the time of the passing of this act, all lands, tithes, and other hereditaments, (except any right of patronage,) belonging to such archdeaconry at the time of such endowment, may, by the authority hereinafter provided, be vested in the ecclesiastical commissioners for England, and their successors, for the purposes of this act; and any benefice annexed to such archdeaconry may be, by the like authority, disannexed therefrom, and the patronage of such benefice shall thenceforth revert to the patron to whom it belonged before such annexation, subject to any transfer of patronage provided by this act.

Commissioners
to have all
legal powers of
enforcing pay-
ments, &c.

“LVII. And be it enacted, that the ecclesiastical commissioners for England shall, for the purpose of enforcing payment of all profits and emoluments to be paid to them, and of obtaining possession of all lands, tithes, or other hereditaments vested in or accruing to them as aforesaid, and of recovering the rents and profits thereof, have and enjoy all rights, powers, and remedies, at law and in equity, which belonged or belong, or would belong or have belonged, to the holder of the deanery, canonry, prebend, dignity, or office, or the rector of the rectory, in respect of which such profits and emoluments, lands, tithes, and other hereditaments and endowments respectively, are, by or under the provisions of this act, to be paid or to accrue to and be vested in the said commissioners.

Appropriation
of residence
houses not
wanted.

“LVIII. (1) And be it enacted, that, so soon as conveniently may be, measures shall be taken by the deans and chapters of the several cathedral and collegiate churches for the disposal of such residence houses now under their control, and houses attached to any dignity, office, or prebend, in the precincts of the respective cathedral and collegiate churches as may no longer be required, in such way as they shall deem fit, according to plans to be from time to time prepared by the respective chapters, and when approved by the visitors, be submitted to the ecclesiastical commissioners for England, and may be confirmed by the authority hereinafter provided.

1 & 2 Vict.
c. 23, relating
to residence
houses, to ap-
ply to deans
and canons.

“LIX. (2) And be it enacted, that it shall be lawful for the said commissioners to authorize any dean or canon of any cathedral church to raise monies on his deanery or canonry, for the purpose of building, enlarging, or otherwise improving the residence house thereof, on such terms and conditions as the said commissioners, with the concurrence of the bishop and the chapter, shall approve; and all the provisions of an act passed in the first year of the reign of her present majesty, intituled, ‘An Act to amend the Law for providing fit Houses for the beneficed Clergy,’ shall be applied, *mutatis mutandis*, to all such cases in which any dean or canon shall be authorized as aforesaid to raise monies on his deanery or canonry for the purpose aforesaid.

Repeal of 5 & 6
Gul. 4, c. 30;
6 & 7 Gul. 4,
c. 67; and
2 & 3 Vict.
c. 55.

“LX. And be it enacted, that an act passed in the sixth year of the reign of his late majesty, intituled, ‘An Act for protecting the Revenues of vacant Ecclesiastical Dignities, Prebends, Canonries, and Benefices with Cure of Souls, and for preventing the Lapse thereof during the pending Inquiries respecting the State of the Established Church in England and Wales,’ and also another act passed in the seventh year of the reign of his late majesty, intituled, ‘An Act for suspending

- (1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 18. applicable to Stat. 5 & 6 Vict. c. 26, by s. 3 of
(2) Provisions of this section made ap- such statute.

for One Year Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories ;' and also so much of another act passed in the last session of parliament, intituled, 'An Act to suspend until the first day of August, one thousand eight hundred and forty, certain Cathedral and other Ecclesiastical Preferments, and the Operation of the new Arrangement of Dioceses upon the existing Ecclesiastical Courts,' as relates to the two last-recited acts of the reign of his late majesty, be and the same are hereby repealed, except only as to the dioceses or cathedral churches of St. Asaph and Bangor, and as to all matters and things done under the authority of the said three last-recited acts, or either of them, all which matters and things shall remain in full force and effect as if the said acts were not repealed ; and the said acts, so far as they relate to the said two last-mentioned dioceses and churches, shall be continued and remain in force until the first day of August, in the year one thousand eight hundred and forty-one, and if parliament shall be then sitting, until the end of the then session of parliament ; but, notwithstanding anything in the said acts contained, it shall be lawful for the Bishop of Bangor for the time being to collate to any vacant canonry, prebend, dignity, or office not having any estate or endowment belonging thereto ; and that within one calendar month after the passing of this act the treasurer of the governors of the bounty of Queen Anne shall deliver to the said ecclesiastical commissioners for England a full and particular account of all monies received and paid by him under and by virtue of the said acts or any of them, and of all things done by him, and of all proceedings then pending in respect thereof, except so far as concerns the said two last-mentioned dioceses and churches ; and that within such time after the delivery of such account as shall be specified in any order made upon him for that purpose by the said commissioners, he shall pay and deliver, or cause to be paid and delivered, to the said commissioners, or into such bank as shall be named in such order, to their account, for the purposes of this act, all monies then remaining in his hands or to his account, and all exchequer bills and other securities for money, and all books of accounts, papers, and writings in his possession or power in respect thereof, except as last herein excepted ; and that it shall be lawful for the said commissioners to allow to the said treasurer in his accounts such sum of money as shall appear to them to be just and reasonable in compensation for his pains and trouble, and also all proper costs, charges, and expenses incurred in the execution of the trusts reposed in him by the said acts ; and that the receipt in writing of the said commissioners, under their common seal, shall be an effectual discharge to the said treasurer for all monies and other things therein expressed to be received by them ; and this act shall not in any other manner than herein or in the first-recited act expressly provided extend or apply to either of the said two last-mentioned dioceses and cathedral churches or the chapters of such churches.

STAT. 3 & 4
VICT. c. 113.
Treasurer of
Queen Anne's
bounty to
account.

" LXI. And be it enacted, that the rectory and five prebends of the church of the parish of Chulmleigh, in the county of Devon, shall immediately become and be permanently annexed and united, and form one entire rectory and benefice, (subject and without prejudice to any existing lease or leases of the prebendal houses, glebes, and tithes, or any of them ;) and that the Reverend George Hole, the present incumbent of the said rectory and prebends, and also all future incumbents of the said rectory, shall henceforth hold the same rectory, with all and every the emoluments, rights, and privileges, of the said several prebends attached thereto, as one benefice, to all intents and purposes ; and that the rector for the time being of the said parish of Chulmleigh may grant such and the same or the like leases of the houses, lands, and tithes, of the same prebends respectively as have been heretofore granted, save and except that no such lease shall henceforth be granted of the house in which the present rector resides, or of the gardens attached thereto ; but such house and gardens, (subject to any such existing lease as aforesaid,) shall henceforth be deemed and used as the residence of the rector for the time being of the said parish, and shall be repaired accordingly.

Prebends of
Chulmleigh.

" LXII. And be it enacted, that, if it be deemed fit, any part of the lands, Provision for

STAT. 3 & 4
VICT. c. 113.

St. David's
college at
Lampeter.

tithes, or other hereditaments, or of the rents and profits thereof, which shall be vested in or accrue to the ecclesiastical commissioners for England from or in respect of the cathedral church of Saint David or the collegiate church of Brecon, may by the authority hereinafter provided be transferred to the college of Saint David's at Lampeter, in exchange for benefices with cure of souls which are now connected with the said college; and the said college is hereby empowered upon the completion of any such arrangement to convey any such benefices to such person or body corporate, and in such manner, as shall by the like authority be directed.

How proceeds
of prebends
in cathedral
church of
Lichfield, and
endowments of
Wolverhampton,
Heytesbury,
and Middleham, to
be applied.

"LXIII. (1) And be it enacted, that out of the endowments belonging to the suspended prebends in the cathedral church of Lichfield, after setting apart so much of the rents and profits of the prebend of Sawley as hath been heretofore applied as an addition to the fabric fund of the said cathedral church, such provision as shall be deemed fit shall by the like authority be made for the rector of the church of Saint Philip, and for the perpetual curate of Christ's Church in Birmingham, for the time being respectively; and that out of the endowments, of whatsoever kind, belonging to the collegiate churches of Wolverhampton, Heytesbury, and Middleham, better provision shall be made by the like authority for the cure of souls in the districts or places with which the said churches are respectively connected.

Endowments
of Wimborne
Minster applied
to care of the
parish.

"LXIV. And be it enacted, that so much of the property belonging to the collegiate church of Wimborne Minster, in the county of Dorset, as shall upon due inquiry be found legally applicable thereto, shall by the like authority be applied to the purpose of making a better provision for the cure of souls in the parish of Wimborne Minster in the said county.

Inquiry into
hospitals
which were
promotions
spiritual in the
reign of King
Henry the
Eighth.

"LXV. And be it enacted, that so soon as conveniently may be the ecclesiastical commissioners for England shall inquire, and report to her majesty in council, respecting the state of all such hospitals as were returned as promotions spiritual in the reign of King Henry the Eighth; and in those cases in which it may appear, upon such inquiry, that the endowments of such hospitals are capable, after satisfying the objects of the founder's bounty, of affording a better provision for the cure of souls in the parishes with which they are connected, the said commissioners may in their report make such suggestions as they may deem advisable for effecting such provision.

Augmentation
of certain
smaller digni-
ties from sur-
plus revenues
of certain
larger dignities.

"LXVI. (2) And be it enacted, that so soon as conveniently may be, and by the authority hereinafter provided, and subject to the provisions herein contained respecting the university of Durham and the canonries in the collegiate church of Westminster annexed to the rectories of Saint Margaret and Saint John, such fixed annual sums shall be determined on to be paid, and shall accordingly be paid to the ecclesiastical commissioners for England, by the deans and canons of the cathedral churches of Durham, and Saint Paul in London, and the collegiate churches of Westminster and Manchester, as, after due inquiry, and a calculation of the present average annual revenues of the chapters of such churches respectively, shall leave to the Dean of Durham an average annual income of three thousand pounds, and to the Deans of Saint Paul's, Westminster, and Manchester, respectively an average annual income of two thousand pounds, and to the canons of the said four last-mentioned churches respectively the average annual income of one thousand pounds; and such other annual sums shall be determined on to be paid, and shall be accordingly paid, by the said commissioners, or such deductions shall be allowed to be made out of the proceeds of any suspended canonry or canonries, as, after like inquiry and calculation, shall give to the dean of every cathedral and collegiate church in England an average annual income of one thousand pounds, and to the Deans of Saint David's and Llandaff respectively an average annual income of seven hundred pounds, and to the respective canons of every cathedral church in England an average annual income of five hundred pounds, and to the canons of the said churches of Saint David and Llandaff an average annual income of three

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 19.

(2) *Vide* Stat. 4 & 5 Vict. c. 39, s. 22.

hundred and fifty pounds, and as shall also enable the respective chapters of Chester and Ripon to provide for the efficient performance of all the duties of the said churches and the maintenance of the fabrics thereof.

“LXVII. And be it enacted, that, except as herein otherwise specified, all the monies and revenues to be paid to the ecclesiastical commissioners for England, and all the rents and profits of the lands, tithes, and other hereditaments vested and to be vested in them the said commissioners by and under the authority of this act, together with all accumulations of interest produced by and arising therefrom, shall be from time to time carried over by the said commissioners to a common fund, and by payments or investments made out of such fund, or, if in any case it be deemed more expedient, by means of an actual conveyance and assignment of such lands, tithes, or other hereditaments, or of a portion thereof, additional provision shall be made, by the authority hereinafter provided, for the cure of souls in parishes where such assistance is most required, in such manner as shall, by the like authority, be deemed most conducive to the efficiency of the established church: provided always, that in making any such additional provision out of any tithes, or any lands or other hereditaments allotted or assigned in lieu of tithes, so vested or to be vested in the said commissioners, or out of the rents and profits thereof, due consideration shall be had of the wants and circumstances of the places in which such tithes now arise or have heretofore arisen.

“LXVIII. (1) And be it enacted, that, by the authority hereinafter provided, and for the purpose of fully carrying into effect any of the provisions of this act or of the said first-recited act, any sum of money which shall have been invested in the public funds, or in other security or securities, in trust for any ecclesiastical body corporate, aggregate or sole, may, upon an application in writing to the ecclesiastical commissioners for England, under the hand and seal of such body corporate, and in the case of any chapter, with the consent of the visitor thereof, be directed to be sold, and the same shall be sold accordingly; and the produce of such sale shall be applied to such purpose and in such manner as shall appear most conducive to the permanent benefit of such body corporate; and also, for any like purpose, and by the like authority, any arrangement may from time to time be made, with the consent in writing under the corporate seal of any bishop or chapter, for the sale, transfer, or exchange of any lands, tithes, or other hereditaments belonging to the see of such bishop, or to such chapter, or for the purchase of other lands, tithes, or other hereditaments in lieu thereof, or for substituting in any case any lands, tithes, or other hereditaments for any money payment.

“LXIX. And be it enacted, that, so soon as conveniently may be, and by the authority hereinafter provided, such arrangements may be made with respect to benefices which are annexed by act of parliament or otherwise to the headships of colleges in the universities of Oxford and Cambridge, as may enable the respective colleges, if they shall think fit, to sell, or themselves to purchase, the advowsons of such benefices, and to invest the proceeds in proper securities, with provisions for the payment of the interest and annual profits thereof to the respective heads of the colleges for the time being; and that upon the completion of the said arrangements respectively the existing incumbents of such benefices respectively shall be at liberty, upon resigning the same, to receive the interest and annual profits of the proceeds arising from such sales respectively.

“LXX. And be it enacted, that, so soon as conveniently may be, and by the like authority, arrangements may be made to enable the university of Cambridge, if they shall so think fit, to sell the advowsons of the benefices annexed to the regius professorship of divinity in the said university or any of them, and to invest the proceeds of any such sale in proper securities, with a provision for the payment of the interest and annual profits thereof to the regius professor of divinity for the time being; and that upon the completion of the sale of any such advowson the existing incumbent of the benefice shall be at liberty, upon resigning the same, to receive such interest and annual profits.

STAT. 3 & 4
VICT. c. 113.

Mode of applying the revenues at the disposal of the commissioners.

Special arrangements, with consent of bishop or chapter.

Benefices annexed to headships of colleges may be sold.

Benefice annexed to the professorship of divinity in Cambridge may be sold.

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 21; and Stat. 5 & 6 Vict. c. 26, s. 8.

STAT. 3 & 4
VICT. c. 113.

Sinecure preferments may be annexed to benefices with cure of souls, with consent of patrons.

Benefices may be divided or consolidated, with consent of patrons.

Provisions for securing the better performance of spiritual duties in ill-endowed parishes.

Income of benefices belonging to one patron may be apportioned in certain cases.

Saving of existing interests.

“LXXI. (1) And be it enacted, that with respect to any benefice with cure of souls which is held together with or in the patronage of the holder of any prebend or other sinecure preferment belonging to any college in either of the universities, or to any private patron, arrangements may be made by the like authority, and with the consents of the respective patrons, for permanently uniting such preferment with such benefice; provided that this act shall not apply to or affect any prebend or other sinecure preferment in the patronage of any college or of any bishop or patron in any other manner than as is herein expressly enacted.

“LXXII. (1) And be it enacted, that with respect to any parish in which both the profits and the spiritual charge are divided between two or more incumbents, each having a mediety or portion of the benefice, a plan or plans may be framed by the bishop of the diocese, with the consent of the patron or patrons, and so as not to prejudice the interests of any existing incumbent, for constituting any of such portions separate benefices, or for consolidating two or more of such portions into one benefice to be held by one incumbent, or for making such other arrangements as he may judge likely to promote the efficient discharge of pastoral duties in such parishes; and any such plan may be carried into effect by the authority hereinafter provided; provided always, that nothing herein contained shall restrain the bishop from doing any act or exercising any power which he may now lawfully do or exercise without the consent of the patron or without the aid of the said commissioners.

“LXXIII. (2) And be it enacted, with an especial view to the better care of populous parishes, that arrangements may from time to time be made by the like authority, for improving the value or making a better provision for the spiritual duties of ill-endowed parishes or districts, by means of such exchange of advowsons, or of such other alterations in the exercise of patronage, as may be agreed upon by patrons, with the consent of the bishop in every such case, or in the case of benefices lying in more than one diocese, then with the consent of the bishop of each diocese, and, where a bishop is himself one of the patrons, with the consent of the archbishop.

“LXXIV. (3) And be it enacted, that arrangements may be made by the like authority for the apportionment of the income of two benefices belonging to the same patron between the incumbents or ministers of such benefices, or the churches or chapels connected therewith; provided that no such arrangement shall be made with respect to benefices in lay patronage without the consents of the respective patrons, nor in any case so as to prejudice the interests of any existing incumbent, nor without the consent of the bishop of the diocese, nor, in the case of benefices lying in more than one diocese, without the consent of the bishop of each diocese, nor, where a bishop is himself one of the patrons, without the consent of the archbishop also.

“LXXV. (4) Provided always, and be it enacted, that nothing in this act contained respecting the division of corporate property, the diminution of the income of any deanery or canonry, the severance of separate property, or the limitation of the exercise of patronage possessed in right of separate property, shall affect any dean, canon, prebendary, dignitary, or officer in possession at the passing of the act, except as hereinbefore expressly enacted; but every dean, canon, prebendary, dignitary, and officer hereafter appointed shall be subject to such regulations as shall be made in pursuance of this act; and that the provisions herein contained respecting the qualification of persons to be presented to any benefice in the patronage of any chapter, or the apportionment of the income of any such benefice, shall not affect such chapter so long as any person who shall be a member thereof at the passing of this act shall continue such member; and that with respect to benefices in the patronage of either of the chapters of Saint Paul in London and of Lincoln the fourth or junior canon for the time being shall not have any voice in the election.

(1) *Vide* Stat. 4 & 5 Vict. c. 39, s. 24.

(2) *Vide* Stat. 4 & 5 Vict. c. 39, ss. 22 & 24.

(3) *Vide* Stat. 4 & 5 Vict. c. 39, s. 24.

(4) *Vide* Stat. 4 & 5 Vict. c. 39, s. 25.

cise of such patronage so long as any one of the present members of such chapter shall continue to be a member thereof.

STAT. 3 & 4
VICT. c. 113.

“LXXXVI. (1) And be it declared and enacted, that nothing in this act or in the said first-recited act contained shall be construed to prejudice or affect any of the provisions of an act passed in the second year of the reign of his late majesty King William the Fourth, intituled, ‘An Act to extend the Provisions of an Act passed in the twenty-ninth year of the Reign of His Majesty King Charles the Second, intituled, “An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies,” and for other Purposes,’ or of the act therein recited: provided nevertheless, that after the passing of this act no augmentation made under such provisions, by any bishop or by any chapter whose revenues are affected by this act or the said first-recited act, shall be valid and effectual without the consent of the ecclesiastical commissioners for England.

Declaration as
to 1 & 2 Gul.
4, c. 45.

“LXXXVII. And be it enacted, that the ecclesiastical commissioners for England shall forthwith, and from time to time as they shall think necessary, cause to be amended the valuation of the revenues of the bishoprics, cathedrals, collegiate churches, ecclesiastical corporations, aggregate and sole, and benefices, in England and Wales, which was made and estimated according to the returns made to the commissioners appointed to inquire into the revenues and patronage of the established church in England and Wales, and specified in the report made by the said last-mentioned commissioners bearing date the sixteenth day of June, in the year one thousand eight hundred and thirty-five; and when any such amended valuation shall be completed, and shall have been approved by her majesty in council, the same shall be printed by her majesty’s printer, and when so printed shall be taken and held to be evidence of the value of every dignity, office, or benefice therein mentioned, for all the purposes of this act and of the said first-recited act.

Valuation of
ecclesiastical
revenues to be
amended.

“LXXXVIII. And be it enacted, that, in addition to the commissioners named in and appointed or to be appointed by or under the provisions of the first-recited act, the following persons shall be ecclesiastical commissioners, and members of the corporation of the ecclesiastical commissioners for England, for all the purposes of the said first-recited act and of this act; that is to say, all the bishops of England and Wales for the time being respectively, the lord chief justice of England, the master of the rolls, the lord chief justice of her majesty’s court of Common Pleas, the lord chief baron of her majesty’s court of Exchequer, the judge of the Prerogative court of the Archbishop of Canterbury, the judge of the high court of Admiralty for the time being respectively, (such chief justices, master of the rolls, chief baron, and judges being respectively members of the united church of England and Ireland,) the deans of the cathedral churches of Canterbury and Saint Paul in London, and of the collegiate church of Saint Peter, Westminster, for the time being respectively; and also four such lay persons (being members of the said united church) as shall be duly appointed by her majesty, and whom her majesty is hereby authorized to appoint, under her royal sign manual, to be such commissioners; and such other two lay persons (being members of the said united church) as shall be duly appointed by the Lord Archbishop of Canterbury for the time being, and whom the said archbishop is hereby authorized to appoint, under his hand and archiepiscopal seal, to be such commissioner.

Appointment
of additional
commissioners.

“LXXXIX. And be it enacted, that when any vacancy shall occur among such six last-mentioned commissioners, by death, resignation, or otherwise, it shall be lawful for her majesty, or for the said archbishop, as the case may be, to fill up such vacancy by the appointment of some other lay person (being a member of the said united church) to be a commissioner; and the person so appointed shall thereupon become and be an ecclesiastical commissioner, and a member of the corporation of the ecclesiastical commissioners for England, for all the purposes of the said first-recited act and of this act.

How vacancies
to be filled up.

STAT. 4 & 5
VICT. c. 14.

No association or copartnership, or contract entered into by any of them, to be illegal or void by reason only of spiritual persons being members thereof.

No spiritual person benefited or performing ecclesiastical duty to act as a director.

In all actions and suits by copartnerships established since the session of 2 & 3 Vict., the defendant to be entitled to taxed costs, and the court to make order for further costs.

Act may be amended this session.

STAT. 4 & 5
VICT. cap.
xxiv.

STAT. 4 & 5
VICT. cap.
xxv.

STAT. 4 & 5
VICT. cap.
xxvi.

STAT. 4 & 5
VICT. c. 36.

5 & 6 Gul. 4,
c. 74.

most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that no such association or copartnership already formed, or which may be hereafter formed, nor any contract either as between the members, partners, or shareholders, composing such association or copartnership, for the purposes thereof; or as between such association or copartnership and other persons, heretofore entered into or which shall be entered into by any such association or copartnership already formed or hereafter to be formed, shall be deemed or taken to be illegal or void, or to occasion any forfeiture whatsoever, by reason only of any such spiritual person as aforesaid being or having been a member, partner, or shareholder of or otherwise interested in the same; but all such associations and copartnerships shall have the same validity, and all such contracts shall and may be enforced in the same manner, to all intents and purposes, as if no such spiritual person had been or was a member, partner, or shareholder of or interested in such association or copartnership: provided always, that it shall not be lawful for any spiritual person holding any cathedral preferment, benefice, curacy, or lectureship, or who shall be licensed or allowed to perform the duties of any ecclesiastical office, to act as a director or managing partner, or to carry on such trade or dealing as aforesaid in person.

“II. And be it enacted, that in all actions and suits which shall have been brought or instituted by or on behalf of any such association or copartnership which may have been formed since the end of the session of parliament held in the second and third years of the reign of her present majesty, in case any defendant therein shall, before the twenty-ninth day of March, one thousand eight hundred and thirty-eight, by plea or otherwise, have insisted on the invalidity of any contract thereby sought to be enforced, by reason of any such spiritual person as aforesaid being or having been a member or shareholder in such association or copartnership, such defendant shall be entitled to the full costs of such plea or other defence, to be paid by the plaintiff, and to be taxed as the court in which the said action or suit shall be depending, or any judge thereof, shall direct; and in order fully to indemnify such defendant it shall be lawful for such court or judge to order the plaintiff to pay to him such further costs (if any) of the said action or suit, as the justice of the case may require.

“III. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.”

LXXXIV. STAT. 4 & 5 VICTORIÆ, cap. xxiv. A.D. 1841.

“An Act for severing the Chapelry of Rowley Regis from the Vicarage of Clent, in the County of Stafford; and for the Sale of certain Lands situate in the Parish of Rowley Regis, and belonging to the Vicarage of Clent with the Chapelry of Rowley Regis annexed, and thereby providing a Residence and Maintenance for the Curate or officiating Minister of Rowley Regis; and for other Purposes.”

LXXXV. STAT. 4 & 5 VICTORIÆ, cap. xxv. A.D. 1841.

“An Act to empower the Dean and Chapter of Westminster to grant Building Leases in certain Parts of the City of Westminster; and for other Purposes.”

LXXXVI. STAT. 4 & 5 VICTORIÆ, cap. xxvi. A.D. 1841.

“An Act to confirm to Sir Edward Bowyer Smyth, Baronet, the Advowson of District Churches within the Parish of Saint Giles, Camberwell, in the County of Surrey.”

LXXXVII. STAT. 4 & 5 VICTORIÆ, c. 36. A.D. 1841.

“An Act to amend an Act of the fifth and sixth years of King William the Fourth, ‘for the more easy Recovery of Tithes,’ and to take away the Jurisdiction from the Ecclesiastical Courts in all Matters relating to Tithes of a certain Amount.”

“Whereas it is expedient to extend all the provisions of an act passed in the fifth and sixth years of his late majesty King William the Fourth, intitled, ‘An Act for the more easy Recovery of Tithes,’ to all suits in the ecclesiastical courts

“LXXXVIII. And be it enacted, that the registrar of every diocese to whom any order of her majesty in council made by virtue of this act shall be delivered shall forthwith register the same in the registry of his diocese; and if any such registrar shall refuse or neglect to register any such order, he shall for every day during which he shall so offend forfeit twenty pounds, and if his offence shall continue for the space of three months he shall forfeit his office, and it shall be lawful for the bishop of the diocese to appoint a successor thereto.

STAT. 3 & 4
VICT. c. 113.

Penalty for
neglect of
registration.

“LXXXIX. And be it enacted, that for such registration as aforesaid the registrar shall not be entitled to receive any fee or reward, but on every search for any such order he shall be entitled to receive a fee of three shillings, and for every copy or extract of any such order certified by him he shall be entitled to receive four-pence for every folio of ninety words; and the copy of every such entry, certified by the registrar, shall be admissible as evidence in all courts and places whatsoever.

Fee to regis-
trar.

“XC. And be it enacted, that all the powers and authorities vested in the ecclesiastical commissioners for England by the first-recited act with reference to the matters therein contained shall be continued, and extended and apply to the said commissioners, and to the commissioners appointed by or under the provisions of this act, with reference to all matters contained in this act, and may be used and exercised by them as fully and effectually as if the said powers and authorities were repeated in this act: and the said first-recited act and this act shall be construed as if they were one and the same act.

Provisions of
6 & 7 Gal. 4,
c. 77, to ex-
tend to this
act.

“XCI. And be it enacted, that, notwithstanding anything in the first-recited act contained, the offices of treasurer and secretary to the said commissioners shall be united and shall be one office, and shall be held and the duties thereof performed by the same person; and Charles Knight Murray, esquire, barrister at law, shall continue to be treasurer and secretary, and may hold the said office so long as he shall well demean himself therein; and upon any vacancy of the said office by death, resignation, or otherwise, the ecclesiastical commissioners for England shall appoint a successor thereto, by an instrument in writing under their common seal.

Office of treas-
urer and
secretary.

“XCII. And be it enacted, that the temporary provisions of the said first-recited act shall continue and be in force until the first day of August, one thousand eight hundred and forty-one, and if parliament shall be then sitting until the end of the then session of parliament; provided always, that, notwithstanding anything in the said first-recited act or in this act contained, any bishop or archdeacon may hold visitations of the clergy within the limits of his diocese or archdeaconry, and at such visitations may admit churchwardens, receive presentments, and do all other acts, matters, and things by custom appertaining to the visitations of bishops and archdeacons in the places assigned to their respective jurisdiction and authority, under or by virtue of the provisions of the said first-recited act; and any bishop may consecrate any new church or chapel or any new burial ground within his diocese.

Ecclesiastical
jurisdictions
continued.

“XCIII. And be it enacted, that in the construction of this act the term ‘canon’ shall be construed to mean only every residentiary member of chapter, except the dean, heretofore styled either prebendary canon, canon residentiary, or residentiary; and the term ‘minor canon’ shall be construed to extend to and include every vicar, vicar choral, priest vicar, and senior vicar, being a member of the choir in any cathedral or collegiate church.

Construction
of the terms
“canon” and
“minor
canon.”

“XCIV. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.”

Act may be
amended this
session.

STAT. 3 & 4
VICT. C. 113.

"SCHEDULE TO WHICH THIS ACT REFERS.

Cathedral or Collegiate Church.	Number of Canons.	Cathedral or Collegiate Church.	Number of Canons.
Canterbury	6	Manchester	4
Durham	6	Norwich	4
Ely	6	St. Paul's, London	4
Westminster	6	Peterborough	4
Winchester	5	Ripon	4
Exeter	5	Rochester	4
Bristol	4	Salisbury	4
Carlisle	4	Wells	4
Chester	4	Windsor	4
Chichester	4	Worcester	4
Gloucester	4	York	4
Hereford	4	Saint David's	2
Lichfield	4	Llandaff	2
Lincoln	4		

STAT. 3 & 4
VICT. CAP.
CXXIV.

LXXX. STAT. 3 & 4 VICTORIÆ, CAP. CXXIV. A.D. 1840.

"An Act to authorize the Trustees of the River Weaver, in the County of Chester, to apply Part of the Funds arising from the Rates and Duties payable in respect of the Navigation of the said River, for the erecting and endowing one or more Church or Churches for the Accommodation of the Watermen, Hawkers, and others employed upon the said River, and connected with the Traffic thereof."

STAT. 4 & 5
VICT. C. 5.
[I.R.]

LXXXI. STAT. 4 & 5 VICTORIÆ, C. 5. [IRELAND.] A.D. 1841.

"An Act to facilitate the Recovery of Arrears of Tithe Compositions in Ireland vested in Her Majesty under the Provisions of an Act of the first and second years of Her present Majesty, for abolishing Compositions for Tithes in Ireland, and for substituting Rent-Charges in lieu thereof."

1 & 2 Vict.
c. 109.

3 & 4 Vict.
c. 13.

"Whereas an act was passed in the session of parliament holden in the first and second years of the reign of her present majesty, intituled, 'An Act to amend the Compositions for Tithes in Ireland, and to substitute Rent-Charges in lieu thereof;' and whereas an act was passed in the last session of parliament, amending the said act; and it was thereby, among other things, enacted, that in any petition presented under the said first-mentioned act by her majesty's attorney-general to Ireland to the court of Chancery or Exchequer in Ireland, or to the court of any assistant barrister or chairman, for the recovery of any arrears of tithe composition vested in her majesty under and by the operation of the provisions of the said act, it should be lawful to include all or any two or more of the persons in default who should be named and distinguished, in the schedule annexed to any memorial for relief presented to the lord lieutenant and privy council in Ireland under the said first-mentioned act, as having such estates or interests as in the said act described in the lands charged with any composition due and in arrear, and that the court to which any such application might be made by petition might from time to time proceed thereon as against any one or more of the persons therein named as defaulters who should appear to have had due notice thereof, although such notice might not be proved to have been given to any other or others of the persons named therein: and whereas it is expedient, for the more cheap and easy recovery of the arrears of tithe compositions vested in her majesty as aforesaid, further to amend the said act; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in any petition to be presented under the said act or acts by the said attorney-general to any of the said courts for the recovery of any arrears of tithe composition vested in her majesty as aforesaid, it shall be lawful to include all or any two or more of the persons in default who shall be named and distinguished,

Any number of defaulters may be included in one petition in respect of arrears due

in the several schedules annexed to all or any two or more of the memorials presented to the said lord lieutenant and privy council for relief under the said act in respect of compositions for tithes charged upon or accrued due in respect of lands situate in one and the same diocese, or in any two or more united dioceses, as having in such lands respectively the estates or interests in the said first-mentioned act described; and that it shall be lawful from time to time to amend any petition which may be filed under the said acts and this act, or any of them, by adding parties thereto.

“II. And be it enacted, that the court to which application may be made by petition as aforesaid under the said recited acts and this act, or any of them, may from time to time proceed thereon as against all or any of the parties therein named as defaulters, although they or any of them may not have had notice of such petition previous to the filing of the same: provided always, that no such court shall make any order adjudicating upon the liability of any such party to pay any sum of money, or directing the payment of any sum of money by any such party, unless such previous notice shall have been served upon such party, or unless fourteen days notice that such petition has been filed, or that some order has been made appointing a time for the hearing thereof, shall have been first served upon such party.

“III. And be it enacted, that any notice to be given or served in pursuance of the said act of the last session of parliament, or of this act, shall be given or served in the manner provided by the said first-recited act in reference to the giving of notices thereunder: provided always, that in case any person who shall be proceeded against as such defaulter shall not have any place of abode in Ireland, or shall be a minor or lunatic, and in case there shall be an agent or receiver, committee or guardian, in actual receipt of the rents of the lands in respect of which the arrears shall be claimed as due, for which such proceeding shall be had, then and in such case such notice shall be given or served upon such agent or receiver, committee or guardian, or at his usual or last place of business or usual or last place of abode, or on such person or persons or in such manner as the court shall order.

“IV. And be it enacted, that this act and the two hereinbefore mentioned acts shall be construed together as one act.

“V. And be it enacted, that this act may be amended or repealed by any act to be passed during the present session of parliament.”

STAT. 4 & 5
VICT. c. 5.
[I.R.]

in the same
diocese.

Petition may
be amended by
adding parties.

Proceedings
may be had on
petition, al-
though notice
may not have
been served;
but no order
shall be made
for payment of
money unless
previous notice
shall have been
served.

Service of
notices.

Acts to be
construed
together.
Act may be
altered.

LXXXII. STAT. 4 & 5 VICTORIÆ, cap. ix. A.D. 1841.

“An Act for the Division of the Rectory of Winwick, in the County Palatine of Lancaster.”

STAT. 4 & 5
VICT. cap. ix.

LXXXIII. STAT. 4 & 5 VICTORIÆ, c. 14. A.D. 1841.

“An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships.”

STAT. 4 & 5
VICT. c. 14.

“Whereas divers associations and copartnerships consisting of more than six members or shareholders have from time to time been formed, for the purpose of being engaged in and carrying on the business of banking, and divers other trades and dealings, for gain and profit, and have accordingly for some time past been and are now engaged in carrying on the same, by means of boards of directors or managers, committees, or other officers acting on behalf of all the members or shareholders of or persons otherwise interested in such associations or copartnerships: and whereas divers spiritual persons having or holding dignities, prebends, canonries, benefices, stipendiary curacies, or lectureships, have been members or shareholders of or otherwise interested in divers of such associations and copartnerships: and whereas it is expedient to render legal and valid all contracts entered into by such associations or copartnerships, although the same may now be void by reason of such spiritual persons being or having been such members or shareholders, or otherwise interested as aforesaid; be it therefore enacted by the queen's

STAT. 4 & 5
VICT. C. 38.

Corporations,
justices, trus-
tees, &c. em-
powered to
convey lands
for the pur-
poses of this
act.

5 & 6 Gul. 4,
c. 69.

7 Gul. 4, c. 18.

Grants of land
may be made
to corporations
or trustees, to
be held by
them for school
purposes.

and sufficient discharges to the party paying such purchase money, who shall not be required to see to the application thereof.

“VI. And be it enacted, that it shall be lawful for any corporation, ecclesiastical or lay, whether sole or aggregate, and for any officers, justices of the peace, trustees, or commissioners, holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, subject to the provisions next hereinafter mentioned, to grant, convey, or enfranchise, for the purposes of this act, such quantity of land as aforesaid in any manner vested in such corporation, officers, justices, trustees, or commissioners: provided always, that no ecclesiastical corporation sole, being below the dignity of a bishop, shall be authorized to make such grant, without the consent in writing of the bishop of the diocese to whose jurisdiction the said ecclesiastical corporation is subject: provided also, that no parochial property shall be granted for such purposes without the consent of a majority of the rate-payers and owners of property in the parish to which the same belongs, assembled at a meeting to be convened according to the mode pointed out in the act passed in the sixth year of the reign of his late majesty, intituled, ‘An Act to facilitate the Conveyance of Workhouses and other Property of Parishes, and of Incorporations or Unions of Parishes in England and Wales,’ and without the consent of the poor law commissioners, to be testified by their seal being affixed to the deed of conveyance, and of the guardians of the poor of the union within which the said parish may be comprised, or of the guardians of the poor of the said parish where the administration of the relief of the poor therein shall be subject to a board of guardians testified by such guardians being the parties to convey the same; provided also, that where any officers, trustees, or commissioners, other than parochial trustees, shall make any such grant, it shall be sufficient if a majority or quorum authorized to act of such officers, trustees, or commissioners, assembled at a meeting duly convened, shall assent to such grant, and shall execute the deed of conveyance, although they shall not constitute a majority of the actual body of such officers, trustees, or commissioners: provided also, that the justices of the peace may give their consent to the making any grant of land or premises belonging to any county, riding, or division, by vote at their general quarter sessions, and may direct the same to be made in the manner directed to be pursued on the sale of the sites of gaols by an act passed in the seventh year of the reign of his late majesty George the Fourth, intituled, ‘An Act to authorize the disposal of unnecessary Prisons in England.’

“VII. And be it enacted, that all grants of land or buildings, or any interest therein, for the purposes of the education of poor persons, whether taking effect under the authority of this act, or any other authority of law, may be made to any corporation sole or aggregate, or to several corporations sole, or to any trustees whatsoever, to be held by such corporation or corporations or trustees for the purposes aforesaid: provided nevertheless, that any such grant may be made to the minister of any parish being a corporation, and the churchwardens or chapelwardens and overseers of the poor, or to the minister and kirk session of the said parish, and their successors; and in such case the land or buildings so granted shall be vested for ever thereafter in the minister, churchwardens, or chapelwardens, and overseers of the poor for the time being, or the minister and kirk session of such parish, but the management, direction, and inspection of the school shall be and remain according to the provisions contained in the deed of conveyance thereof: provided also, that where any ecclesiastical corporation sole below the dignity of a bishop shall grant any land to trustees, other than the minister, churchwardens, or chapelwardens, and overseers, for the purposes aforesaid, such trustees shall be nominated in writing by the bishop of the diocese to whose jurisdiction such corporation shall be subject; provided that where any school shall be intended for any ecclesiastical district not being a parish as hereinafter defined, it shall be sufficient if the grant be made to the minister and church or chapelwarden or wardens of the church or chapel of such district, to hold to them and their successors in office; and such grant shall enure to vest the land, subject to

hereafter to be commenced for the recovery of any tithes, oblations, or compositions, of or under the yearly value of ten pounds, and of any great or small tithes, moduses, compositions, rates, or other ecclesiastical dues or demands whatsoever, of or under the value of fifty pounds, withheld by any quaker; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act all the enactments and provisions of the said recited act passed in the fifth and sixth years of his late majesty King William the Fourth, respecting suits or other proceedings in any of her majesty's courts in England, in respect of tithes, oblations, and compositions, of or under the yearly value of ten pounds, and of any great or small tithes, moduses, compositions, rates, or other ecclesiastical dues or demands whatsoever, of or under the value of fifty pounds, withheld by any quaker, shall extend and be applied to all ecclesiastical courts in England."

STAT. 4 & 5
VICT. c. 36.

Enactments and provisions of recited act respecting proceedings for the recovery of certain tithes and other ecclesiastical dues, extended to all ecclesiastical courts in England.

LXXXVIII. STAT. 4 & 5 VICTORIÆ, c. 37. [IRELAND.] A.D. 1841.

"An Act for the more easy Recovery of Arrears of Compositions for Tithes from Persons of the Persuasion of the People called Quakers in Ireland."

STAT. 4 & 5
VICT. c. 37.
[Ir.]

"Whereas by an act passed in the session of parliament holden in the first and second years of the reign of her present majesty, intituled, 'An Act to abolish Compositions for Tithes in Ireland, and to substitute Rent-Charges in lieu thereof,' the right in and to certain compositions for tithes therein mentioned was vested in her majesty: and whereas it is expedient to make provision, in manner hereinafter mentioned, for the recovery of such compositions, (without limit as to the amount thereof,) from persons of the persuasion of the people called quakers; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in all cases in which the person liable to the payment of any composition for tithes, the right in and to which shall have vested in her majesty under any of the provisions of the said recited act, shall be of the persuasion of the people called quakers, the same shall, (without limit as to the amount,) be recoverable by her majesty's attorney-general for Ireland, in such manner only as by an act of the fifth and sixth years of the reign of his late majesty King William the Fourth, intituled, 'An Act for the more easy Recovery of Tithes,' is expressly or by reference prescribed for the recovery of ecclesiastical demands of or under the value of fifty pounds from quakers in Ireland, but with a like exception, as is contained in the said last recited act, in case the actual title of her majesty to such composition for tithes, or the amount thereof, or the liability or exemption of the property to or from the same, shall be *bonâ fide* in question; and in any case, except as aforesaid, in which the person so liable shall be of the persuasion aforesaid, and any other remedy or proceeding than those expressly or by reference prescribed by the said last-mentioned act has heretofore been or shall hereafter be commenced or prosecuted against him, it shall be lawful for him, or any one on his behalf, to serve upon the said attorney-general a declaration or notice in writing, stating that he is of the persuasion aforesaid, and such other remedy or proceeding shall be thereupon forthwith discontinued, and the costs previously incurred shall be taxed, and the said attorney-general shall proceed to recover such composition by such remedy as in the said last-recited act is provided, and shall be entitled to recover therewith, and as part thereof, the costs of such proceeding so discontinued; and such notice shall be evidence of the liability of the person by or on whose behalf the same may have been given, and of his being of the persuasion aforesaid: provided always, that nothing herein contained shall affect the validity of any proceeding which shall have been instituted or commenced before the passing of this act, unless and until such declaration or notice in writing as aforesaid shall be served upon the said attorney-general: and provided further, that if upon any such proceeding a sufficient distress cannot be found to satisfy the said composition for tithes, and the costs, (if any,) together with the reasonable costs of distress, then the other remedies provided or allowed

1 & 2 Vict.
c. 109.

Arrears of compositions for tithes vested in her majesty under 1 & 2 Vict. c. 109, to be recovered from quakers in like manner as rent-charges under that act and 5 & 6 Gul. 4, c. 74.

STAT. 4 & 5
VICT. C. 37.
[1a.]

by the said recited act of the first and second years of her majesty's reign may be resorted to, in the same manner as if the persons liable to the payment were not of the said persuasion of people called quakers: provided also, that in no case whatever shall any execution, or decree, or order, issue, or be made in respect of any such tithe composition against the person of any defendant being of the persuasion of the people called quakers.

Interpretation
clause.

"II. And be it enacted, that the provisions made by the said recited act of her present majesty for the interpretation of certain words and expressions therein shall apply to and extend to the like words and expressions in this act; and that the said recited act and this act shall be construed together as one act.

Act may be
amended, &c.
this session.

"III. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

STAT. 4 & 5
VICT. CAP.
XXXVII.

LXXXIX. STAT. 4 & 5 VICTORIÆ, CAP. XXXVII. A.D. 1841.

"An Act for completing and maintaining a new Church in Birkenhead, in the County of Chester."

STAT. 4 & 5
VICT. C. 38.

XC. STAT. 4 & 5 VICTORIÆ, C. 38. A.D. 1841.

"An Act to afford further Facilities for the Conveyance and Endowment of Sites for Schools."

Repeal of 6 &
7 Gul. 4, c. 70;
but things
done in pur-
suance thereof
declared valid,
and those
commenced to
be continued
according to
this act.

"Whereas it is expedient that greater facilities should be given for the erection of schools and buildings for the purposes of education; may it therefore please your majesty, that it may be enacted, and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act an act passed in the sixth held in the sixth and seventh years of the reign of his late majesty King William the Fourth, intituled, 'An Act to facilitate the Conveyance of Sites for School-rooms,' shall be and the same is hereby repealed; provided that all matters and things done in pursuance of the said act shall be and remain valid as though the said act was not repealed; and all matters and things commenced in pursuance of the said act shall be continued according to the provisions of this act, if the same shall be applicable, otherwise shall be continued conformably to the said recited act, which shall be deemed to be still in force with regard to such proceedings.

Landlords
empowered to
convey land to
be used as
sites for
schools, &c.

"II. And be it enacted, that any person, being seised in fee-simple, fee-tail, or for life, of and in any manor or lands of freehold, copyhold, or customary tenure, and having the beneficial interest therein, or in Scotland being the proprietor of a fee-simple or under entail, and in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange, in fee-simple or for a term of years, any quantity not exceeding one acre of such land, as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge; provided that no such grant made by any person seised only for life of and in any such manor or lands shall be valid, unless the person next entitled to the same in remainder, in fee-simple or fee-tail, (if legally competent,) shall be a party to and join in such grant: provided also, that where any portion of waste or commonable land shall be gratuitously conveyed by any lord or lady of a manor for any such purposes as aforesaid, the rights and interests of all persons in the said land shall be barred and divested by such conveyance: provided also, that upon the said land so granted as aforesaid, or any part thereof, ceasing to be used for the purposes in this act mentioned, the same shall thereupon immediately revert to and become a portion of the said estate held in fee-simple or otherwise, or of any manor or land as aforesaid, as fully to all intents and purposes as if this act had not been passed, anything herein contained to the contrary notwithstanding.

Chancellor
and council of
the duchy of

"III. And whereas it may be expedient and proper that the chancellor and council of her majesty's duchy of Lancaster, on her majesty's behalf, should be authorized to grant, convey, or enfranchise, to or in favour of the trustee or trustees

tees of any existing or intended school, lands and hereditaments belonging to her majesty in right of her said duchy, for the purposes of this act; be it therefore enacted, that it shall and may be lawful for the chancellor and council of her majesty's duchy of Lancaster for the time being, by any deed or writing under the hand and seal of the chancellor of the said duchy for the time being, attested by the clerk of the council of the said duchy for the time being, for and in the name of her majesty, her heirs, and successors, to grant, convey, or enfranchise, to or in favour of such trustee or trustees, any lands and hereditaments to be used by them for the purposes of this act, upon such terms and conditions as to the said chancellor and council shall seem meet; and where any sum or sums of money shall be paid as or for the purchase or consideration for such lands or hereditaments so to be granted, conveyed, or enfranchised as aforesaid, the same shall be paid by such trustee or trustees into the hands of the receiver-general for the time being of the said duchy, or his deputy, and shall be by him paid, applied, and disposed of according to the provisions and regulations contained in an act passed in the forty-eighth year of the reign of his late majesty King George the Third, intituled, 'An Act to improve the Land Revenue of the Crown in England, and also of His Majesty's Duchy of Lancaster,' or any other act or acts now in force for that purpose: provided always, that upon the said land so granted as aforesaid, or any part thereof, ceasing to be used for the purposes in this act mentioned, the same shall thereupon immediately revert to and become again a portion of the possessions of the said duchy, as fully, to all intents and purposes, as if this act, or any such grant as aforesaid, had not been passed or made, anything herein contained to the contrary notwithstanding.

"IV. And be it enacted, that for the purposes of this act only, and for such time only as the same shall be used for the purposes of this act, it shall be lawful for any two of the principal officers of the duchy of Cornwall, under the authority of a warrant issued for that purpose under the hands of any three or more of the special commissioners for the time being for managing the affairs of the duchy of Cornwall, or under the hands of any three or more of the persons who may hereafter for the time being have the immediate management of the said duchy, if the said duchy shall be then vested in the crown, or if the said duchy shall then be vested in a Duke of Cornwall, then under the hand of the chancellor for the time being of the said duchy, or under the hands of any three or more of the persons for the time being having the immediate management of the said duchy, by deed under their hands, to grant and convey to the trustees or trustee for the time being of any existing school, or of any school intended to be established by virtue of this act, any lands, tenements, or hereditaments, forming part of the possessions of the said duchy of Cornwall, not exceeding in the whole one acre in any one parish, upon such terms and conditions as to the said special commissioners or chancellor, or such other persons as aforesaid, shall seem meet: provided always, that upon the said land so granted as aforesaid, or any part thereof, ceasing to be used for the purposes in this act mentioned, the same shall thereupon immediately revert to and become again a portion of the possessions of the said duchy, as fully, to all intents and purposes, as if this act or any such grant as aforesaid hath not been passed or made; anything herein contained to the contrary notwithstanding.

"V. And be it enacted, that where any person shall be equitably entitled to any manor or land, but the legal estate therein shall be in some trustee or trustees, it shall be sufficient for such person to convey the same for the purposes of this act without the trustee or trustees being party to the conveyance thereof; and where any married woman shall be seised or possessed of or entitled to any estate or interest, manorial or otherwise, in land proposed to be conveyed for the purposes of this act, she and her husband may convey the same for such purposes by deed, without any acknowledgment thereof; and where it is deemed expedient to purchase any land for the purposes aforesaid belonging to or vested in any infant or lunatic, such land may be conveyed by the guardian or committee of such infant, or the committee of such lunatic respectively, who may receive the purchase money for the same, and give valid

STAT. 4 & 5

VICT. c. 38.

Lancaster empowered to grant lands to the trustees of any existing or intended school.

48 Geo. 3, c. 73.

If lands cease to be used for the purposes of the act they shall revert.

Officers of the duchy of Cornwall empowered, upon sufficient authority, to grant lands to the trustees of any existing or intended school.

If lands cease to be used for the purposes of the act they shall revert.

Persons under disability empowered to convey lands for the purposes of this act.

STAT. 4 & 5
VICT. c. 38.

division, or of the sheriff's officers in Scotland, commanding him or them, within a period to be therein named, not less than ten nor more than twenty-one clear days from the date of such warrant, to enter into the premises, and give possession of the same to the said trustees or managers or their agents, such entry and possession being given in England in such manner as justices of the peace are empowered to give possession of any premises to any landlord or his agent under an act passed in the second year of the reign of her present majesty, intituled, 'An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy.'

1 & 2 Vict.
c. 74.

Powers granted to the commissioners under 3 & 4 Vict. c. 60, for applying land to ecclesiastical purposes extended to land granted by way of gift.

"XIX. And whereas by an act passed in the last session of parliament, intituled, 'An Act to further amend the Church Building Acts,' provision was made to enable her majesty's commissioners for building new churches, to apply land in any parish granted to them for any of the purposes of the Church Building Acts to any other ecclesiastical purposes, or for the purpose of any parochial or charitable school, or any other charitable or public purpose relating to any such parish or place: and whereas through an accidental omission such provision does not extend to cases of land granted by way of gift; be it therefore enacted, that such power so given to the said commissioners, so far as it is applicable to the purposes of any school, shall extend to every case of land granted, given, or conveyed to them under the authority of the several acts in the said act recited.

Definition of the term "parish."

"XX. And be it enacted, that the term 'parish' in this act shall be taken to signify every place separately maintaining its own poor, and having its own overseers of the poor and church or chapel wardens.

Act not to extend to Ireland.

"XXI. And be it enacted, that this act shall not extend to Ireland.

Act not to affect 1 & 2 Vict. c. 87, or 3 & 4 Vict. c. 48.

"XXII. And be it enacted, that nothing herein contained shall repeal or affect an act passed in the second year of the reign of her present majesty, intituled, 'An Act to facilitate the Foundation and Endowment of additional Schools in Scotland,' or another act passed in the last session of parliament, intituled, 'An Act to enable Proprietors of Entailed Estates in Scotland to feu or lease on long Leases, portions of the same for the building of Churches and Schools, and for Dwelling Houses and Gardens for the Ministers and Masters thereof.'

Act may be amended, &c. this session.

"XXIII. And be it enacted, that this act may be altered or amended by any act to be passed in this session of parliament."

STAT. 4 & 5
VICT. csp.
xxxviii.

XCI. STAT. 4 & 5 VICTORIÆ, csp. xxxviii. A.D. 1841.

"An Act to enable the Trustees of the Hospital of Saint John the Baptist, in the City of Winchester, to effect an Exchange with Sir Edmund Antrobus, Baronet, under the Authority of the Court of Chancery."

STAT. 4 & 5
VICT. c. 39.

XCII. STAT. 4 & 5 VICTORIÆ, c. 39(1). A.D. 1841.

"An Act to explain and amend two several Acts relating to the Ecclesiastical Commissioners for England."

6 & 7 Gul. 4,
c. 77.

"(2) Whereas an act was passed in the seventh year of the reign of his late majesty, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage:' and whereas another act was passed in the last session of parliament, intituled, 'An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues:' and whereas it is expedient to explain and amend certain provisions in the said acts contained; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that, notwithstanding anything in either of the

3 & 4 Vict. c.
113.

(1) *Vide* Stat. 6 & 7 Vict. c. 60; and Stat. (2) *Vide* Stat. 5 & 6 Vict. c. 106, s. 11.
6 & 7 Vict. c. 77.

the conditions contained in the deed of conveyance, in such minister and the church or chapel warden or wardens for the time being.

“VIII. And whereas schools for the education of the poor in the principles of the established church, or in religious and useful knowledge, and residences for the masters or mistresses of such schools, have been heretofore erected, and are vested in trustees not having a corporate character; be it therefore enacted, that it shall be lawful for the trustees for the time being of such last-mentioned schools and residences, not being subject to the provisions of the act passed in the last session of parliament, intituled, ‘An Act for improving the Conditions and extending the Benefits of Grammar Schools,’ to convey or assign the same, and all their estate and interest therein, to such ministers and churchwardens and overseers of the poor of the parish within which the same are respectively situate, and their successors as aforesaid, or being situate within an ecclesiastical district not being a parish as hereinafter defined, then to the minister and church or chapel wardens of the church or chapel of such district, and their successors, in whom the same shall thereafter remain vested accordingly, but subject to and under the existing trusts and provisions respectively affecting the same.

“IX. And be it enacted, that any person or persons or corporation may grant any number of sites for distinct and separate schools, and residences for the master or mistress thereof, although the aggregate quantity of land thereby granted by such person or persons or corporation shall exceed the extent of one acre; provided that the site of each school and residence do not exceed that extent; provided also, that not more than one such site shall be in the same parish.

“X. And be it enacted, that all grants, conveyances, and assurances of any site for a school, or the residence of a schoolmaster or schoolmistress, under the provisions of this act, in respect of any land, messuages, or buildings, may be made according to the form following, or as near thereto as the circumstances of the case will admit; (that is to say,)

“‘I, [*or we, or the corporate title of a corporation,*] under the authority of an act passed in the year of the reign of her majesty Queen Victoria, intituled ‘An Act for affording further Facilities for the Conveyance and Endowment of Sites for Schools,’ do hereby freely and voluntarily, and without any valuable consideration, [*or do, in consideration of the sum of* to me or us or the said paid,] grant, [*alienate,*] and convey to all [*description of the premises,*] and all [*my or our or the right, title, and interest of the*] to and in the same and every part thereof, to hold unto and to the use of the said and his or their [*heirs, or executors, or administrators, or successors,*] for the purposes of the said act, and to be applied as a site for a school for poor persons of and in the parish of and for the residence of the schoolmaster [*or schoolmistress*] of the said school [*or for other purposes of the said school,*] and for no other purpose whatever; such school to be under the management and control of [*set forth the mode in which and the persons by whom the school is to be managed, directed, and inspected*]. [*In case the school be conveyed to trustees, a clause providing for the renewal of the trustees, and in cases where the land is purchased, exchanged, or demised, usual covenants or obligations for title, may be added.*] In witness whereof the conveying and other parties have hereunto set their hands and seals, this day of .

“‘Signed, sealed, and delivered by the said in the presence of of .

“And no bargain and sale or livery of seisin shall be requisite in any conveyance intended to take effect under the provisions of this act, nor more than one witness to the execution by each party; and instead of such attestation such conveyance of any lands or heritages in Scotland shall be executed with a testing clause, according to the law and practice of Scotland; and, being recorded within sixty days of the date thereof in the general register of seisins or particular register for the county or stewartry in which the lands or heritages lie, shall, without actual seisin, be valid and effectual in law to all intents and purposes, and shall be a complete bar to all other rights, titles, trusts, interests, and incumbrances to, in, or upon the lands or heritages so conveyed.

STAT. 4 & 5
VICT. c. 38.

Estates now vested in trustees for the purposes of education may be conveyed to the minister and churchwardens.

Any number of sites may be granted for separate schools.

Form of grants, &c.

STAT. 4 & 5
VICT. c. 38.

Application
of purchase
money for land
sold by any
ecclesiastical
corporation
sole.

Application
of purchase
money for
lands sold in
Scotland.

1 & 2 Gul. 4,
c. 43.

Ecclesiastical
corporation to
procure a
certificate as
to the extent
of the land
conveyed.

Form of cer-
tificate.

Trustees em-
powered to
sell or exchange
lands or
buildings.

All convey-

“XI. And be it enacted, that where any land shall be sold by any ecclesiastical corporation sole for the purposes of this act, and the purchase money to be paid shall not exceed the sum of twenty pounds, the same may be retained by the party conveying, for his own benefit; but when it shall exceed the sum of twenty pounds it shall be applied for the benefit of the said corporation, in such manner as the bishop in whose diocese such land shall be situated shall, by writing under his hand, to be registered in the registry of his diocese, direct and appoint; but a person purchasing such land for the purpose aforesaid shall be required to see to the due application of any such purchase money.

“XII. And be it enacted, that the price of any lands or heritages to be sold for the purposes of this act by any heir of entail or other incapacitated person or persons in Scotland shall be applied and invested in such and the like manner as is directed in relation to any monies awarded to be paid for lands or heritages belonging to heirs of entail or incapacitated persons under an act passed in the first and second years of the reign of his late majesty King William the Fourth, intituled, ‘An Act for amending and making more effectual the Laws concerning Turnpike Roads in Scotland.’

“XIII. And be it enacted, that when any ecclesiastical corporation sole bearing the dignity of a bishop shall grant any land belonging to him in right of his corporation, for the purposes of this act, he shall procure a certificate, under the hands of three beneficed clergymen of the diocese within which the land to be conveyed shall be situate, as to the extent of the land so conveyed, to be endorsed on the said deed; which certificate shall be in the form following; (that is to say),

“We, *A. B.*, clerk, rector of the parish of *C. D.*, clerk, rector of the parish of *E. F.*, clerk, vicar of the parish of *G. H.*, being three beneficed clergymen of the diocese of *I. J.*, do hereby certify, that *K. L.*, clerk, rector of the parish of *M. N.*, within the said diocese of *O. P.*, being about to convey a portion of land situate in the said parish of *Q. R.*, for the purposes of a school, under the powers of the act passed in the *S. T.* year of the reign of her majesty Queen Victoria, intituled, ‘An Act for affording further Facilities for the Conveyance and Endowment of Sites for Schools,’ we have at his request inspected and examined the portion of land, and have ascertained that the same is situate at [*here describe the situation*]; and that the extent thereof does not exceed *U. V.* acre. As witness our hands this *W. X.* day of *Y. Z.* at *AA.* in the county of *BB.* and diocese of *CC.*

“Witness *DD.* of *EE.*

“And until such certificate shall have been signed no such conveyance shall have any force or validity.

“XIV. And be it enacted, that when any land or building shall have been or shall be given or acquired under the provisions of the said first-recited act or this act, or shall be held in trust for the purposes aforesaid, and it shall be deemed advisable to sell or exchange the same for any other more convenient or eligible site, it shall be lawful for the trustees in whom the legal estate in the said land or building shall be vested, by the direction or with the consent of the managers and directors of the said school, if any such there be, to sell or exchange the said land or building, or part thereof, for other land or building suitable to the purposes of their trust, and to receive on any exchange any sum of money by way of effecting an equality of exchange, and to apply the money arising from such sale or given on such exchange in the purchase of another site, or in the improvement of other premises used or to be used for the purposes of such trust; provided that where the land shall have been given by any ecclesiastical corporation sole, the consent of the bishop of the diocese shall be required to be given to such sale or exchange before the same shall take place: provided also, that where a portion of any parliamentary grant shall have been or shall be applied towards the erection of any school, no sale or exchange thereof shall take place without the consent of the secretary of state for the home department for the time being.

“XV. And whereas in many cases conveyances of land have been made pur-

porting to be made in pursuance of the powers of the said first-recited act, to the minister or incumbent and the churchwardens or chapelwardens of certain parishes or places, as and for sites of schools or houses of residence for the schoolmasters; and doubts have been entertained whether such conveyances are valid and effectual for the purposes of conveying the fee-simple, in consequence of the said statute not containing any words of limitation to the successors of such persons; be it therefore enacted, that all conveyances whereby any land shall have been conveyed to the minister or incumbent and the churchwardens or chapelwardens of any parish or place for the time being, whether made to them as such minister or incumbent and churchwardens or chapelwardens, or to them and their successors, shall be deemed and taken to have been and shall be valid and effectual for the purpose of vesting the fee-simple, or such other estate as hath been proposed to be conveyed, in the persons who from time to time shall be the minister or incumbent and the churchwardens or chapelwardens of such place, such minister being the rector, vicar, or perpetual curate, whether endowed or not, of the said parish or place.

“XVI. And whereas certain lands or buildings have been conveyed for valuable consideration, upon trust, for the purposes of the education of the poor, and through inadvertence or other causes the deeds or assurances conveying the same have not been enrolled in Chancery, as required by the act passed in the ninth year of the reign of his late majesty King George the Second, intituled, ‘An Act to restrain the Disposition of Lands whereby the same become unalienable, and by the said hereinbefore first-recited act; be it therefore enacted, that notwithstanding the said provisions all such conveyances shall be and remain valid for the space of twelve calendar months next ensuing the passing of this act, and if enrolled in Chancery before the expiration of that time shall be and remain valid hereafter as if duly enrolled within the time required by the provisions of the said acts: provided nevertheless, that no effect shall be given hereby to any deed or other assurance heretofore made, so far as the same has been already avoided by any suit at law or in equity, or by any other legal or equitable means whatsoever, or to affect or prejudice any suit at law or in equity actually commenced, for avoiding any such deed or other assurance, or for defeating the charitable uses in trust or for the benefit of which such deed or other assurance may have been made.

“XVII. And be it enacted, that no schoolmaster or schoolmistress to be appointed to any school erected upon land conveyed under the powers of this act shall be deemed to have acquired an interest for life by virtue of such appointment, but shall, in default of any specific engagement, hold his office at the discretion of the trustees of the said school.

“XVIII. And for the more speedy and effectual recovery of the possession of any premises belonging to any school which the master or mistress who shall have been dismissed, or any person who shall have ceased to be master or mistress, shall hold over after his or her dismissal or ceasing to be master or mistress, be it enacted, that when any master or mistress, not being the master or mistress of any grammar school within the provision of the act of the last session of parliament hereinafter mentioned, holding any schoolroom, school-house, or any other house, land, or tenement, by virtue of his or her office shall have been dismissed or removed, or shall have ceased to be master or mistress, and shall neglect or refuse to quit and deliver up possession of the premises within the space of three calendar months after such dismissal or ceasing to be master or mistress, not having any lawful authority for retaining such possession, it shall be lawful for the justices of the peace acting for the district or division in which such premises are situated, in petty sessions assembled, or any two of them, or for the sheriff of the county in Scotland, and they are hereby required, on the complaint of the trustees or managers of the said school, or some one of them, on proof of such master or mistress having been dismissed or removed, or having ceased to be such master or mistress, to issue a warrant under their hands and seals, or under the hand of such sheriff in Scotland, to some one or more of the constables and peace officers of the said district or

STAT. 4 & 5
VICT. c. 38.
acres of land
under 6 & 7
Gul. 4, c. 70,
to be deemed
effectual for
vesting the fee
simple.

Certain conveyances of lands, &c. for purposes of education not enrolled as required by 9 Geo. 2, c. 36, rendered valid if enrolled within twelve months from the passing of this act. Proviso for deeds avoided in any suit.

No school-master to acquire a life interest by virtue of his appointment.

Justices of the peace or sheriffs to give possession of school rooms, &c. in case of the refusal of the master.

STAT. 4 & 5
VICT. c. 39.

contained shall relieve any person from the payment of any tenths which he is now bound to pay by any covenant contained in any lease held by him: provided also, that in case of any bishop being deprived by the provisions of this act of any tenths heretofore receivable by him, the amount thereof shall from time to time and out of the same monies be paid or allowed to such bishop by the said commissioners.

Deans need
not hold pre-
bends.
3 & 4 Vict. c.
113, s. 24.

“V. And be it declared and enacted, that the holding of a canonry, residentiary, prebend, or office is not nor shall be necessary to the holding of the deanery of any cathedral church in England, nor to the entitling of any dean to his full share of the divisible corporate revenues of such church, although such share may not heretofore have been received by any preceding dean otherwise than as a canon residentiary; and that the holding of a prebend is not nor shall be necessary to the holding of either of the residentiary canonries in the cathedral church of Saint Paul in London which are in the direct patronage of her majesty.

Commissioners
to have same
claims as duly
qualified pre-
bendaries.
3 & 4 Vict. c.
113, ss. 49, 50,
51.

“VI. And be it declared and enacted, that the provisions of the secondly-recited act and of this act, by virtue of which any lands, tithes, or other hereditaments, endowments, or emoluments belonging to any dignity, prebend, or office, in any cathedral or collegiate church, have accrued to and become vested in, or may accrue to or become vested in, the said ecclesiastical commissioners, do and shall be construed to extend to and include all lands and tenements, (except any house within the precincts of such church belonging to any canonry or usually held and enjoyed therewith, or any small portion of land situate within the limits and precincts of any cathedral or collegiate church, or in the vicinity of any residence house, which, under the provisions of the secondly-recited act, may be reserved to such church, or permanently annexed to any residentiary house by the authority in the same act provided,) tithes, or other hereditaments, endowments, and emoluments, of what nature or kind soever, which, if the said secondly-recited act had not been passed, any successor to such dignity, prebend, or office would have been entitled to possess or receive, if duly qualified in all respects according to the statutes and usages of his church to possess or receive the same, and if qualified and ready at all times personally and duly to perform all the duties and services of such his prebend, dignity, or office.

Provisions of
3 & 4 Vict. c.
113, to apply
to other non-
residentiary
prebends, &c.
ss. 22, 51, 52
& 53.

“VII. And be it enacted, that all the provisions in the said secondly-recited act and in this act contained relating to lands, tithes, or other hereditaments or endowments belonging to prebends not residentiary, shall apply also to all lands, tithes, and other hereditaments and endowments belonging to the respective offices of sacrist, custos, and hospitaller in any cathedral or collegiate church, or enjoyed by the holders thereof in right of such offices, as fully and effectually as if such offices had been expressly named as subject to such provisions.

Application
of certain
monies to pa-
rishes of St.
Margaret's and
St. John's,
Westminster.
3 & 4 Vict. c.
113, s. 31.

“VIII. And be it enacted, that so much of the secondly-recited act as relates to the application of certain monies therein specified towards making a better provision for the cure of souls in the respective parishes of Saint Margaret and Saint John, Westminster, shall be repealed; and that it shall be lawful to apply such monies towards making such better provision in such manner as by the authority in the same act provided shall be deemed best for the spiritual interests of the said parishes respectively; provided that such monies shall be exclusively applied within the respective parishes with which the canonries in the collegiate church of Saint Peter, Westminster, are connected, and from the proceeds of which they respectively accrue; and that with respect to the parish of Saint John, it shall also be lawful, by the like authority, in the same manner, to apply so much of the monies paid over to the ecclesiastical commissioners for England, or to their account, by the treasurer of the governors of the bounty of Queen Anne, under the provisions of the same act, as came to his hands by reason of the temporary suspension of the canonry in the said church, to which is now annexed the rectory of the said parish of Saint John, together with any interests which may have accrued thereon.

Archdeacons
may be

“IX. And be it enacted, that, notwithstanding anything in the said secondly-recited act contained, it shall be lawful by the authority in the same act provided,

said recited acts contained, it shall be lawful for the ecclesiastical commissioners for England, at any meeting duly convened according to the provisions thereof, to continue and adjourn such meeting from day to day for any such number of days as they shall deem necessary; and the proceedings of the said commissioners, and all acts, matters, and things done and executed by them, on each and every of such days of adjournment, shall be as valid and effectual to all intents and purposes as if the same had been done and executed on the first day of such meeting: provided always, that no proceeding which requires to be ratified and confirmed by the common seal of the corporation shall be finally concluded by the affixing of the said seal on any such day of adjournment, unless notice of the intention to propose such proceeding for final consideration and decision shall have been sent together with every notice issued for such first day of meeting.

“II. And for the removal of all doubts respecting the foundation of honorary canonries, be it declared and enacted, that honorary canonries are and shall be founded forthwith in the cathedral churches of Canterbury, Bristol, Carlisle, Chester, Durham, Ely, Gloucester, Norwich, Oxford, Peterborough, Ripon, Rochester, Winchester, and Worcester, and in the collegiate church of Manchester so soon as the same shall become a cathedral church, and in no other cathedral church; and that all the provisions of the secondly-recited act which purport to relate to honorary canonries shall apply to the honorary canonries so founded.

“III. And be it enacted, that the holding of an honorary canonry, or of any prebend, dignity, or office, not now in any manner endowed, or whereof the lands, tithes, or other hereditaments, endowments, or emoluments shall have been vested in the ecclesiastical commissioners for England, or which may hereafter be endowed to an amount not exceeding twenty pounds by the year, shall not be construed to prevent the holding therewith of more benefices than one; and that no such prebend, dignity, or office, which was vacant on the thirteenth day of August last, or became so at any time since, shall be deemed to have lapsed by reason of such vacancy, but hath remained and shall remain in the patronage of the archbishop or bishop of the diocese for the time being until a successor shall be collated thereto; and that every such prebend, dignity, or office, which shall hereafter become vacant, and every such honorary canonry, shall in like manner be and remain in the patronage of the archbishop or bishop of the diocese for the time being until a successor shall be collated thereto; any royal prerogative, statute, canon, or usage to the contrary notwithstanding.

“IV. And whereas it is not just that first-fruits and tenths should be paid by the holders of dignities, prebends, and offices of which the estates are vested in the said ecclesiastical commissioners, and it is inexpedient to diminish the amount of the fund accruing to the governors of Queen Anne's bounty in respect of such prebends, dignities, and offices, and of sinecure rectories; be it enacted, that the holders of all dignities, prebends, and offices, whereof the lands, tithes, tenements, and other hereditaments and endowments shall have become so vested, shall be absolutely relieved and discharged from the payment of all first-fruits and tenths in respect of such their dignities, prebends, and offices respectively; and that the said commissioners shall yearly and every year, on or before the thirty-first day of March, out of the monies at their disposal under the provisions of the secondly-recited act, pay or cause to be paid to the treasurer of the said governors for the time being a sum equal to one twentieth part of the aggregate amount charged for first-fruits on all dignities, prebends, offices, and sinecure rectories of which the lands, tithes, tenements, or other hereditaments or endowments had on the last day of the preceding December become so vested in the said commissioners, as an average compensation for, and in full satisfaction of all claim of the said governors to, the first-fruits heretofore payable in respect thereof; and the said commissioners shall also, subject to the proviso hereinafter contained, on or before the same day of March, and out of the same monies, pay or cause to be paid yearly and every year to the said treasurer for the time being the aggregate amount of the tenths due to the said governors for or in respect of all the same dignities, prebends, offices, and sinecure rectories: provided always, that nothing herein

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VICT. c. 39.

Commissioners may adjourn meetings from day to day.
6 & 7 Gul. 4, c. 77, s. 4.
3 & 4 Vict. c. 113, s. 82.
Proviso as to confirming proceedings.

Cathedrals in which honorary canonries are founded.
3 & 4 Vict. c. 113, s. 23.

Honorary preferment may be held with two benefices.
3 & 4 Vict. c. 113, ss. 23, 51 and shall not be subject to lapse.

First-fruits and tenths of vacated prebends, &c.
3 & 4 Vict. c. 113, ss. 48, 49, 50, 51, 54.

STAT. 4 & 5
VICT. c. 39.

cure of souls possessed by the said chapter shall be transferred to and vested partly in the Bishop of Ripon and partly in the Bishop of Manchester, subject to the same provisions as are in the said secondly-recited act contained with respect to benefices in the patronage of the prebendaries of the said collegiate church; and that so soon as conveniently may be, and by the like authority, and out of the same lands, tenements, tithes, or other hereditaments or endowments, or the proceeds thereof, or out of any other lands, tithes, or other hereditaments or endowments now or in the meantime vested in the said commissioners, or any endowments already accrued or hereafter accruing to them in respect of the canonries or prebends of the said church, provision shall be made for the spiritual care of the said parish of Southwell, and for the competent endowment of ministers in the several parishes within the deanery of Southwell, wherein any of such lands, tenements, tithes, and hereditaments are respectively situate or arise; and the vicar of Southwell shall be endowed with such portion of the tithes of the parish of Southwell, or with such other provision, as by the like authority may be determined on, and may be constituted a rectory with cure of souls; and that on the then next avoidance thereof the Archdeacon of Nottingham for the time being shall become *ipso facto* rector of the said rectory, and the said rectory shall thenceforth be permanently annexed to the archdeaconry of Nottingham: provided always, that the said rectory of Southwell and the incumbent thereof shall continue subject to all the provisions of the thirdly-recited act passed in the second year of her present majesty's reign.

Durham University trusts.
3 & 4 Vict. c.
113, s. 37.

"XIII. And whereas inconvenience arises from the mode in which certain property is now held partly by the bishop and partly by the dean and chapter of Durham in trust for the university of Durham; be it enacted, that it shall be lawful, by the authority in the said secondly-recited act provided, with the consent of the said university, and also of the said bishop or of the said dean and chapter, as the case may be, to make any such arrangements as may be deemed fit by the like authority for varying, transferring, or annulling any of the trusts upon which any monies or securities for money, or any lands, tenements, tithes, or other hereditaments, are now held for the benefit of the said university, and for transferring and vesting such monies, securities for money, lands, tenements, tithes, or other hereditaments, or any part thereof, in such other manner and in such other persons or body corporate as may be deemed by the like authority most beneficial to the said university; and that the said university of Durham may, by the name of 'The Warden, Masters, and Scholars of the University of Durham,' take and purchase and hold lands, tenements, tithes, and other hereditaments to them and their successors, the Statutes of Mortmain or any other act or acts to the contrary notwithstanding; and that, when the lands, tenements, tithes, or other hereditaments, monies or securities for money, or any part thereof, now held by the said bishop or by the said dean and chapter in trust for the said university, shall be vested, by the authority aforesaid, in the said warden, masters, and scholars, they shall have and enjoy all the powers of sale, of purchase, of holding in mortmain, of leasing, of management, of applying the principal monies, and the rents, dividends, and interests thereof, or of such part thereof as shall be vested in them, in as full and ample manner as the said dean and chapter now have and enjoy the same powers by virtue of an act passed in the third year of the reign of his late majesty, intituled, 'An Act to enable the Dean and Chapter of Durham to appropriate part of the Property of their Church to the Establishment of a University in connexion therewith for the Advancement of Learning;' and that it shall be lawful for all bodies corporate, aggregate, or sole, and all other incapacitated persons named in the said act, to sell and convey to the said warden, master, and scholars, and their successors, all such lands, tenements, and hereditaments as by the said act they are enabled to sell and convey to the said dean and chapter, and in such manner and by such conveyances and assurances as in the said act are mentioned; and that it shall be lawful for the said warden, masters, and scholars to apply the building fund to the payment of expenses already incurred by the said university in erecting and completing, altering, repairing, or improving any

2 & 3 Gal. 4,
cap. xix.

with the consent of the bishop of any diocese, and of the patron of any benefice within the limits of any archdeaconry in such diocese, to endow such archdeaconry, by the annexation thereto of such benefice, such annexation to take effect immediately if the benefice be vacant at the time of such endowment, or otherwise upon the then next vacancy thereof; and every benefice so annexed, and every future holder thereof, shall be subject to all the provisions of an act passed in the second year of her present majesty's reign, intituled, 'An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy:' provided always, that no such annexation shall take effect as to any archdeacon in possession at the passing of this act, without his consent; and in default of such consent at the time when any benefice would otherwise so as aforesaid become annexed, or until such consent be given, during the incumbency of such archdeacon, the income and emoluments of such benefice shall, after due provision thereout being made for the cure of souls in the parish or district of such benefice, be applied, by the like authority, either in improving the existing house and buildings, or in providing a new house of residence for such benefice, or in improving or augmenting the glebe belonging thereto, or if no such improvement or augmentation be deemed necessary, then for the benefit of any poor benefice or benefices within the same archdeaconry.

"X. And whereas it is by the thirdly-recited act provided, that nothing thereinbefore contained shall be construed to prevent any archdeacon from holding, together with his archdeaconry, two benefices, under the limitations in the said act mentioned with respect to distance, joint yearly value, and population, and one of which benefices shall be situate within the diocese of which his archdeaconry forms a part, or one cathedral preferment in any cathedral or collegiate church of the diocese of which his archdeaconry forms a part, and one benefice situate within such diocese: and whereas doubts are entertained whether the said provision includes benefices of peculiar or exempt jurisdiction, and it is expedient that such doubts should be removed; be it therefore enacted, that the said provision shall extend and apply to benefices locally situate within the diocese of which any such archdeaconry shall form a part, although the same may not be subject to the jurisdiction of the bishop of such diocese.

"XI. And be it enacted, that any canonry or portion of the income of a canonry or benefice annexed to any archdeaconry under the provisions of the secondly-recited act or this act may at any time, upon the representation of the bishop of the diocese, and by the authority in the said secondly-recited act provided, be disannexed from such archdeaconry on the vacancy thereof, and annexed to any other archdeaconry in the same diocese.

"XII. And be it enacted, that so much of the said secondly-recited act as relates to the Archdeacon of Nottingham and to the parish of Southwell shall be repealed; and that the Bishop of Lincoln, and not the Archbishop of York, shall from henceforth be the visitor of the collegiate church of Southwell, and shall enjoy all powers now vested in the said archbishop as such visitor; and that, notwithstanding anything in the said secondly-recited act contained, no appointment shall be made to any canonry or prebend in the said collegiate church, but that so soon as every person who was a member of the chapter thereof at the passing of the same act shall have ceased to be such member, all lands and tenements, tithes, and other hereditaments belonging to the said church or the chapter thereof, except any right of patronage, shall, without any conveyance or assurance in the law other than the provisions of this act, accrue to and be vested in the ecclesiastical commissioners for England, and their successors, for the purposes of the secondly-recited act and of this act; and that out of the lands, tenements, tithes, and other hereditaments and endowments which shall so accrue to the said commissioners, or the proceeds thereof, competent provision shall be made, by the authority in the said secondly recited act provided, and in such manner as shall be by such authority deemed expedient, for the services of the said church of Southwell, and for the maintenance and reparation of the fabric of the said church, and for any minor canon or officer thereof; and that the patronage of all benefices with

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endowed with
benefices.

3 & 4 Vict. c.
113, ss. 34 &
35.

1 & 2 Vict. c.
106.

The provision
in 1 & 2 Vict.
c. 106, as to
archdeacons
holding two
benefices, to
extend to
peculiars.

Endowment
may be dis-
annexed from
one archdea-
conry, and annexed to
another.

Further pro-
visions respect-
ing Southwell.
3 & 4 Vict. c.
113, ss. 18, 36
& 41.

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canons of such church, or may make any such arrangement to take effect at any future time, or may assign any one of such houses being vacant to any canon willing to accept the same in lieu of the house theretofore occupied by him, and thereupon any house no longer required by any canon may by the said dean and chapter be disposed of, in such way as they shall deem fit, with the consent of their visitor, and of the ecclesiastical commissioners for England, signified under their common seal; provided that all acts, matters, and things relating to any such house already done under the last-mentioned provisions of the said secondly-recited act shall be valid and effectual to all intents and purposes.

Correction of
error respect-
ing endow-
ments belong-
ing to Lich-
field prebends.
3 & 4 Vict.
c. 113, s. 63.

“XIX. And be it declared and enacted, that the provisions of the secondly-recited act which purport to relate to the endowments belonging to the suspended prebends in the cathedral church of Lichfield were intended to apply and do apply to all the lands and tenements, tithes, and other hereditaments and endowments, which are or are to be vested in the said ecclesiastical commissioners, by or under the provisions of the said act, by reason of the vacancy of any canon residentiary, or of any prebend, dignity, or office not residentiary, in the said church.

Enlarged dis-
cretion as to
mode of fixing
incomes.
3 & 4 Vict.
c. 113, ss. 52
& 66.

“XX. And be it declared and enacted, that, notwithstanding anything in the secondly-recited act contained relating to the payment of fixed annual sums by certain deans and canons, and the payment of other annual sums to certain deans and chapters therein respectively named or referred to, or relating to the transfer of parts of the lands, tithes, or other hereditaments therein specified to the chapters of York, Chichester, Exeter, Hereford, Lichfield, Salisbury, and Wells respectively, for the purposes therein respectively specified, it shall be lawful, by the authority in the same act provided, to carry such purposes or any of them into effect by any mode of payment, contribution, augmentation, or endowment which may be deemed fit, as well as by the modes in the said act specified; and that the scale of payments and receipts may from time to time in any case be revised, and if need be, varied by the like authority, so as to preserve, as nearly as may be, the intended average annual incomes respectively, but not so as to affect any dean or canon in possession at the time of making any such variation.

Powers of ex-
change, &c.
extended to all
corporations
sole.
3 & 4 Vict.
c. 113, s. 66.

“XXI. And be it declared and enacted, that the provisions of the secondly-recited act relating to the sale, transfer, or exchange of any lands, tithes, or other hereditaments, the purchase of other lands, tithes, or other hereditaments in lieu thereof, or the substitution of any lands, tithes, or other hereditaments for any money payment, do and shall extend to authorize the substitution of any money payment for any lands, tithes, or other hereditaments, and do and shall include and apply to all lands, tithes, or other hereditaments in the possession or enjoyment of any dean, canon, prebendary, or other dignitary or officer of any cathedral or collegiate church, or in the possession of the ecclesiastical commissioners for England; and the consent in writing under the hand only of any such dean, canon, prebendary, or other dignitary or officer, shall be deemed to be a consent within the meaning of the said act.

Provisions of
3 & 4 Vict.
c. 113, s. 73,
respecting ex-
change of
advowsons, to
authorize ex-
change by
ecclesiastical
corporations.
Exchanges of
advowsons may
be made for the
purpose of
unions.
1 & 2 Vict.
c. 106, s. 16.

“XXII. And be it declared and enacted, that it is and shall be competent to the authority in the first-recited act provided to make arrangements, under and according to the provisions of the said act, for improving the value or making a better provision for the spiritual duties of ill-endowed parishes or districts, by means of the exchange of advowsons, or other alterations in the exercise of patronage, notwithstanding that such advowsons, or any or either of them, or such patronage, shall be vested in or belong to any ecclesiastical corporation aggregate or sole.

“XXIII. And be it enacted, that whenever it shall be made to appear to the ecclesiastical commissioners for England that it would be expedient to make an exchange of an advowson, or of any right of patronage, for any other advowson or right of patronage, with a view to proceedings being taken for the union of two or more benefices under the provisions of the said act passed in the second year of her present majesty's reign, it shall be lawful for the said commissioners, with the consent of the patron or patrons of every such advowson or right of patronage, and also, in case any such advowson or right of patronage shall be vested in or belong

building for the use of the said university, or for the use of any person or persons for whom the said university was or is bound to provide any office or building under an order of her majesty in council bearing date the nineteenth day of July, one thousand eight hundred and thirty-seven, relating to the castle of Durham, and to the erection and completion, alteration, reparation, or improvement of any building erected or to be erected, not only on land now vested in the said dean and chapter, but also on land now vested in the said bishop in trust for the said university, or on land to be hereafter acquired by the said warden, masters, and scholars for any of the foregoing uses; and that it shall be lawful, by the like authority, with the consent of the said university, and also of the said bishop and of the said dean and chapter, to transfer to the said warden, masters, and scholars the whole or any part of the powers relating to the government of the said university, and the order and discipline to be observed therein, which are now vested by the last-mentioned act in the said dean and chapter.

“XIV. And be it enacted, that so much of the said secondly-recited act as relates to the division and application of the existing corporate revenues of the chapters of the cathedral churches of Saint David and Llandaff respectively, and to the application of the endowments belonging to the prebends in the collegiate church of Brecon, shall be and the same is hereby repealed.

“XV. And be it declared and enacted, that, notwithstanding anything in the secondly-recited act contained, any minor canon in any cathedral or collegiate church may take and hold, together with his minor canonry, any benefice which is within the distance prescribed by the said act; and that in every case in which any dean before the passing of the same act enjoyed a right, as such dean, to appoint any minor canon, nothing therein contained shall be construed to deprive him or his successors thereof; and that, in the construction of the same act and of this act, the term ‘minor canon’ shall not be construed to extend to or include any other than a spiritual person.

“XVI. And be it enacted, that in every cathedral church in which any canonry or canonries is or are or shall be suspended, a majority of the existing members of chapter, including or not including the dean, according as his presence may or may not be by law required, shall at all times be a sufficient number of canons for constituting a chapter.

“XVII. And be it enacted, that so much of the secondly-recited act as relates to the purchase, by the ecclesiastical commissioners for England, of ecclesiastical rectories without cure of souls, shall be construed to extend and apply to any ecclesiastical rectory which shall by the archbishop of the province and the bishop of the diocese be certified to be, and shall by the said commissioners be deemed to be, an ecclesiastical rectory without cure of souls, although there shall be no vicarage endowed or perpetual curacy belonging thereto or connected therewith; provided that when any such ecclesiastical rectory purchased by the said commissioners shall have become suppressed under the provisions of the same act, the whole, if it be deemed necessary, or such part as shall be deemed necessary by the said commissioners, of the lands, tithes, or other endowments belonging to such rectory, and of the proceeds thereof, shall, by the authority in the same act provided, be set apart and applied towards the spiritual care of the population of the parish or district in which such lands, tithes, or other endowments are situate or accrue, in such manner as by the like authority shall be deemed expedient.

“XVIII. (1) And be it enacted, that the provisions of the secondly-recited act relating to the disposal of residence houses, and houses attached to any dignity, prebend, or office in the precincts of the respective cathedral and collegiate churches, and also so much of an act passed in the second year of the reign of his late majesty as annexes to the archdeaconry of Durham the house of residence therein mentioned, shall be repealed; and that the dean and chapter of any cathedral or collegiate church, with the consent of their visitor, may from time to time sanction and confirm the exchange of houses of residence, or of houses attached to any dignities, offices, or prebends in the precincts of such church, among the

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VICT. c. 39.

Saint David's
Llandaff, and
Brecon reve-
nues.

Provisions
repealed.

3 & 4 Vict. c.
113, ss. 38, 39
& 40.

Amendments
relating to
minor canons.
3 & 4 Vict. c.
113,
ss. 44, 45 &
46,

s. 93.

Majority of
members to
constitute a
chapter.

3 & 4 Vict. c.
113, s. 47.

Sinecure rec-
tories in pri-
vate patronage.
3 & 4 Vict. c.
113, s. 48.

Disposal of
residence
houses.

3 & 4 Vict. c.
113, s. 58.
2 & 3 Gul. 4,
cap. x.

(1) *Vide* Stat. 5 & 6 Vict. c. 26, s. 7.

STAT 4 & 5
VICT. c. 39.

canons of such church, or may make any such arrangement to take effect at any future time, or may assign any one of such houses being vacant to any canon willing to accept the same in lieu of the house theretofore occupied by him, and thereupon any house no longer required by any canon may by the said dean and chapter be disposed of, in such way as they shall deem fit, with the consent of their visitor, and of the ecclesiastical commissioners for England, signified under their common seal; provided that all acts, matters, and things relating to any such house already done under the last-mentioned provisions of the said secondly-recited act shall be valid and effectual to all intents and purposes.

Correction of
error respect-
ing endow-
ments belong-
ing to Lich-
field prebends.
3 & 4 Vict.
c. 113, s. 63.

"XIX. And be it declared and enacted, that the provisions of the secondly-recited act which purport to relate to the endowments belonging to the suspended prebends in the cathedral church of Lichfield were intended to apply and do apply to all the lands and tenements, tithes, and other hereditaments and endowments, which are or are to be vested in the said ecclesiastical commissioners, by or under the provisions of the said act, by reason of the vacancy of any canon residentiary, or of any prebend, dignity, or office not residentiary, in the said church.

Enlarged dis-
cretion as to
mode of fixing
incomes.
3 & 4 Vict.
c. 113, ss. 52
& 66.

"XX. And be it declared and enacted, that, notwithstanding anything in the secondly-recited act contained relating to the payment of fixed annual sums by certain deans and canons, and the payment of other annual sums to certain deans and chapters therein respectively named or referred to, or relating to the transfer of parts of the lands, tithes, or other hereditaments therein specified to the chapters of York, Chichester, Exeter, Hereford, Lichfield, Salisbury, and Wells respectively, for the purposes therein respectively specified, it shall be lawful, by the authority in the same act provided, to carry such purposes or any of them into effect by any mode of payment, contribution, augmentation, or endowment which may be deemed fit, as well as by the modes in the said act specified; and that the scale of payments and receipts may from time to time in any case be revised, and if need be, varied by the like authority, so as to preserve, as nearly as may be, the intended average annual incomes respectively, but not so as to affect any dean or canon in possession at the time of making any such variation.

Powers of ex-
change, &c.
extended to all
corporations
sole.
3 & 4 Vict.
c. 113, s. 68.

"XXI. And be it declared and enacted, that the provisions of the secondly-recited act relating to the sale, transfer, or exchange of any lands, tithes, or other hereditaments, the purchase of other lands, tithes, or other hereditaments in lieu thereof, or the substitution of any lands, tithes, or other hereditaments for any money payment, do and shall extend to authorize the substitution of any money payment for any lands, tithes, or other hereditaments, and do and shall include and apply to all lands, tithes, or other hereditaments in the possession or enjoyment of any dean, canon, prebendary, or other dignitary or officer of any cathedral or collegiate church, or in the possession of the ecclesiastical commissioners for England; and the consent in writing under the hand only of any such dean, canon, prebendary, or other dignitary or officer, shall be deemed to be a consent within the meaning of the said act.

Provisions of
3 & 4 Vict.
c. 113, s. 73,
respecting ex-
change of
advowsons, to
authorize ex-
change by
ecclesiastical
corporations.

"XXII. And be it declared and enacted, that it is and shall be competent to the authority in the first-recited act provided to make arrangements, under and according to the provisions of the said act, for improving the value or making a better provision for the spiritual duties of ill-endowed parishes or districts, by means of the exchange of advowsons, or other alterations in the exercise of patronage, notwithstanding that such advowsons, or any or either of them, or such patronage, shall be vested in or belong to any ecclesiastical corporation aggregate or sole.

Exchanges of
advowsons may
be made for
the purpose of
unions.
1 & 2 Vict.
c. 106, s. 16.

"XXIII. And be it enacted, that whenever it shall be made to appear to the ecclesiastical commissioners for England that it would be expedient to make an exchange of an advowson, or of any right of patronage, for any other advowson or right of patronage, with a view to proceedings being taken for the union of two or more benefices under the provisions of the said act passed in the second year of her present majesty's reign, it shall be lawful for the said commissioners, with the consent of the patron or patrons of every such advowson or right of patronage, and also, in case any such advowson or right of patronage shall be vested in or belong

to any ecclesiastical corporation aggregate or sole, with the consent of the bishop of the diocese, or in the case of benefices lying in more than one diocese then with the consent of the bishop of each diocese, and where a bishop shall be himself one of the patrons with the consent of the archbishop of the province, to certify the same to such archbishop; and that thereupon, if the said archbishop shall think fit, proceedings may be taken, under and in pursuance of the provisions of the said last-mentioned act, for effecting the union of such benefices; and the said archbishop, at the same time that he shall certify to her majesty in council the inquiry and consent referred to in the same act, shall transmit such certificate of the said commissioners to her majesty in council, together with an abstract of the title to any advowson or right of patronage mentioned in the certificate of the said commissioners, other than advowsons or rights of patronage belonging to any such ecclesiastical corporation as aforesaid, and the opinion of counsel on such title; and that thereupon it shall be lawful for her majesty in council, in any order for such licence made and issued under the provisions of the same act, to order that such exchange as aforesaid shall take effect; and upon such order being made and registered pursuant to the said act the said exchange shall be valid and effectual, without any other assurance in the law, and notwithstanding that the advowsons or rights of patronage, or any or either of them, exchanged by virtue of the said order, were or was previously thereto vested in or belonged to any such ecclesiastical corporation as aforesaid; and the respective exchangees, their heirs, appointees, successors, and assigns, shall thenceforth stand seised of the advowsons or rights of patronage so taken in exchange, in the same manner, to all intents and purposes, and subject to the same trusts, powers, limitations, charges, and incumbrances, (if any,) as the advowsons or rights of patronage by them given in exchange were respectively held and were subject.

“XXIV. And be it declared and enacted, that all the provisions relating to the consent of patrons of benefices, contained in the thirdly-recited act passed in the second year of the reign of her present majesty, shall be construed to apply to the consent of patrons under the provisions of the secondly-recited act and of this act, as fully and effectually as if the same had been therein and herein repeated and enacted respecting the patrons of benefices affected by such secondly-recited act and this act.

“XXV. And be it enacted, subject to the provisions of the said secondly-recited act with respect to the interests of existing incumbents, that in the queen’s free chapel of Saint George within her castle of Windsor, so soon as a vacancy shall occur in the deanery, the share of the divisible corporate revenues from time to time payable to each canon appointed after the passing of the same act, and to the ecclesiastical commissioners for England in respect of each suspended canonry, shall be one fourteenth part of the whole of such revenues, and the remainder thereof shall be paid to the dean; and in the cathedral church of Lincoln, so soon as the chapter thereof shall entirely consist of a dean and canons appointed after the passing of the said secondly-recited act, the whole divisible corporate revenues shall from time to time be divided into six shares, and two of such shares shall be paid to the dean, and one of such shares shall be paid to each canon; and in the meantime such revenues may be so apportioned by the authority in the said secondly-recited act provided as to afford just shares thereof to the new members of chapter.

“XXVI. And be it declared and enacted, that the provisions of the secondly-recited act respecting the augmentations of benefices under the provisions of an act passed in the second year of the reign of his late majesty King William the Fourth, intituled, ‘An Act to extend the Provisions of an Act passed in the twenty-ninth year of the Reign of His Majesty King Charles the Second, intituled, “An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies,” and for other Purposes,’ therein recited, do and shall extend and apply to every dean, canon, prebendary, or other dignitary or officer whose revenues are or may be affected by any of the provisions of the said two first-recited acts or either of them, or of this act; and if for the purpose of more fully carrying into effect the provisions of the said act relative to augmenta-

STAT. 4 & 5
VICT. c. 39.

Consent of patrons, how to be given.
1 & 2 Vict. c. 106, ss. 125 to 128 inclusive.

3 & 4 Vict. c. 113, ss. 71, 72, 73, & 74.
Division of corporate revenues at Windsor and Lincoln.
3 & 4 Vict. c. 113, s. 75.

Augmentations under 1 & 2 Gul. 4, c. 45, may be made by all corporations sole;
3 & 4 Vict. c. 113, s. 76.

And building land may be

STAT. 4 & 5
VICT. c. 39.
let or sold for
the purpose.

tions it shall appear to the said commissioners and to any bishop or chapter to be expedient that any land belonging to such bishop or chapter adjacent to or situate within the distance of twenty miles from any city or town should be let or sold for purposes of building or other improvement, it shall be lawful for such bishop or chapter, as the case may be, with the consent of the said commissioners under their common seal, to grant any lease or leases of such land for such period or periods and upon such conditions as the said commissioners, having regard to the circumstances of the case, shall deem just and equitable, or, with the like consent, to convey the said land in fee-simple for such price as shall appear to the said commissioners to be the full value thereof; provided that the rent in the former case, or the purchase money in the latter case, after reserving to the bishop or chapter, as the case may be, an annual payment equal to the amount theretofore enjoyed in respect of the land so let or sold, shall be wholly applied to the purposes of the said last-mentioned act, the consent of the said commissioners being in all cases necessary to the particular application thereof: provided also, that if it be deemed expedient with a view to the better effecting of such purposes, such rent or purchase money, or any part thereof, may, with the like consent, be at any time reinvested in the purchase of land.

Commissioners
may pay agents,
&c.

“XXVII. And be it enacted, that it shall be lawful for the ecclesiastical commissioners for England, out of the revenues accruing to them under the said recited acts respectively or this act, to pay and defray all necessary law charges, and to make any such allowance for costs, charges, expenses, pains, and trouble, as to the said commissioners shall appear just and reasonable, to any person employed by them in receiving or paying any monies accruing to them, or in auditing any accounts relating thereto, or in surveying, valuing, or performing any other duty relating to or connected with the possession or management of any lands, tithes, or other hereditaments vested in them the said commissioners, or relating to or connected with any other matter or thing to be done or executed under the authority of the said recited acts, or either of them, or of this act.

Act not to
apply to Saint
Asaph and
Bangor, &c.
5 & 6 Gul. 4,
c. 30.

“XXVIII.(1) And be it enacted, that nothing in this act contained shall, except as hereinafter specified, extend or apply to the dioceses or cathedral churches of Saint Asaph and Bangor or either of them; and that an act passed in the sixth year of the reign of his late majesty, intituled, ‘An Act for protecting the Revenues of vacant Ecclesiastical Dignities, Prebends, Canonries, and Benefices without Cure of Souls, and for preventing the Lapse thereof, during the pending Inquiries respecting the State of the Established Church in England and Wales,’ and another act passed in the seventh year of the reign of his said late majesty, intituled, ‘An Act for suspending for One Year Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories,’ and such parts of another act passed in the second year of the reign of her present majesty, intituled, ‘An Act to suspend until the first day of August, one thousand eight hundred and forty, certain Cathedral and other Ecclesiastical Preferments, and the Operation of the new Arrangement of Dioceses upon the existing Ecclesiastical Courts,’ as relate to the two last-mentioned acts, so far only as the same acts and parts of an act apply to the said two last-mentioned dioceses and churches, or either of them, and also the temporary provisions of the first herein-recited act, shall respectively continue and be in force until the first day of August in the year one thousand eight hundred and forty-two, and, if parliament shall be then sitting, until the end of the then session of parliament: provided always, that notwithstanding anything in the same acts, or any or either of them, or in this act contained, it shall be lawful for the Bishop of Bangor for the time being to collate to any vacant canonry, prebend, dignity, or office in the said cathedral church of Bangor not having any estate or endowment belonging thereto; and also that any bishop or archdeacon may hold visitations of the clergy within the limits of his diocese or archdeaconry, and as such visitations may admit churchwardens, receive presentments, and do all other acts, matters, and things by custom appertaining to the visitations of bishops and archdeacons in the places assigned to their respective jurisdiction and authority

6 & 7 Gul. 4,
c. 67.

2 & 3 Vict.
c. 55.

under or by virtue of the provisions of the said first or secondly recited act; and any bishop may consecrate any new church or chapel or any new burial ground within his diocese.

STAT. 4 & 5
VICT. c. 39.

“XXIX. And for the purpose of removing all doubts respecting the meaning of the terms ‘real estates,’ ‘lands,’ and ‘lands, tenements, and hereditaments,’ be it declared and enacted, that the said terms, wherever they occur, either in the recital or in the enactments of either of the said recited acts, or in any scheme, or any order of her majesty in council, prepared and issued under the authority of those acts or either of them, shall respectively be construed to include and comprehend lands, tithes, tenements, and other hereditaments, except any right of ecclesiastical patronage; and that the said first-mentioned terms, and also the term ‘lands, tithes, tenements, or other hereditaments,’ in any part of either of the said recited acts or in this act or in any such scheme or order in council contained, shall be construed to apply and extend to lands, tithes, tenements, and other hereditaments, as well in reversion as in possession, and to any leasehold interest therein; and that the term ‘tithes’ in either of the said acts or in this act contained shall extend to and comprehend rents-charges allotted or assigned in lieu of tithes; and the ecclesiastical commissioners for England shall, in respect of all lands, tithes, tenements, or other hereditaments, endowments, or emoluments, already vested or liable to be vested in them by or under the provisions of either of the said acts or of this act, be deemed to be the owners or joint owners thereof respectively, as the case may be, for all the purposes of an act passed in the seventh year of the reign of his late majesty King William the Fourth, intituled, ‘An Act for the Commutation of Tithes in England and Wales,’ and of the several acts to explain and amend the same.

Construction
of the terms
“lands,” &c.

Provisions of
Tithe Commu-
tation Acts
extended to
commissioners.

6 & 7 Gul. 4,
c. 71.

“XXX. And be it enacted, that all the powers and authorities vested in her majesty in council and in the ecclesiastical commissioners for England by the two first-recited acts or either of them with reference to the matters therein respectively contained, and all other the provisions of the secondly-recited act relating to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued, and extended and apply to her majesty in council and to the said commissioners, and to all schemes and orders prepared, made, and issued by them respectively with reference to all matters contained in this act, as fully and effectually as if the said powers, authorities, and other provisions were repeated in this act; and that so much of the said secondly-recited act as enacts that the said first-recited act and the said secondly-recited act shall be construed as if they were one, and the same act shall be repealed.

Powers of
6 & 7 Gul. 4,
c. 77, and
3 & 4 Vict.
c. 113, ex-
tended to this
act.

“XXXI. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.”

Act may be
amended this
session.

XCIII. STAT. 4 & 5 VICTORIÆ, cap. xl. A.D. 1841.

“*An Act for ascertaining and defining the Globe Land of the Rector of Abington, alias Abingdon, in the County of Northampton, and for building a Parsonage House for such Rector.*”

STAT. 4 & 5
VICT. cap. xl.

XCIV. STAT. 4 & 5 VICTORIÆ, c. 42. A.D. 1841.

“*An Act to remove Doubts as to the Division of the Parish of Winterbourne, in the County of Gloucester, into two Parishes.*”

STAT. 4 & 5
VICT. c. 42.

XCV. STAT. 4 & 5 VICTORIÆ, cap. xliii. A.D. 1841.

“*An Act for effecting an Exchange between the Mayor, Aldermen, and Burgesses of the Borough of Great Yarmouth, in the County of Norfolk, and the Trustees of a Charity in the said Borough called ‘The Children’s Hospital.’*”

STAT. 4 & 5
VICT. cap. xliii.

XCVI. STAT. 4 & 5 VICTORIÆ, cap. xlv. A.D. 1841.

“*An Act to enable the Trustees of the Oldbury Charity to grant Building Leases.*”

STAT. 4 & 5
VICT. cap. xlv.

STAT. 4 & 5
VICT. cap.
xlvi.

XCVII. STAT. 4 & 5 VICTORIÆ, cap. xlvii. A.D. 1841.

"An Act to enable the Trustees of the Chapelry of Smethwick, in the County of Stafford, to demise Coal and other Mines, and to grant Building Leases."

STAT. 4 & 5
VICT. CAP.
LXIII.

XCVIII. STAT. 4 & 5 VICTORIÆ, CAP. LXIII. A.D. 1841.

"An Act to establish a General Cemetery for the Interment of the Dead in the Parishes of Saint Dunstan Stepney, and Saint Leonard Bromley, in the County of Middlesex."

STAT. 5 VICT.
C. 6.

XCIX. STAT. 5 VICTORIÆ, C. 6(1). A.D. 1841.

"An Act to amend an Act made in the twenty-sixth year of the Reign of His Majesty King George the Third, intituled, An Act to empower the Archbishop of Canterbury or the Archbishop of York for the time being, to consecrate to the Office of a Bishop Persons being Subjects or Citizens of Countries out of His Majesty's Dominions."

26 Geo. 3, c. 84.

"Whereas in and by an act passed in the twenty-sixth year of the reign of his late majesty King George the Third, intituled, 'An Act to empower the Arch-

(1) "In the year 1841, the appointment of a bishop for Jerusalem was proposed by his majesty the King of Prussia, by a special mission to the Queen of England, and a particular communication to the Archbishop of Canterbury. His majesty had in view the conversion of the Jews, and also the spiritual care of such of his own subjects in Palestine, who might wish to join themselves to the church so formed in Jerusalem. His majesty undertook to make at once the munificent donation of fifteen thousand pounds towards that object, the annual interest of which, amounting to six hundred pounds, is to be paid yearly in advance, till the capital sum, (together with that which is to be raised by subscription for the purpose of completing the bishop's annual income of twelve hundred pounds,) can be advantageously invested in land situate in Palestine.

"The Bishop of the United Church of England and Ireland at Jerusalem is to be nominated alternately by the crowns of England and Prussia, the archbishop having the absolute right of veto with respect to those nominated by the Prussian crown.

"The bishop will be subject to the Archbishop of Canterbury as his metropolitan, until the local circumstances of his bishopric shall be such as to make it expedient, in the opinion of the bishops of that united church, to establish some other relation.

"His spiritual jurisdiction will extend over the English clergy and congregations, and over those who may join his church, and place themselves under his episcopal authority in Palestine, and, for the present, in the rest of Syria, in Chaldaea, Egypt, and Abyssinia; such jurisdiction being exercised, as nearly as may be, according to the laws, canons, and customs of the church of England; the bishop having power to frame, with the consent of the metropolitan, particular rules and orders for the peculiar wants of his people.

"A college is to be established at Jerusalem,

under the bishop, whose chaplain will be its first principal. Its primary object will be the education of Jewish converts; but the bishop will be authorized to receive into it Druses and other Gentile converts; and if the funds of the college should be sufficient, oriental Christians may be admitted; but clerical members of the orthodox Greek church will be received into the college, only with the express consent of their spiritual superiors and for a subsidiary purpose. The religious instruction given in the college will be in strict conformity with the doctrines of the united church of England and Ireland, and under the superintendence and direction of the bishop.

"Congregations, consisting of protestants of the German tongue, residing within the limits of the bishop's jurisdiction, and willing to submit to it, will be under the care of German clergymen ordained by him for that purpose, who will officiate in the German language, according to the forms of their national liturgy, compiled from the ancient liturgies, agreeing in all points of doctrine with the liturgy of the English church, and sanctioned by the bishop, with consent of the metropolitan, for the special use of those congregations; such liturgy to be used in the German language only. Germans intended for the charge of such congregations are to be ordained according to the ritual of the English church, and to sign the articles of that church: and in order that they may not be disqualified by the laws of Germany from officiating to German congregations, they are, before ordination, to exhibit to the bishop a certificate of their having subscribed, before some competent authority, the Confession of Augsburg.

"The rite of confirmation will be administered by the bishop to the catechumens of the German congregations, according to the form used in the English church." 1 Burn's E. L. by Phillimore, 415 ccc c.

The licence for consecration was as follows:—"Victoria, by the grace of God queen

bishop of Canterbury or the Archbishop of York for the time being to consecrate to the Office of a Bishop Persons being Subjects or Citizens of Countries out of His Majesty's Dominions,' after reciting that 'there are divers persons, subjects or citizens of countries out of his majesty's dominions, and inhabiting and residing within the said countries, who profess the public worship of Almighty God according to the principles of the church of England, and who, in order to provide a regular succession of ministers for the service of their church, are desirous of having certain of the subjects or citizens of those countries consecrated bishops according to the form of consecration of the church of England,' it is amongst other things enacted, that from and after the passing of the said act it should and might be lawful to and for the Archbishop of Canterbury or for the Archbishop of York for the time being, together with such other bishops as they should call to their assistance, to consecrate persons being subjects or citizens of countries out

STAT. 5 VICT.
c. 6.

of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c. &c. &c. To the most reverend Father in God, William, by Divine Providence Lord Archbishop of Canterbury, primate of all England and metropolitan, greeting. Whereas, by an act passed in the fifth of our reign, intituled, 'An Act to amend an Act made in the twenty-sixth year of the Reign of His Majesty King George the Third, intituled, "An Act to empower the Archbishop of Canterbury or the Archbishop of York for the time being to consecrate to the Office of a Bishop Persons being Subjects or Citizens of Countries out of His Majesty's Dominions,"' it was, amongst other things, enacted, that it should and might be lawful for the Archbishop of Canterbury or the Archbishop of York for the time being, together with such other bishops as they should call to their assistance, to consecrate British subjects, or the subjects or citizens of any foreign kingdom or state, to be bishops in any foreign country, whether such foreign subjects or citizens be or be not subjects or citizens of the country in which they are to act, and without the queen's licence for their election, or the royal mandate under the great seal for their confirmation and consecration, and without requiring such of them as may be subjects or citizens of any foreign kingdom or state to take the oaths of allegiance and supremacy and the oath of due obedience to the archbishop for the time being.

"And whereas it is by the said act further enacted, that such bishop or bishops so consecrated may exercise, within such limits as may from time to time be assigned for that purpose in such foreign countries by us, spiritual jurisdiction over the ministers of British congregations of the united church of England and Ireland, and over such other protestant congregations as may be desirous of placing themselves under his or their authority.

"And whereas it is by the said act provided, that no person should be consecrated a bishop in the manner therein provided until the Archbishop of Canterbury or the Archbishop of York for the time being should have first applied for and should have obtained our licence, by warrant under the royal signet and sign manual, authorizing and empowering him to perform such consecration, and expressing the name of the person so to be consecrated, nor until the said archbishop has been fully ascertained of the sufficiency of such person in good learning, of the soundness of his faith, and of the purity of his manners.

"And whereas you, the said William, Archbishop of Canterbury, have humbly applied to us for our licence, by warrant under our royal signet and sign manual, authorizing and empowering you to consecrate the Reverend Michael Solomon Alexander (clerk), a British subject, to be bishop of the united church of England and Ireland in Jerusalem, you having certified to us that you had fully ascertained the sufficiency of the said Michael Solomon Alexander in good learning, the soundness of his faith, and the purity of his manners, and praying that we would be graciously pleased to assign Syria, Chaldea, Egypt, and Abyssinia, as the limit within which the said Michael Solomon Alexander might exercise spiritual jurisdiction over the ministers of British congregations of the united church of England and Ireland, and over such other protestant congregations as may be desirous of placing themselves under his authority, subject to such alterations in respect to the limits of the jurisdiction so to be exercised as may hereafter be made by our authority.

"Now it is our royal will and pleasure, and we do, by this our licence under our royal signet and sign manual, authorize and empower you, the said archbishop, to consecrate the said Michael Solomon Alexander to be bishop of the united church of England and Ireland in Jerusalem. And we are graciously pleased to assign Syria, Chaldea, Egypt, and Abyssinia, as the limit within which the said Michael Solomon Alexander may exercise spiritual jurisdiction pursuant to the said act, subject nevertheless to such alterations in the said limit as we from time to time may be pleased to assign.

"Given at our court at Buckingham Palace, the sixth day of November, 1841. in the fifth year of our reign.

"By her majesty's command,

"ASHERDEN."

The following tables, for which the Editor is indebted to the Secretary of the Society for the Propagation of the Gospel in Foreign Parts, will afford statistical information respecting the amount of population ever

STAT. 5 VICT.
C. 6.

Archbishops of
Canterbury and
York may consecrate
British subjects or fo-
reigners to be
bishops in fo-
reign countries,
without the
royal licence
for election,
&c.

of his majesty's dominions bishops for the purposes in the said act mentioned, without the king's licence for their election, or the royal mandate under the great seal for their confirmation and consecration, and without requiring them to take the oaths of allegiance and supremacy, and the oath of due obedience to the archbishop for the time being: and whereas it is expedient to enlarge the powers given by the said act; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the Archbishop of Canterbury or the Archbishop of York for the time being, together with such other bishops as they shall call to their assistance, to consecrate British subjects, or the subjects or citizens of any foreign kingdom or state, to be bishops in any foreign country, whether such foreign subjects or citizens be or be not subjects or citizens of the country in which they are to act, and without the queen's licence for their election, or the royal mandate under the great seal for their confirmation and consecration, and without requiring such of them as may be subjects or citizens of any

whom clergymen are employed in inculcating the doctrines of the Anglican church in foreign parts the country—the area in

square miles—and likewise a general statement of the number of persons unconverted to Christianity, &c. &c.

Country.	Area in Square Miles.	Population.	Clergy of the Church of England.
Canada, East.....	200,000	678,000	74
Canada, West.....	100,000	500,000	102
Hudson's Bay	370,000	103,000	4
New Brunswick.....	27,000	156,000	29
Nova Scotia	15,000	173,000	40
Prince Edward's Island	2,131	47,000	6
Cape Breton	35,000	5,000	4
Newfoundland	30,000	75,000	27
Bermudas	22	10,000	9
West India Islands	15,000	800,000	163
British Guiana	100,000	102,000	23
Honduras	62,750	10,000	2
West (Coast of) Africa	558	52,000	12
Cape of Good Hope	110,256	160,000	10
Mauritius and Seychelles	788	175,000	4
Bengal	348,000	70,000,000	80
Madras	122,000	15,000,000	78
Bombay	128,000	8,000,000	30
Ceylon	24,000	1,421,000	22
Hong Kong, China	40	15,000	2
Australia	450,000	150,000	34
Van Diemen's Land	24,000	50,000	22
New Zealand.....	95,000	110,000	18
Gibraltar and Malta	96	120,000	5
Population of British colonial dominions.....			97,770,000
Number of colonial bishoprics (1845).....			17
Number of clergy of the church of England			819
Of these 819 clergy, 327 (with between 300 and 400 catechists and schoolmasters) are maintained in whole, or in part, by the Society for the Propagation of the Gospel in Foreign Parts.			
Christians			260,000,000
Jews			4,000,000
Mahometans			96,000,000
Idolaters of all sorts.....			500,000,000
Total population of the world			860,000,000

foreign kingdom or state to take the oaths of allegiance and supremacy, and the oath of due obedience to the archbishop for the time being.

“II. And be it further enacted, that such bishop or bishops so consecrated may exercise, within such limits as may from time to time be assigned for that purpose in such foreign countries by her majesty, spiritual jurisdiction over the ministers of British congregations of the united church of England and Ireland, and over such other protestant congregations as may be desirous of placing themselves under his or their authority.

“III. Provided always, that no person shall be consecrated a bishop in the manner herein provided until the Archbishop of Canterbury or the Archbishop of York for the time being shall have first applied for and shall have obtained her majesty's licence, by warrant under her royal signet and sign manual, authorizing and empowering him to perform such consecration, and expressing the name of the person so to be consecrated, nor until the said archbishop has been fully ascertained of the sufficiency of such person in good learning, of the soundness of his faith, and of the purity of his manners.

“IV. Provided always, and be it hereby declared, that no person consecrated to the office of a bishop in the manner aforesaid, nor any person deriving his consecration from or under any bishop so consecrated, nor any person admitted to the order of deacon or priest by any bishop or bishops so consecrated, or by the successor or successors of any bishop or bishops so consecrated, shall be thereby enabled to exercise his office within her majesty's dominions in England or Ireland, otherwise than according to the provisions of an act of the third and fourth years of her present majesty, intituled, ‘An Act to make certain Provisions and Regulations in respect to the Exercise within England and Ireland of their Office by the Bishops and Clergy of the Protestant Episcopal Church in Scotland; and also to extend such Provisions and Regulations to the Bishops and Clergy of the Protestant Episcopal Church in the United States of America; and also to make further Regulations in respect to Bishops and Clergy other than those of the United Church of England and Ireland.’

“V. Provided always, and be it further enacted, that the archbishop who so consecrates shall give to the person consecrated a certificate under his hand and seal, containing the name of the country whereof he is a subject or citizen, and the name of the church in which he is appointed bishop; and in case of such person being the subject or citizen of any foreign kingdom or state, then such certificate shall further mention, that he has not taken the said oaths, he being exempted by virtue of this act from taking them.

“VI. Provided always, and be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.”

STAT. 5 VICT.
c. 6.

Spiritual
jurisdiction of
such bishops.

Archbishops to
obtain her ma-
jesty's licence
for consecra-
tion, and to
ascertain the
fitness of per-
sons to be
consecrated.

Such bishops,
and the per-
sons conse-
crated or or-
dained by them,
not to act
within England
or Ireland,
otherwise than
according to
3 & 4 Vict.
c. 33.

Archbishop to
give a certifi-
cate of conse-
cration.

Act may be
amended this
session.

C. STAT. 5 & 6 VICTORIÆ, c. 4. A.D. 1842.

“An Act to provide for the Increase of the Number of Bishoprics and Archdeaconries in the West Indies, and to amend the several Acts relating thereto.”

“Whereas an act was passed in the sixth year of the reign of his late majesty, King George the Fourth, intituled, ‘An Act to make Provision for the Salaries of certain Bishops and other Ecclesiastical Dignitaries and Ministers in the Diocese of Jamaica, and in the Diocese of Barbadoes and the Leeward Islands; and to enable His Majesty to grant Annuities to such Bishops upon the Resignation of their Offices,’ whereby it was amongst other things enacted, that the persons who should from time to time exercise and enjoy the several dignities and offices thereafter mentioned, under or by virtue of his said late majesty's letters patent or authority, should receive the several salaries or annual sums thereafter respectively specified and set forth; that is to say, the bishop of the diocese of Jamaica and the bishop of the diocese of Barbadoes and the Leeward Islands in the West Indies, the salary or annual sum of four thousand pounds each of lawful money of the United Kingdom of Great Britain and Ireland; the archdeacon of the island of Jamaica, and the archdeacon of the island of Barbadoes, and the archdeacon of the island of

STAT. 5 & 6
VICT. c. 4.

6 Geo. 4, c. 88.

STAT. 5 & 6
VICT. C. 4.

Antigua, the salary or annual sum of two thousand pounds each of the like lawful money; the seven ministers of the gospel in the diocese of Jamaica, and the thirteen ministers of the gospel in the diocese of Barbadoes and the Leeward Islands, the salary or annual sum of three hundred pounds of the like lawful money; the three catechists in the said diocese of Barbadoes and the Leeward Islands, the salary or annual sum of one hundred pounds each of the like lawful money; and that all the said several salaries and annual sums should be paid and payable free and clear from all taxes and deductions whatsoever; and it was by the said recited act further enacted, that it should and might be lawful for the commissioners of his majesty's Treasury of the United Kingdom for the time being, or any three or more of them, and they were thereby authorized and required, from time to time, by warrant or warrants under their hands, to direct the proper officer of the Exchequer to issue and pay, out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as might be appointed to receive the same, all and every such sum and sums of money as might from time to time be necessary for the payment of all or any of the several salaries or annual sums made payable by the said recited act, which might have accrued respectively at any time before the passing of the said recited act, or which might from time to time accrue and become due and payable at any time after the passing of the said recited act: and whereas another act was passed in the seventh year of the reign of his said late majesty to amend the said recited act, by which act of the seventh year of his said late majesty's reign so much of the said first-recited act as enacted that there should be seven ministers in the diocese of Jamaica, and thirteen ministers and three catechists in the diocese of Barbadoes, with certain salaries therein specified, was repealed; and it was further enacted, that it should and might be lawful for the commissioners of his majesty's Treasury of the United Kingdom for the time being, or any three or more of them, and they were thereby authorized and required, from time to time, by warrant or warrants under their hands, to direct the proper officer of the Exchequer to issue and pay, out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as might be appointed to receive the same, any sum or sums of money not exceeding the sum of six thousand three hundred pounds per annum, to commence and be computed from the fifth day of April, one thousand eight hundred and twenty-four, for the salaries of ministers, catechists, and schoolmasters in the dioceses of Jamaica and Barbadoes and the Leeward Islands, and to be distributed among such ministers, catechists, and schoolmasters, in salaries or otherwise, as the bishops of the respective dioceses, with the approbation of the commissioners of the Treasury, or of his majesty's secretary of state, should appoint, and so that the sum to be paid to the ministers, catechists, and schoolmasters, in pursuance of the said recited acts should not exceed two thousand one hundred pounds per annum for the diocese of Jamaica, and four thousand two hundred pounds per annum for the diocese of Barbadoes and the Leeward Islands, and that no minister should have a salary exceeding three hundred pounds per annum, as authorized by the said first-recited act: and whereas it may be expedient that the several colonies and territories comprised within the said dioceses of Jamaica and Barbadoes should be divided into a greater number of dioceses and archdeaconries than are mentioned in the said recited acts, and that the annual payment so charged as aforesaid on the growing produce of the consolidated fund should be apportioned to the maintenance of the bishops and archdeacons of such new dioceses and archdeaconries, and of the ministers, catechists, and schoolmasters within the same: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and common in this present parliament assembled, and by the authority of the same, that it shall be lawful for her majesty from time to time, by letters patent under the great seal of the United Kingdom, to establish within the territorial limits of the existing dioceses of Jamaica and Barbadoes three or more dioceses, with such and so many archdeaconries within each diocese as to her majesty shall seem meet, and for that purpose to revoke the letters patent under the great seal aforesaid under which the

Her majesty empowered, by letters patent, to erect three dioceses within the territorial limits of the dioceses of Jamaica and Barbadoes,

existing dioceses of Barbadoes and Jamaica, and the existing archdeacons within the same respectively, have been established: provided always, that no such letters patent, if issued during the life and incumbency of any such bishop, shall take effect or be of any force or authority within his diocese, unless he shall first, by a notarial act under his hand and the public seal of his diocese, to be deposited in the registry thereof, have declared his consent to the operation, during his own incumbency, within his diocese, of any such letters patent.

“II. And be it enacted, that it shall be lawful for her majesty, by any such letters patent as aforesaid, from time to time to make any such new apportionment and appropriation as to her majesty shall seem fit, among such new bishops and archdeacons, of the sums of money which by virtue of the said recited acts are payable out of the growing produce of the consolidated fund as the salaries of the bishops and archdeacons therein mentioned; and that it shall be lawful for her majesty, in manner aforesaid, to apportion and appropriate so much of the total amount of such sums of money as to her majesty shall seem fit for the maintenance of such new bishops as aforesaid, and so much thereof as to her majesty shall seem fit to the maintenance of such new archdeacons as aforesaid, without reference to, and without the observance of, the proportions in which the said sums of money are by the said recited acts apportioned for the maintenance of bishops and archdeacons respectively: provided that nothing herein contained shall authorize any diminution, during the life and incumbency of any bishop or archdeacon, of any salary to which he is or shall be by law entitled.

“III. And be it enacted, that it shall be lawful for her majesty, by any such letters patent as aforesaid, from time to time to assign to the respective bishops of such future dioceses as aforesaid the power of distributing among the ministers, catechists, and schoolmasters, of their respective dioceses, with the approbation of the commissioners of her majesty's Treasury, or of one of her majesty's principal secretaries of state, the sum of six thousand three hundred pounds per annum in the said recited act mentioned, in such proportion as her majesty shall see fit to apportion that sum between the said future dioceses: provided always, that nothing herein contained shall authorize any diminution, during the life and incumbency of any minister, catechist, or schoolmaster, of any salary to which he is or shall be by law entitled.

“IV. And be it enacted, that it shall and may be lawful for the commissioners of her majesty's Treasury for the time being, or any three or more of them, and they are hereby authorized and required, from time to time, by warrant or warrants under their hands, to direct the proper officer of the exchequer to issue and pay, out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as may be appointed to receive the same, the several annual salaries or sums of money before mentioned, according to such new apportionment and appropriation thereof as, in pursuance of this present act, shall from time to time be made by her majesty by any such letters patent as aforesaid.

“V. And whereas by the said first-recited act his said late majesty, his heirs and successors, were authorized to give and grant to any person who should execute the office of bishop of either of the dioceses therein mentioned, and who should resign the same respectively, certain annuities or pensions; and it is expedient that, subject to the exception hereinafter contained, the said provision should be repealed; be it therefore enacted, that so much of the said recited act of the sixth year of the reign of his late majesty King George the Fourth as empowered his said late majesty, his heirs and successors, to grant annuities or pensions on the resignation of the dioceses therein mentioned shall be and the same is hereby repealed, save and except only so far as respects the respective bishops of the said dioceses of Jamaica and Barbadoes who had been appointed to the same respectively before the making of this present act.

“VI. And be it enacted, that this act may be repealed or amended during this present session of parliament.”

STAT. 5 & 6

VICT. c. 4.

and to revoke the existing letters patent.

Her majesty empowered to direct apportionment of the sums of money granted for salaries of the bishops and archdeacons of the said dioceses.

Bishops of dioceses to apportion salaries of ministers, catechists, and schoolmasters.

Commissioners of the Treasury to direct issue of the money necessary for salaries of bishops, &c.

Repeal of provision in recited act as to pensions of bishops.

Exception.

Amendment of act.

STAT. 5 & 6
VICT. CAP. X.

CI. STAT. 5 & 6 VICTORIÆ, CAP. X. A.D. 1842.

"An Act for prohibiting Burying and Funeral Service in a Church or Chapel in the Parish of Saint Pancras, in the County of Middlesex, erected on the Estate of the Duke of Bedford."

STAT. 5 & 6
VICT. CAP. XI.

CII. STAT. 5 & 6 VICTORIÆ, CAP. XI. A.D. 1842.

"An Act to enable the Trustees of Estates held upon Charitable Trusts under the Will of Sir John Cass, Knight, deceased, to make Sale of Part of the said Estate"

STAT. 5 & 6
VICT. CAP. XII.

CIII. STAT. 5 & 6 VICTORIÆ, CAP. XII. A.D. 1842.

"An Act to enable the Governors of the Hospital of King James founded in Charterhouse, to endow the Perpetual Curacy of Hartland, in the County of Devon, with a fixed Provision out of the Tithes of the Rectory of Hartland aforesaid, in substitution of their present Obligation, and to sell the Right of Presentation to the said Curacy, and the said Rectory and Tithes, and also certain Lands at Hartland aforesaid, and to invest the Monies arising from such Sales in the Purchase of other Lands for the Benefit of the said Hospital."

STAT. 5 & 6
VICT. C. 18.

CIV. STAT. 5 & 6 VICTORIÆ, C. 18. A.D. 1842.

"An Act to explain and amend the Acts for regulating the Sale of Parish Property, and to make further Provision for the Discharge of Debts, Liabilities and Engagements, incurred by or on behalf of Parishes."

"II. . . . Provided always, that nothing in this act shall be deemed to render valid or to authorize the sale, exchange, letting, or other disposition of any property whatsoever, which shall have been given or bequeathed by way of charitable donation, or shall have been allotted in right of some charitable donation or otherwise, for the poor persons of any parish, and not for the general benefit of the rate payers, parishioners, or inhabitants of such parish, nor to dispense with the consent of the rate payers and owners of property required by the said last-recited act [Stat. 5 & 6 Gul. 4, c. 69, s. 8,] to all sales, exchanges, lettings, or other dispositions of property belonging to any parish, except in the case next hereinafter provided."

STAT. 5 & 6
VICT. CAP. XVIII.

CV. STAT. 5 & 6 VICTORIÆ, CAP. XVIII. A.D. 1842.

"An Act for empowering the Trustees of Brewood Grammar School, in the County of Stafford, to make Sales and to grant Mining Leases of certain Parts of the Estates belonging to the said School; and for other Purposes therein mentioned."

STAT. 5 & 6
VICT. CAP. XIX.

CVI. STAT. 5 & 6 VICTORIÆ, CAP. XIX. A.D. 1842.

"An Act for enabling the Dean and Chapter of the Cathedral and Metropolis Church of Saint Peter of York, to raise Money for the Discharge of Debts, and for effecting the Restoration and Repair of the said Cathedral Church."

STAT. 5 & 6
VICT. C. 26.

CVII. STAT. 5 & 6 VICTORIÆ, C. 26. A.D. 1842.

"An Act to alter and amend the Law relating to Ecclesiastical Houses of Residence."

"Whereas it is expedient to alter and amend the law relating to ecclesiastical houses of residence (1): be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that whenever

(1) Houses of residence:—

England and Ireland; for providing churchyards and
glebes

Amended by

43 Geo. 3, c. 108.

51 Geo. 3, c. 115.

} R & L

it shall appear to be expedient to relieve any bishop having more episcopal houses of residence than one from any of such houses, or to provide any bishop with a more convenient house of residence, or to add to, alter, improve, or take down and rebuild any episcopal house of residence, or to improve the demesnes thereof, it shall be lawful, by the authority provided in an act passed in the session of parliament held in the sixth and seventh years of the reign of his late majesty, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' with the consent under the hand and episcopal seal of the bishop, to make such arrangements as may by such authority be deemed most expedient, for selling and conveying, to such person or body corporate, and for such consideration as may be approved by the like authority, any episcopal house of residence then belonging to the see of such bishop, or for taking down the same or any part thereof, and selling the site or the materials thereof, (as the circumstances may render expedient,) or for adding to, altering, improving, or taking down and rebuilding any episcopal house of residence, or for improving the demesnes adjoining to any such house by the purchase of any land, tenement, or hereditament in the immediate neighbourhood or within the view thereof, or for building a new episcopal house of residence for any see on any site to be approved by the like authority, and for applying the proceeds of any such sale as aforesaid, or any part thereof, to any of such purposes, or to any such other purposes, and in such manner as shall appear to be most conducive to the permanent benefit of the see; and that so much of the said act as relates to the providing of any bishop with a more suitable and convenient residence shall be extended so as to include and apply to any of the purposes of this act.

STAT. 5 & 6
VICT. c. 26.

Episcopal house may in certain cases be taken down and sold, or may be rebuilt or altered.
6 & 7 Gul. 4, c. 77.

Provisions of 6 & 7 Gul. 4, c. 77, s. 1, made applicable thereto.

England; spiritual persons enabled to exchange parsonage houses and glebe lands	55 Geo. 3, c. 147	}	E.
<i>Amended by</i>	56 Geo. 3, c. 52. 1 Geo. 4, c. 6. 6 Geo. 4, c. 8. 7 Geo. 4, c. 66. 5 Geo. 4, c. 89. 7 Geo. 4, c. 66.		
..... rendering acts more effectual for promoting residence by providing houses, &c. for benefices	1 & 2 Vict. cc. 23 & 29. 1 & 2 Vict. c. 106. 2 & 3 Vict. c. 49, ss. 14, 17. 3 & 4 Vict. c. 113. 5 & 6 Vict. c. 26.		
Ireland; commissioners of first-fruits enabled to lend money, interest free, for providing glebe houses and lands	43 Geo. 3, c. 106. 4 Geo. 4, c. 86.		
<i>Repealed, and other provisions made by</i>	3 & 4 Gul. 4, c. 37. 4 & 5 Gul. 4, c. 90. 6 & 7 Gul. 4, c. 99.		
..... 50,000 <i>l.</i> granted for building glebe houses pursuant to 43 Geo. 3, c. 106	43 Geo. 3, c. 158.	}	I.
<i>Amended by</i>	47 Geo. 3, sess. 2, c. 23.		
..... more effectually providing for the building and rebuilding of glebe houses, &c. and for the purchase of glebe lands, glebe houses, and impropriations	48 Geo. 3, c. 65.	}	I.
<i>Amended by</i>	49 Geo. 3, c. 103. 3 & 4 Gul. 4, c. 37. 4 & 5 Gul. 4, c. 90. 6 & 7 Gul. 4, c. 99.		
<i>Repealed, and other provisions made by</i>			
..... empowering rectors and vicars to grant glebe land for sites for churches and churchyards	54 Geo. 3, c. 117.		
..... spiritual persons enabled to exchange parsonage houses and glebe lands under 55 Geo. 3, c. 147	4 Geo. 4, c. 86.	}	I.
<i>Amended by</i>	5 Geo. 4, c. 8. 7 Geo. 4, c. 72. 3 & 4 Gul. 4, c. 37. 4 & 5 Gul. 4, c. 90. 6 & 7 Gul. 4, c. 99.		
<i>Repealed, and other provisions made by</i>			

STAT. 5 & 6
VICT. C. 4.

Her majesty empowered, by letters patent, to erect three dioceses within the territorial limits of the dioceses of Jamaica and Barbadoes,

Antigua, the salary or annual sum of two thousand pounds each of the like lawful money; the seven ministers of the gospel in the diocese of Jamaica, and the thirteen ministers of the gospel in the diocese of Barbadoes and the Leeward Islands, the salary or annual sum of three hundred pounds of the like lawful money; the three catechists in the said diocese of Barbadoes and the Leeward Islands, the salary or annual sum of one hundred pounds each of the like lawful money; and that all the said several salaries and annual sums should be paid and payable free and clear from all taxes and deductions whatsoever; and it was by the said recited act further enacted, that it should and might be lawful for the commissioners of his majesty's Treasury of the United Kingdom for the time being, or any three or more of them, and they were thereby authorized and required, from time to time, by warrant or warrants under their hands, to direct the proper officer of the Exchequer to issue and pay, out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as might be appointed to receive the same, all and every such sum and sums of money as might from time to time be necessary for the payment of all or any of the several salaries or annual sums made payable by the said recited act, which might have accrued respectively at any time before the passing of the said recited act, or which might from time to time accrue and become due and payable at any time after the passing of the said recited act: and whereas another act was passed in the seventh year of the reign of his said late majesty to amend the said recited act, by which act of the seventh year of his said late majesty's reign so much of the said first-recited act as enacted that there should be seven ministers in the diocese of Jamaica, and thirteen ministers and three catechists in the diocese of Barbadoes, with certain salaries therein specified, was repealed; and it was further enacted, that it should and might be lawful for the commissioners of his majesty's Treasury of the United Kingdom for the time being, or any three or more of them, and they were thereby authorized and required, from time to time, by warrant or warrants under their hands, to direct the proper officer of the Exchequer to issue and pay, out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as might be appointed to receive the same, any sum or sums of money not exceeding the sum of six thousand three hundred pounds per annum, to commence and be computed from the fifth day of April, one thousand eight hundred and twenty-four, for the salaries of ministers, catechists, and schoolmasters in the dioceses of Jamaica and Barbadoes and the Leeward Islands, and to be distributed among such ministers, catechists, and schoolmasters, in salaries or otherwise, as the bishops of the respective dioceses, with the approbation of the commissioners of the Treasury, or of his majesty's secretary of state, should appoint, and so that the sum to be paid to the ministers, catechists, and schoolmasters, in pursuance of the said recited acts should not exceed two thousand one hundred pounds per annum for the diocese of Jamaica, and four thousand two hundred pounds per annum for the diocese of Barbadoes and the Leeward Islands, and that no minister should have a salary exceeding three hundred pounds per annum, as authorized by the said first-recited act: and whereas it may be expedient that the several colonies and territories comprised within the said dioceses of Jamaica and Barbadoes should be divided into a greater number of dioceses and archdeaconries than are mentioned in the said recited acts, and that the annual payment so charged as aforesaid on the growing produce of the consolidated fund should be apportioned to the maintenance of the bishops and archdeacons of such new dioceses and archdeaconries, and of the ministers, catechists, and schoolmasters within the same: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and common in this present parliament assembled, and by the authority of the same, that it shall be lawful for her majesty from time to time, by letters patent under the great seal of the United Kingdom, to establish within the territorial limits of the existing dioceses of Jamaica and Barbadoes three or more dioceses, with such and so many archdeaconries within each diocese as to her majesty shall seem meet, and for that purpose to revoke the letters patent under the great seal aforesaid under which the

existing dioceses of Barbadoes and Jamaica, and the existing archdeaconries within the same respectively, have been established: provided always, that no such letters patent, if issued during the life and incumbency of any such bishop, shall take effect or be of any force or authority within his diocese, unless he shall first, by a notarial act under his hand and the public seal of his diocese, to be deposited in the registry thereof, have declared his consent to the operation, during his own incumbency, within his diocese, of any such letters patent.

“II. And be it enacted, that it shall be lawful for her majesty, by any such letters patent as aforesaid, from time to time to make any such new apportionment and appropriation as to her majesty shall seem fit, among such new bishops and archdeacons, of the sums of money which by virtue of the said recited acts are payable out of the growing produce of the consolidated fund as the salaries of the bishops and archdeacons therein mentioned; and that it shall be lawful for her majesty, in manner aforesaid, to apportion and appropriate so much of the total amount of such sums of money as to her majesty shall seem fit for the maintenance of such new bishops as aforesaid, and so much thereof as to her majesty shall seem fit to the maintenance of such new archdeacons as aforesaid, without reference to, and without the observance of, the proportions in which the said sums of money are by the said recited acts apportioned for the maintenance of bishops and archdeacons respectively: provided that nothing herein contained shall authorize any diminution, during the life and incumbency of any bishop or archdeacon, of any salary to which he is or shall be by law entitled.

“III. And be it enacted, that it shall be lawful for her majesty, by any such letters patent as aforesaid, from time to time to assign to the respective bishops of such future dioceses as aforesaid the power of distributing among the ministers, catechists, and schoolmasters, of their respective dioceses, with the approbation of the commissioners of her majesty's Treasury, or of one of her majesty's principal secretaries of state, the sum of six thousand three hundred pounds per annum in the said recited act mentioned, in such proportion as her majesty shall see fit to apportion that sum between the said future dioceses: provided always, that nothing herein contained shall authorize any diminution, during the life and incumbency of any minister, catechist, or schoolmaster, of any salary to which he is or shall be by law entitled.

“IV. And be it enacted, that it shall and may be lawful for the commissioners of her majesty's Treasury for the time being, or any three or more of them, and they are hereby authorized and required, from time to time, by warrant or warrants under their hands, to direct the proper officer of the exchequer to issue and pay, out of the growing produce of the consolidated fund of the United Kingdom of Great Britain and Ireland, to such person or persons as may be appointed to receive the same, the several annual salaries or sums of money before mentioned, according to such new apportionment and appropriation thereof as, in pursuance of this present act, shall from time to time be made by her majesty by any such letters patent as aforesaid.

“V. And whereas by the said first-recited act his said late majesty, his heirs and successors, were authorized to give and grant to any person who should execute the office of bishop of either of the dioceses therein mentioned, and who should resign the same respectively, certain annuities or pensions; and it is expedient that, subject to the exception hereinafter contained, the said provision should be repealed; be it therefore enacted, that so much of the said recited act of the sixth year of the reign of his late majesty King George the Fourth as empowered his said late majesty, his heirs and successors, to grant annuities or pensions on the resignation of the dioceses therein mentioned shall be and the same is hereby repealed, save and except only so far as respects the respective bishops of the said dioceses of Jamaica and Barbadoes who had been appointed to the same respectively before the making of this present act.

“VI. And be it enacted, that this act may be repealed or amended during this present session of parliament.”

STAT. 5 & 6
VICT. c. 4.

and to revoke
the existing
letters patent.

Her majesty
empowered to
direct apportionment
of the sums of
money granted
for salaries of
the bishops
and archdeacons
of the said
dioceses.

Bishops of
dioceses to
apportion
salaries of
ministers,
catechists,
and school-
masters.

Commissioners
of the Treasury
to direct issue
of the money
necessary for
salaries of
bishops, &c.

Repeal of pro-
vision in re-
cited act as to
pensions of
bishops.

Exception.

Amendment of
act.

STAT. 5 & 6

VICT. CAP. X.

CI. STAT. 5 & 6 VICTORIÆ, CAP. X. A.D. 1842.

"An Act for prohibiting Burying and Funeral Service in a Church or Chapel in the Parish of Saint Pancras, in the County of Middlesex, erected on the East of the Duke of Bedford."

STAT. 5 & 6

VICT. CAP. XI.

CII. STAT. 5 & 6 VICTORIÆ, CAP. XI. A.D. 1842.

"An Act to enable the Trustees of Estates held upon Charitable Trusts under the Will of Sir John Cass, Knight, deceased, to make Sale of Part of the said Estate."

STAT. 5 & 6

VICT. CAP. XII.

CIII. STAT. 5 & 6 VICTORIÆ, CAP. XII. A.D. 1842.

"An Act to enable the Governors of the Hospital of King James founded in Charterhouse, to endow the Perpetual Curacy of Hartland, in the County of Devon, with a fixed Provision out of the Tithes of the Rectory of Horland aforesaid, in substitution of their present Obligation, and to sell the Right of Presentation to the said Curacy, and the said Rectory and Tithes, and also certain Lands at Hartland aforesaid, and to invest the Monies arising from such Sales in the Purchase of other Lands for the Benefit of the said Hospital."

STAT. 5 & 6

VICT. C. 18.

CIV. STAT. 5 & 6 VICTORIÆ, C. 18. A.D. 1842.

"An Act to explain and amend the Acts for regulating the Sale of Parish Property, and to make further Provision for the Discharge of Debts, Liabilities and Engagements, incurred by or on behalf of Parishes."

"II. . . . Provided always, that nothing in this act shall be deemed to make valid or to authorize the sale, exchange, letting, or other disposition of any property whatsoever, which shall have been given or bequeathed by way of charitable donation, or shall have been allotted in right of some charitable donation or otherwise, for the poor persons of any parish, and not for the general benefit of the rate payers, parishioners, or inhabitants of such parish, nor to dispense with the consent of the rate payers and owners of property required by the said last-recited act [5 & 6 Gul. 4, c. 69, s. 3,] to all sales, exchanges, lettings, or other dispositions of property belonging to any parish, except in the case next hereinafter provided."

STAT. 5 & 6

VICT. CAP. XVIII.

CV. STAT. 5 & 6 VICTORIÆ, CAP. XVIII. A.D. 1842.

"An Act for empowering the Trustees of Brewood Grammar School, in the County of Stafford, to make Sales and to grant Mining Leases of certain Parts of the Estates belonging to the said School; and for other Purposes therein mentioned."

STAT. 5 & 6

VICT. CAP. XIX.

CVI. STAT. 5 & 6 VICTORIÆ, CAP. XIX. A.D. 1842.

"An Act for enabling the Dean and Chapter of the Cathedral and Metropolitan Church of Saint Peter of York, to raise Money for the Discharge of Debts, and for effecting the Restoration and Repair of the said Cathedral Church."

STAT. 5 & 6

VICT. C. 26.

CVII. STAT. 5 & 6 VICTORIÆ, C. 26. A.D. 1842.

"An Act to alter and amend the Law relating to Ecclesiastical Houses of Residence."

"Whereas it is expedient to alter and amend the law relating to ecclesiastical houses of residence (1): be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that wherever

(1) Houses of residence:—

England and Ireland; for providing churchyards and
gloves } 43 Geo. 3, c. 106.

Amended by 51 Geo. 3, c. 115.

} E. A. I.

it shall appear to be expedient to relieve any bishop having more episcopal houses of residence than one from any of such houses, or to provide any bishop with a more convenient house of residence, or to add to, alter, improve, or take down and rebuild any episcopal house of residence, or to improve the demesnes thereof, it shall be lawful, by the authority provided in an act passed in the session of parliament held in the sixth and seventh years of the reign of his late majesty, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' with the consent under the hand and episcopal seal of the bishop, to make such arrangements as may by such authority be deemed most expedient, for selling and conveying, to such person or body corporate, and for such consideration as may be approved by the like authority, any episcopal house of residence then belonging to the see of such bishop, or for taking down the same or any part thereof, and selling the site or the materials thereof, (as the circumstances may render expedient,) or for adding to, altering, improving, or taking down and rebuilding any episcopal house of residence, or for improving the demesnes adjoining to any such house by the purchase of any land, tenement, or hereditament in the immediate neighbourhood or within the view thereof, or for building a new episcopal house of residence for any see on any site to be approved by the like authority, and for applying the proceeds of any such sale as aforesaid, or any part thereof, to any of such purposes, or to any such other purposes, and in such manner as shall appear to be most conducive to the permanent benefit of the see; and that so much of the said act as relates to the providing of any bishop with a more suitable and convenient residence shall be extended so as to include and apply to any of the purposes of this act.

STAT. 5 & 6
VICT. c. 26.

Episcopal house may in certain cases be taken down and sold, or may be rebuilt or altered.
6 & 7 Gul. 4, c. 77.

Provisions of
6 & 7 Gul. 4, c. 77, s. 1, made applicable thereto.

England; spiritual persons enabled to exchange parsonage houses and glebe lands	55 Geo. 3, c. 147	} E.
<i>Amended by</i>	56 Geo. 3, c. 52. 1 Geo. 4, c. 6. 6 Geo. 4, c. 8. 7 Geo. 4, c. 66.	
..... rendering acts more effectual for promoting residence by providing houses, &c. for benefices	5 Geo. 4, c. 89. 7 Geo. 4, c. 66. 1 & 2 Vict. cc. 23 & 29. 1 & 2 Vict. c. 106. 2 & 3 Vict. c. 49, ss. 14, 17. 3 & 4 Vict. c. 113. 5 & 6 Vict. c. 26.	
Ireland; commissioners of first-fruits enabled to lend money, interest free, for providing glebe houses and lands	43 Geo. 3, c. 106. 4 Geo. 4, c. 86.	
<i>Repealed, and other provisions made by</i>	3 & 4 Gul. 4, c. 37. 4 & 5 Gul. 4, c. 90. 6 & 7 Gul. 4, c. 99.	
..... 50,000 <i>l.</i> granted for building glebe houses pursuant to 43 Geo. 3, c. 106	43 Geo. 3, c. 158.	} I.
<i>Amended by</i>	47 Geo. 3, sess. 2, c. 23.	
..... more effectually providing for the building and rebuilding of glebe houses, &c. and for the purchase of glebe lands, glebe houses, and impropriations	48 Geo. 3, c. 65.	} I.
<i>Amended by</i>	49 Geo. 3, c. 103.	
<i>Repealed, and other provisions made by</i>	3 & 4 Gul. 4, c. 37. 4 & 5 Gul. 4, c. 90. 6 & 7 Gul. 4, c. 99.	
..... empowering rectors and vicars to grant glebe land for sites for churches and churchyards	54 Geo. 3, c. 117.	
..... spiritual persons enabled to exchange parsonage houses and glebe lands under 55 Geo. 3, c. 147	4 Geo. 4, c. 86.	} I.
<i>Amended by</i>	5 Geo. 4, c. 8. 7 Geo. 4, c. 72.	
<i>Repealed, and other provisions made by</i>	3 & 4 Gul. 4, c. 37. 4 & 5 Gul. 4, c. 90. 6 & 7 Gul. 4, c. 99.	

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VICT. c. 26.

Commissioners
to state their
reasons for the
alteration.

Repeal of
2 & 3 Vict.
c. 18, except
as to subsisting
mortgages.

Deficiency in
bishop's in-
come may be
supplied.

Chapters,
deans, and
canons may
purchase, and
alter, take
down, or re-
build.

Provisions of
3 & 4 Vict.
c. 113, s. 59,
made applica-
ble thereto.

Episcopal
house may be
made the
deanery or a
canonical
house.

Provisions of
4 & 5 Vict.
c. 39, s. 18,
respecting
disposal of
canonical
houses, to
apply to all
such houses.

"II. Provided always, and be it enacted, that in any scheme which shall be laid before her majesty in council by the ecclesiastical commissioners for England under this act, recommending any arrangement for taking down or selling any episcopal residence, or changing the site thereof, the said commissioners shall set forth particularly the grounds and reasons upon which they deem it expedient to offer such recommendation.

"III. And be it enacted, that an act passed in the session of parliament held in the second and third years of her majesty's reign, intituled, 'An Act to enable Archbishops and Bishops to raise Money on Mortgage of their Sees, for the purpose of building and otherwise providing fit Houses for their Residence,' shall be repealed; provided that nothing herein contained shall affect any subsisting mortgage made under the provisions thereof, but that every such mortgage, and all proceedings completed and in progress in respect thereof, shall be as valid and effectual, and all the parties to such mortgage or to any such proceeding shall continue subject to the same conditions and provisions as if the said act had not been repealed.

"IV. And be it enacted, that in case such a deficiency shall have been or would be created in the average annual income of any bishop appointed after the passing of the said first-recited act, by the effecting of any mortgage or other arrangement under either of the said acts or this act, as to reduce it below the average annual income of such bishop named in the first-recited act, or in any order of her majesty in council issued under the provisions thereof, it shall be lawful, by the authority aforesaid, out of any monies from time to time standing to the credit and account of the ecclesiastical commissioners for England, being part of payments from the larger sees respectively towards the augmentation of the incomes of the bishops of the smaller sees, if it shall be deemed fit, and if such monies, after duly considering all the claims thereon, shall appear to be sufficient for such purpose, to make any arrangement for supplying or preventing such deficiency or any part thereof which by the like authority shall be deemed expedient.

"V. And be it enacted, that it shall be lawful for the dean and chapter, or for the dean, or for any canon of any cathedral church, under the authority aforesaid, to purchase any episcopal house of residence sold under the provisions of this act, or the site of any such house, or any other house or site, being contiguous or near to such cathedral church, or any part of such house or site, and to add to, alter, or improve any such house, or to take down the same, and to build another house or more houses than one upon the site thereof, or to apply the site of any such house, or any part thereof, by and with the authority aforesaid, to the improvement of the cathedral or the precincts thereof; and that so much of an act passed in the session of parliament held in the third and fourth years of her majesty's reign, intituled 'An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues,' as relates to the raising of monies by any dean or canon for the purpose of building, enlarging, or otherwise improving the residence house of his deanery or canonry, shall be extended so as to make lawful the raising of monies, in the manner and with the authority therein provided, by any dean and chapter, dean or canon, for any purpose of this act.

"VI. And be it enacted, that any house so purchased by the dean and chapter, dean or canon of any cathedral church, or any house erected upon any site so purchased, may by the authority aforesaid, and with the consent of the dean and chapter, be made the deanery, or the house of residence for any canon of such church; and the house theretofore occupied as the deanery, or any house no longer required as the house of residence of any canon, may be so applied or disposed of as may by the same authority and with the like consent be determined on.

"VII. And be it declared and enacted, that the provisions of an act passed in the session of parliament held in the fourth and fifth years of her majesty's reign, intituled, 'An Act to explain and amend two several Acts relating to the Ecclesiastical Commissioners for England,' respecting the disposal of houses no longer required by any canon, do and shall apply to all such houses, whether there may have been any exchange of such houses or not.

“VIII. And be it declared and enacted, that the provisions of the thirdly-recited act, relating to the sale and application of any sum of money invested in trust for any ecclesiastical body corporate, do and shall include and apply to all monies and securities for money, and to all stock in the government funds or elsewhere, standing in the name of the accountant-general of the court of Chancery, or in the name or names of any other public officer, or of any individual or individuals, for or to the credit or for the benefit of or in trust for any bishop, dean and chapter, dean or canon, whether for the purpose of being laid out in land or otherwise; and that the same provisions, and also the provisions of the same act relating to the sale, transfer, or exchange of any lands or other hereditaments belonging to any bishop or chapter, shall extend and may be applied to any of the purposes of this act.

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VICT. c. 26.
Defining other provisions of 3 & 4 Vict. c. 113, s. 68, and extending them to this act.

“IX. And be it enacted, that whenever any house of residence to be sold or taken down as aforesaid shall contain any pictures, books, or other goods and chattels belonging to the owner of such house in right of his dignity, and not in his private capacity, directions shall be given by the authority aforesaid for the sale of such fixtures and articles of furniture as shall be deemed to be unfit for removal to the new or other house of residence, and for the application of the money arising from such sale to purposes consistent, as nearly as may be, with the source from whence the money shall have arisen, and also for the removal to such new or other house of residence of all such pictures and books, and of all such other fixtures, goods, and chattels, as shall be deemed to be fit for removal thereto, and for the deposit and care of them thereat, in conformity, as nearly as may be, with the uses to which they were previously applicable respectively.

Certain fixtures and articles of furniture in any house sold or taken down may be sold or removed to another house.

“X. And be it enacted, that in every case of a house of residence purchased, built, rebuilt, added to, altered, or improved under the authority of the first-recited act or of this act, or the provisions of the secondly-recited act, all fixtures, fittings, and other articles in such house which shall have been or shall be paid for out of any monies provided or raised under such authority or such provisions, and which shall be set forth in an inventory in writing, certified under the common seal of the said commissioners, and registered in the registry of the diocese, shall be deemed to be, to all intents and for all purposes, as much part and parcel of the freehold of such house of residence as any fixtures can in any case now by law be held to be part and parcel of the freehold.

Certain articles to be deemed freehold fixtures.

“XI. And be it enacted, that it shall be lawful, by the authority aforesaid, to direct that any house of residence purchased, built, rebuilt, added to, altered, or improved under the provisions of the said recited acts or either of them, or of this act, shall be insured and kept insured by the bishop, dean, or canon for the time being in the occupation thereof, at his own personal charge and expense, in such public office or offices of assurance from loss or damage by fire, and in such sum or sums, as by the like authority may be deemed fit, and such house shall be insured and kept insured accordingly; and that the receipt for every premium payable for any such insurance shall be delivered to the said commissioners within fourteen days after such premium shall become due; and that in case of loss or damage by fire to any such house so insured, it shall be lawful, by the like authority, to direct in what manner the money received under any such insurance shall be deposited, in trust to be applied towards the rebuilding or repairing and the reinstating of such house, or of any such part thereof as may have so suffered loss or damage, and also to direct in what manner the same money, and the interest and accumulations thereof, if any, shall be applied to such last-mentioned purposes.

Residence houses to be insured.

“XII. And be it enacted, that it shall be lawful for any corporation, aggregate or sole, tenant for life or in tail, guardian, committee, or trustee, on behalf of their or his successors, heirs, remaindermen, issue in tail, infants, lunatics, and cestuique trusts respectively, and for any feme covert, to contract for, sell, and convey any lands, tenements, or hereditaments, or if copyhold to enfranchise the same, for any of the purposes of the first and thirdly-recited acts or this act; and that if the purchase-money shall amount to or exceed the sum of two hundred pounds, the same shall be paid, without fee or reward, into the bank of England, in the name and

Corporations and persons under legal disability empowered to sell.
Application of purchase money where it exceeds 200*l*.

STAT. 5 & 6
VICT. c. 26.

with the privity of the accountant-general of the court of Chancery, to be placed to his account *ex parte* the bishop, dean and chapter, dean, or canon, as the case may be, to whom or for whose benefit any such lands, tenements, or hereditaments shall have been so sold and conveyed or enfranchised, to the intent that such money shall be applied, under the direction of the said court, by order made upon the summary petition of the corporation or person entitled to the rents and profits of the said lands, tenements, or hereditaments, in the purchase of the land-tax, or towards the discharge of any debt or debts, or other incumbrance, or any part thereof, affecting the same lands, tenements, or hereditaments, or affecting other lands, tenements, or hereditaments standing settled therewith to the same or the like uses, intents, and purposes; or where such money shall not be so applied then the same shall be laid out and invested, under the like direction, in the purchase of other lands, tenements, or hereditaments, to be conveyed to, for, or upon such and the like uses, intents, and purposes, and in the same manner, as the lands, tenements, or hereditaments so sold, conveyed, or enfranchised stood settled or limited, or such of them as shall be then existing undetermined and capable of taking effect; and in the meantime, and until such purchase shall be made, the same money shall, by like order, be invested by the said accountant-general in his name in the purchase of three pounds per centum consolidated or reduced bank annuities; and in the meantime, and until the said bank annuities shall be ordered by the said court to be sold for any purpose aforesaid, the dividends and annual produce thereof shall, by like order, be from time to time paid to such corporation or person; and that any such purchase money which shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, shall be paid to three trustees, to be nominated in an instrument in writing duly executed by such corporation or person, and approved by the said commissioners under their common seal; in order that such principal money, and the dividends accruing thereon, may be applied in manner hereinbefore directed, so far as may be, without the direction or approbation of the said court; and that any such purchase money which shall not exceed the sum of twenty pounds shall be paid to such corporation or person; and the certificate of the cashier of the bank of England shall be a sufficient discharge for any such purchase money as aforesaid therein certified to be received, and in case of infancy or other incapacity, the receipt in writing of any guardian, husband, committee, or trustee, as the case may be, for any such purchase money, shall be a sufficient discharge for the amount therein acknowledged to be received.

Where less
than 200*l.* but
exceeding 20*l.*

When not ex-
ceeding 20*l.*
Certificate of
cashier, and
receipts of
guardians, &c.
to be good
discharges.

Restriction as
to mortgaging
certain aug-
mented bene-
fices.

Powers of
3 & 4 Vict.
c. 113, ex-
tended to this
act.

Act may be
amended this
session.

“XIII. And be it enacted, that the powers for enabling incumbents of benefices to raise money by way of mortgage for the purpose of purchasing, building, or improving their houses of residence, shall not be exercised by the incumbent of any benefice augmented under the provisions of the thirdly-recited act, without the consent of the said commissioners signified under their common seal.

“XIV. And be it enacted, that all the powers and authorities vested in her majesty in council and in the said commissioners by the thirdly-recited act, with reference to the matters therein contained, and all other the provisions of the same act relating to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and apply to her majesty in council and to the said commissioners, and to all schemes and orders prepared, made, and issued by them respectively, with reference to all matters contained in this act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein.

“XV. And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament.”

STAT. 5 & 6
VICT. c. 27.

CVIII. STAT. 5 & 6 VICTORIÆ, c. 27. A.D. 1842.

“An Act for better enabling Incumbents of Ecclesiastical Benefices to diminish the Lands belonging to their Benefices on Farming Leases.”

“Whereas it would be advantageous to ecclesiastical benefices if the incumbents thereof were empowered, with such consent and under such restrictions as

are hereinafter expressed, to demise the lands of or belonging to the same for a term of years certain, for farming purposes: may it therefore please your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for the incumbent for the time being of any benefice, from time to time after the passing of this act, by deed under his hand and seal, with the consent of the patron of such benefice, and of the bishop of the diocese wherein the same is locally situated, and where the lands proposed or intended to be leased are of copyhold or customary tenure, with the consent also of the lord for the time being of the manor of which the same are holden, in any case where the lease proposed to be granted could not according to the custom of the manor be effectually made without the licence of the lord, such respective consents to be testified by the persons whose consents are hereby required respectively being parties to and signing and sealing such deeds before the execution thereof by such incumbent, to lease any part of the glebe lands or other lands of or belonging to such benefice, either with or without any farmhouses, cottages, barns, or other agricultural buildings or conveniences, parcel of or belonging to such benefice, to any person whomsoever, for any term of years not exceeding fourteen years, to take effect in possession, and not in reversion or by way of future interest, so that there be reserved on every such lease, payable to the incumbent for the time being of such benefice quarterly in every year, during the continuance of the term thereby granted, the best and most improved yearly rent that can be reasonably gotten for the same, without taking any fine, foregift, premium, or other consideration for granting such lease, and so that no such lessee be made punishable for waste by any clause or words to be contained in such lease, and so that the lessee do thereby covenant with the incumbent granting such lease, and his successors, for due payment of the rent thereby to be reserved, and of all taxes, charges, rates, assessments, and impositions whatsoever which shall be payable in respect of the premises thereby leased, and do further covenant with such incumbent and his successors, that he will not assign or underlet the hereditaments comprised in such lease, or any part thereof, for all or any part of the term thereby granted, without the consent of the bishop of the diocese for the time being and the patron and incumbent for the time being of the said benefice, to be testified by their respectively being parties to and sealing and delivering the deed or instrument by which any assignment or underlease of the same premises, or any part thereof, may be effected; and that he will in all respects cultivate and manage the lands and hereditaments thereby leased according to the most improved system of husbandry in that part of the country where such lands and hereditaments are locally situated, so far as such system may not be inconsistent with any express stipulation to be contained in such lease; and that he will keep, and at the end of the term leave, all the lands comprised in such lease, together with the gates, drains, and fences of every description, and other fixtures and things thereupon or belonging thereto, in good and substantial repair and condition; and that he will at all times during the continuance of the term keep the buildings comprised in such lease, or to be erected during the term upon the lands thereby demised, or on any part thereof, insured against damage by fire, in the joint names of the lessee, his executors or administrators, and of the incumbent of the benefice for the time being, in three-fourths at the least of the value thereof; and that he will lay out the money to be received by virtue of any such insurance, and all such other sums of money as shall be necessary, in substantially rebuilding, repairing, and reinstating, under the direction of a surveyor to be for that purpose appointed by the incumbent of such benefice for the time being and such lessee, by some writing under their respective hands, such messuages or buildings as shall be destroyed or damaged by fire; and so that there be inserted in every such lease a reservation for the use of such incumbent and his successors of all timber trees and trees likely to become timber, and of all saplings and underwoods, and of all mines and minerals, except as is hereinafter provided; and also a power of re-entry, in case the rent thereby to be reserved shall be unpaid for the

STAT. 5 & 6
VICT. c. 27.

Incumbents of benefices empowered, with consent of bishop and patron, to lease lands belonging to their benefices for fourteen years, under certain restrictions.

STAT. 5 & 6
VICT. C. 27.

Saving for
covenants
respecting
cultivation,
improvements,
&c.

In certain
cases, leases
may be granted
for twenty
years.

Parsonage
house and
offices, and
ten acres of
glebe, situate
most conven-
iently for
occupation,
not to be
leased, &c.

Proviso.

space of twenty-one days next after the same shall become due, or in case the lessee shall be convicted of felony, or shall become a bankrupt, or shall take the benefit of any act or acts of parliament now in force or hereafter to be passed for the relief of insolvent debtors, or shall compound his debts, or assign over his estate and effects for payment thereof, or in case any execution shall issue against him or his effects, or in case such lessee shall not from time to time duly observe and perform all the covenants and agreements on his part in such lease to be contained; and so that the lessee in each such lease do execute the same or a counterpart thereof: provided always, that any stipulation, covenant, condition, or agreement in any such lease to be contained, on the part of the lessee, for the adoption and use of any particular mode or system of cultivation, or for the drainage or subdividing, or embanking or warping, (in those places where the system of improvement of land called warping is or may be practised,) of all or any of the lands comprised in such lease, or for the erection of any new or additional farmhouses, barns, or outhouses, or other farm buildings, which the condition or local situation of the lands to be comprised in such lease may require or render expedient, or for putting in repair any houses, edifices, or buildings to be comprised in any such lease, or for making any substantial improvements on the premises, or for the reservation or payment of any additional rent or rents, or penalty on breach of any of the covenants or agreements contained in any such lease, shall not be deemed or construed to be a fine, foregift, premium, or consideration for the granting of such lease within the meaning of this act: provided also, that nothing herein contained shall be construed to preclude the lessor in any such lease from covenanting that the lessee shall be entitled to have or take from off the demised premises, brick, earth, stone, lime, or other materials for the erection or repair of any buildings, or for the construction or repair of drains, or for any other necessary improvements, and sufficient rough timber, to be assigned by the incumbent for the time being, or his agent duly authorized, for any of the purposes aforesaid, and for the making or repair of gates and fences: provided also, that the custom of the country as to outgoing tenants shall apply to each lease to be granted under this act, except so far as the lease shall contain any express stipulation to the contrary: provided also, that the term to be granted by any such lease as aforesaid may be twenty years in any case where the lessee shall covenant thereby to adopt and use any mode or system of cultivation more expensive than the usual course, or to drain or subdivide, or embank and warp, at his expense, any part of the demised premises, or to erect, at his own expense, on the said premises, any buildings, or to repair in a more extensive manner and at a greater expense than is usually required of leases of farms any buildings on the demised premises, or in any other manner to improve, at his expense, the demised premises or any part thereof.

"II. And be it enacted, that the authority given by this act shall not render valid any lease to be granted in the manner hereinbefore mentioned, unless the parsonage house or other the house of residence of or belonging to the benefice, and all offices, outbuildings, yards, gardens, orchards, and plantations to such parsonage house or other house of residence adjoining and appurtenant, and which may be necessary or convenient for actual occupation with such parsonage house or other house of residence, and also so much glebe land or other land of or belonging to the benefice, and situated the most conveniently for actual occupation by the incumbent, as, together with the site of such parsonage house or other house of residence, offices, and outbuildings, and with such yards, gardens, orchards, and plantations as aforesaid, shall amount to ten acres at least, if there shall be ten or more acres of such land situated within five miles from the parsonage or other the house of residence, or if there shall be less than ten acres so situated, then the whole of such land shall be reserved out of or not be comprised in such lease, and not be comprised in any subsisting lease for the time being which shall have been previously granted under the authority of this act: provided always, that in any case where the lands comprised in any lease granted under the authority of this act shall be situate five miles or upwards from the parsonage house or other the house of residence, or (in case there shall be no parsonage house or other house of

residence) from the church or chapel of the benefice to which such lands shall belong, the provision herein contained for the reservation of a stipulated number of acres of the glebe land or other land of or belonging to the benefice shall not be applicable.

“III. And be it enacted, that whenever any lease is intended to be granted under the authority of this act, a competent land surveyor shall be appointed by the bishop of the diocese and the patron and incumbent of the benefice, by some writing under their respective hands; and such surveyor shall make a map or plan under an actual survey of the lands proposed or intended to be leased, and of the other lands of or belonging to the benefice, or of such part or parts of the said other lands as will sufficiently show to the bishop of the diocese and the patron of the benefice the relative positions or local situations and quantities of the lands proposed or intended to be leased, and of the lands (if any) intended to be reserved, and as will enable them to form an accurate judgment of the situation and convenience for actual occupation of the lands intended to be reserved; and such surveyor shall certify that the lands intended to be leased, and such buildings and other hereditaments (if any) as are intended to be leased therewith, are proper to be leased to a tenant under the provisions of this act, and (in any case where the provision hereinbefore contained respecting the reservation of a stipulated number of acres may be applicable) that the lands which are intended to remain unlet are such part of the glebe land or other land of or belonging to the benefice as is situated the most conveniently for actual occupation by the incumbent thereof; and such surveyor shall also make a valuation on actual survey of the lands and hereditaments proposed or intended to be leased, and shall report what is the best yearly rent which ought to be reserved upon a lease of such lands and hereditaments under the circumstances under which such lease is proposed or intended to be granted, and shall state the course of husbandry or management of such lands and hereditaments which ought in the opinion of such surveyor to be adopted by the tenant thereof; and in any case where it is proposed that the lease shall contain special covenants on the part of the lessee for the drainage or subdividing, or embanking or warping, of all or any of the lands to be comprised in the lease, or for the erection of any new or additional farmhouses, barns, or outhouses, or other farm buildings, or for putting in repair any houses, edifices, or buildings to be comprised in the lease, or for making any substantial improvement in the premises, such surveyor shall certify that in his opinion the covenants for those purposes are proper covenants to be entered into by the lessee under the circumstances of the case, and he shall state the amount by which the yearly rent to be reserved by the proposed lease ought in his judgment to be diminished in respect or on account of the lessee entering into such covenants; and in any case where it is proposed that the lessee shall be entitled to have or take from off the demised premises brick earth, stones, lime, or other materials, or rough timber, for any of the purposes hereinbefore mentioned, he shall also certify that in his opinion covenants on the part of the lessor for those purposes are proper to be entered into, and that he has taken the matter into his consideration in estimating the amount of rent to be reserved by the proposed lease; and such surveyor shall in all cases also report upon and state such other matters or things (if any) connected with such intended lease, or the lands and hereditaments proposed or intended to be therein comprised, as he shall, by such bishop, patron, and incumbent, or any of them, be directed to report upon; and the map or plan, certificate, valuation, and report of such surveyor shall be respectively signed by such surveyor, and verified by his declaration to be made before any justice of the peace, and shall, immediately upon the completion thereof, respectively be delivered to the bishop of the diocese: provided always, that in all cases in which there shall be in the possession of the bishop of the diocese, or of the patron or incumbent of any benefice, or of the parish officers of the parish in which such benefice may be comprised, any map or plan made under an actual survey of the parish, or of such part thereof as shall include the lands proposed or intended to be demised, a copy of or an extract from such map or plan may be substituted for the map or plan hereinbefore directed to be made by any such surveyor as aforesaid.

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VICT. c. 27.

Before any lease is granted, a surveyor to be appointed, who is to make maps, certificates, valuation, and reports respecting such intended lease.

An existing map of the lands may be used.

STAT. 5 & 6

VICT. c. 27.

Lessor's receipt for counterpart or attested copy of lease to be evidence of its execution; and execution by bishop and patron to be evidence that the lands are proper to be leased, &c.

Surrenders of leases.

In cases of peculiars belonging to bishops, such bishops to exercise, within their peculiars, the powers given by this act.

Provision where patron or lord of manor is under incapacity or beyond seas.

Provision where the patronage of any benefice is in the crown.

"IV. And be it enacted, that the receipt in writing of the incumbent by whom any lease shall be granted under the authority of this act, acknowledging that he has received the counterpart, or an attested copy in all cases where there shall be only one part, of such lease, and signed by such incumbent, and endorsed on the lease, shall be conclusive evidence that the counterpart or lease (as the case may be) has been duly executed by the lessee, and also in all cases where there shall be only one part of such lease that the attested copy is a true and faithful transcript of the original lease; and the execution by the bishop and patron, whose consents are hereby made requisite, of any lease to be granted under the authority of this act, shall be conclusive evidence that the lease does not comprise any lands which ought not to be leased under the provisions of this act, and that a proper portion of the glebe land remains unleased, and that the rent reserved by such lease is the best and most improved rent that could be reasonably gotten for the lands and hereditaments comprised therein at the time of granting such lease, and that all the covenants contained in such lease are proper covenants.

"V. And be it enacted, that no surrender of any lease which shall have been made under the authority of this act shall be valid to any purpose whatsoever unless the bishop of the diocese and the patron and incumbent of the benefice to which the lands or hereditaments comprised in such lease shall belong shall respectively be made parties to and execute the deed or instrument by which such surrender shall be made; and every such surrender shall have operation from the time only when such deed or instrument as aforesaid shall have been executed by all the persons whose execution thereof is hereinbefore required.

"VI. And whereas there are within divers dioceses certain exempt jurisdictions called peculiars, belonging to the archbishops and bishops of other dioceses, and it is expedient that all the powers, authorities, and duties by this act given to or imposed upon the bishop of the diocese should, as to such peculiars, be given to and imposed upon the archbishop or bishop to whom the same respectively belong; be it therefore enacted, that all the powers, authorities, and duties by this act given to or imposed upon the bishop of any diocese shall, with respect to the aforesaid peculiars locally situated within such diocese, be exercised and performed by the archbishop or bishop to whom such peculiars shall respectively belong, and not by the bishop within whose diocese such peculiar shall be locally situated, but that with respect to all peculiars belonging to any other person than archbishops or bishops such powers, authorities, and duties shall be exercised and performed by the bishop of the diocese within which such peculiars shall be locally situated.

"VII. And be it enacted, that whenever the consent or concurrence of the patron of any benefice, or of the lord for the time being of any manor, is hereby required, and the patron of such benefice, or the lord for the time being of such manor, (as the case may be,) shall happen to be a minor, idiot, lunatic, or feme covert, or beyond seas, it shall be lawful for the guardian, committee, husband, or attorney (as the case may be) of such patron or lord, (but in the case of a feme covert not being a minor, idiot, or lunatic, or beyond seas, with her consent in writing,) to execute the instrument by which such consent or concurrence is to be testified, in testimony of the consent or concurrence of such patron or lord; and such execution shall, for the purposes of this act, be deemed and taken to be an execution by the patron of the benefice or by the lord of the manor (as the case may be).

"VIII. And be it enacted, that in any case in which the consent or concurrence of the patron of any benefice is hereby required, and the patronage of such benefice shall be in the crown, the consent or concurrence of the crown shall be testified in the manner hereinafter mentioned; (that is to say,) if such benefice shall be above the yearly value of twenty pounds in the King's Books, the instrument by which such consent or concurrence shall be testified shall be executed by the lord high treasurer or first lord commissioner of the Treasury for the time being; and if such benefice shall not exceed the yearly value of twenty pounds in the King's Books, such instrument shall be executed by the lord high chancellor, or lord keeper or lords commissioners of the great seal for the time

being; and if such benefice shall be within the patronage of the crown in right of the duchy of Lancaster, such instrument shall be executed by the chancellor of the said duchy for the time being; and the execution of such instrument by such person or persons shall be deemed and taken, for the purposes of this act, to be an execution by the patron of the benefice.

STAT. 5 & 6
VICT. c. 27.

“IX. And be it enacted, that in any case in which the consent or concurrence of the patron of any benefice is hereby required, and the right of patronage of such benefice shall be part of the possessions of the duchy of Cornwall, the consent or concurrence of the patron of such benefice to the exercise of such power shall be testified in the manner hereinafter mentioned; (that is to say,) the instrument by which such consent or concurrence is to be testified shall, whenever there shall be a Duke of Cornwall, whether he be of full age or otherwise, be under his great or privy seal, or if there be no Duke of Cornwall, and such benefice shall be in the patronage of the crown in right of the duchy of Cornwall, such instrument shall be executed by the person or persons who is or are authorized to testify the consent or concurrence of the crown; and such instrument, being so sealed or executed, shall be deemed and taken, for the purposes of this act, to be an execution by the patron of the benefice.

Provision where the patronage is attached to the duchy of Cornwall.

“X. And be it enacted, that in any case in which the consent or concurrence of the patron of any benefice or of the lord of any manor is hereby required, and the patronage of such benefice, or (as the case may be) the lordship of such manor, shall belong to any dean and chapter, or collegiate or other corporate body having a common seal, the consent or concurrence of such dean and chapter, or collegiate or other corporate body, shall be testified by the sealing of the instrument by which such consent or concurrence is to be testified with the common seal of such dean and chapter, collegiate or other corporate body.

Corporate bodies may act by their common seal.

“XI. And be it enacted, that the person or persons, (if not more than two,) or the majority of the persons, (if more than two,) or the corporation, who or which would for the time being be entitled to the turn or right of presentation to any benefice if the same were then vacant, shall, for the purposes of this act, be considered to be the patron thereof; provided nevertheless, that in the case of the patronage being exercised alternately by different patrons, the person or persons, (if not more than two,) or the majority of the persons, (if more than two,) or the corporation, who or which would for the time being be entitled to the second turn or right of presentation to any benefice, if the same were then vacant, shall, for the purposes of this act, jointly with the person or persons or corporation entitled to the first turn or right of presentation, be considered to be the patron thereof.

Person who for the time being would be entitled to present shall be considered the patron.

“XII. And be it enacted, that in all cases in which any person shall sustain any more than one of the aforesaid characters of bishop of the diocese, patron, lord of the manor, and incumbent, in respect of any benefice to which the provisions of this act extend, every such person shall or may at any time act in both or all of the characters which he shall so sustain as aforesaid, and execute and do all and every or any of such deeds and acts as are hereby authorized to be executed and done, as effectually as different persons, each sustaining one of those characters, could execute and do the same.

Provision where any person shall sustain more than one of the characters of bishop, patron, and incumbent.

“XIII. And be it enacted, that whenever any lands or hereditaments proposed to be leased under the provisions of this act are or shall be vested in any trustee or trustees, in trust for or for the benefit of any incumbent hereby empowered to grant leases as aforesaid, in such a manner as that the net income or three fourth parts at the least of the net income of such lands and hereditaments is, are, or shall be payable for the exclusive benefit of such incumbent, all the powers of this act which, in case such lands and hereditaments had been legally vested in such incumbent for the sole and exclusive benefit of such incumbent, might have been exercised by such incumbent in relation to or affecting the same lands and hereditaments, shall or may be exercised by such incumbent in the same or the like manner as the same might have been exercised by such incumbent in case the same lands and hereditaments were legally vested in such incumbent as aforesaid; but in order to give legal effect to any lease to be executed in relation to any such lands

The power of the act to extend to lands, &c. held in trust for corporations.

STAT. 5 & 6
VICT. C. 27.

and hereditaments, in pursuance of this act, the trustee or trustees of the premises intended to be affected thereby shall be made a party or parties to such lease, (in addition to the other parties whose concurrence is hereby declared to be requisite to any such lease,) and shall join in the demise intended to be thereby made; and the trustee or trustees of any such lands or hereditaments is and are hereby directed and required at all times to execute any lease to which he or they may be made a party or parties, with a view to give legal effect to any such lease as aforesaid, as soon as the same may be tendered to him or them for execution, after the same shall have been duly executed by the incumbent beneficially entitled to such premises, and the bishop and patron, whose consents are hereby declared to be requisite to the validity of any lease granted by such incumbent; and the fact that any such lease is executed by the said other parties shall be a sufficient authority for the execution thereof by the trustee or trustees of the same premises, and it shall not at any time afterwards be necessary for such trustee or trustees, or for any other person or persons, to prove that such deed was executed by such other parties, or any of them, prior to the execution thereof by such trustee or trustees; provided that no trustee shall by virtue of or under this provision be compellable to execute any lease whereby he shall render himself in any way liable, further than by a covenant for quiet enjoyment by any lessee against the acts of the trustee executing such deed.

Incumbent's part of all instruments, and all maps, &c. shall be deposited in the bishop's registry, except as to peculiars belonging to bishops.

“XIV. And be it enacted, that the part of every lease granted under this act, which shall belong to any incumbent, or, in case there shall not be more than one part of any such lease, an attested copy thereof, and every surrender to be made under this act, together with the writing by which a surveyor shall have been appointed as aforesaid, and the map or plan, or copy of or extract from a map or plan, (as the case may be,) certificate, valuation, and report hereinbefore directed to be made before the granting of such lease, shall, within six calendar months next after the date of such lease, be deposited in the office of one of the registrars of the diocese wherein such benefice shall be locally situated, to be perpetually kept and preserved therein, except where the benefice shall be under the peculiar jurisdiction of any archbishop or bishop, in which case the several documents before mentioned shall be deposited in the office of the registrar of the peculiar jurisdiction to which such benefice shall be subject; and such registrars respectively, or their respective deputies, shall, upon any such deposit being so made, sign and give unto the incumbent a certificate of such deposit; and such lease or attested copy and other documents so to be deposited shall be produced, at all proper and usual hours, at such registry, to the incumbent of the benefice for the time being, or to the patron of such benefice for the time being, or to any person on their or either of their behalf, applying to inspect the same; and an office copy thereof, respectively certified under the hand of the registrar or his deputy, (and which office copy, so certified, the registrar or his deputy shall in all cases, upon application in that behalf, give to the incumbent for the time being of such benefice,) shall in any action against the lessee, and in all other cases, be admitted and allowed in all courts whatsoever as legal evidence of the contents of such lease, or of any such other document, and of the due execution of the counterpart of such lease by the lessee, if there shall be any counterpart, and of the due execution of the lease and of every such other document by the parties who on the face of such office copy shall appear to have executed the same; and every such registrar shall be entitled to the sum of five shillings, and no more, for so depositing as aforesaid the documents hereinbefore directed to be deposited, and for certifying the deposit thereof, and the sum of one shilling, and no more, for each search and inspection, and the sum of sixpence, and no more, over and besides the stamp duty (if any) for each folio of seventy-two words of each office copy so certified as aforesaid.

Deposited documents to be produced to incumbent or patron on application; and office copies given, which are to be admitted as evidence of such instruments in all courts.

Charges which the registrar is entitled to make.

Interpretation of act.

“XV. And be it enacted, that in the construction and for the purposes of this act the several following words shall have the meanings hereinafter assigned to them respectively (unless there shall be something in the subject or context repugnant to such construction); (that is to say,)

"The word 'person' shall be construed to include the queen's majesty, and any corporation, aggregate or sole, as well as private individual: the word 'lands' shall be construed to include lands of any tenure: the word 'benefice' shall be construed to comprehend every rectory, vicarage, perpetual curacy, donative, endowed public chapel, parochial chapelry, and district chapelry, the incumbent of which in right thereof shall be a corporation sole: and every word importing the singular number shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as to several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

STAT. 5 & 6
VICT. c. 27.

"XVI. And be it enacted, that this act shall extend only to that part of the United Kingdom called England and Wales, and to the isle of Man, and to the islands of Guernsey, Jersey, Alderney, and Sark.

"XVII. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

To what parts
only the act
shall extend.
Act may be
amended this
session.

CIX. STAT. 5 & 6 VICTORIÆ, cap. xxvii. A.D. 1842.

"An Act for carrying into effect certain Provisions contained in the Will of Thomas Swinnerton, Esquire, deceased, relative to the Building of a Mansion House on the Testator's Estate at Butterton, in the County of Stafford, and building a Church or Chapel on the said Estate; and for other Purposes."

STAT. 5 & 6
VICT. cap.
xxvii.

CX. STAT. 5 & 6 VICTORIÆ, c. 28. [IRELAND.] A.D. 1842.

"An Act to assimilate the Law in Ireland, as to the Punishment of Death, to the Law in England; to abolish the Punishment of Death in certain Cases in Ireland; and to substitute other Punishments in lieu thereof."

STAT. 5 & 6
VICT. c. 28.
[Ia.]

"Whereas it is expedient to alter and amend various statutes now in force in Ireland relative to certain offences by the said statutes now punishable with death, and to assimilate the law in Ireland as to the punishment of death in certain cases to the law in England: and whereas by an act passed in the twelfth year of the reign of King George the First, intituled, 'An Act to prevent Marriages by degraded Clergymen and Popish Priests, and for preventing Marriages consummated from being avoided by Pre-Contracts, and for the more effectual Punishment of Bigamy,' it was amongst other things enacted, that if any person pretending to be a popish priest, or any degraded clergyman, or any layman pretending to be a clergyman of the church of Ireland as by law established, should, after the twenty-fifth day of April in the year of our Lord one thousand seven hundred and twenty-six, celebrate or take upon him to celebrate any marriage between two protestants or reputed protestants, or between a protestant or reputed protestant and a papist, such degraded clergyman, and layman pretending to be a clergyman, should be and was thereby declared to be guilty of felony, and should suffer death as a felon, without benefit of clergy: and whereas it is expedient that none of the said offences should be henceforth punishable with death: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that if any person shall, after the commencement of this act, be convicted of any of the offences hereinbefore mentioned, such person shall not suffer death, or have sentence of death awarded against him or her for the same, but shall be liable to be transported beyond the seas for seven years: provided always, that nothing in this act contained shall alter or in anywise affect the provisions of an act passed in the third and fourth years of the reign of his late majesty King William the Fourth, intituled, 'An Act to repeal certain penal Enactments made in the Parliament of Ireland against Roman Catholic Clergymen for celebrating Marriages contrary to the Provisions of certain Acts made in the Parliament of Ireland.'

Recital of 12
Geo. 1, c. 3, s.
1, (Ir.) inflict-
ing the punish-
ment of death
on popish
priests or de-
graded clergy-
men, or pre-
tended clergy-
men, celebrat-
ing marriages
between pro-
testants, &c.

Transportation
for seven years
substituted for
the punishment
of death for the
offences herein
mentioned.
3 & 4 Gul. 4,
c. 102.

STAT. 5 & 6
VICT. C. 54.
wards an
award.

dred and thirty-eight, to make compulsory awards for the commutation of tithes in any parish in which no such agreement shall have been made as aforesaid, and confirmed by the said commissioners: and whereas doubts have been entertained whether, pending the proceedings toward a compulsory award, the landowners and titheowners can make and execute a voluntary agreement which, if confirmed by the said commissioners, shall be valid, and it is expedient that such doubts be removed; be it declared and enacted, that a parochial agreement for the payment of a rent-charge instead of tithes, as provided by the said act, may be made in the manner therein specified, at any time before the confirmation of any award for the commutation of the tithes of the same parish; and such agreement may contain provisions for declaring how the expenses of the parties, or any of them, shall be defrayed, which shall have been incurred in contesting the award; and every such agreement, whether made before or after the passing of this act, if confirmed by the commissioners, shall be as valid as if made and executed before any proceedings had been taken toward making a compulsory award, and shall have the effect of making null and void all the proceedings toward such compulsory award, or incident thereunto, except so far as the same shall be adopted in such agreement.

Parties may
make a sup-
plemental
agreement as
to commence-
ment of rent-
charge.

“III. And be it enacted, that in all cases where no time is fixed by any award or agreement commuting the tithes of a parish for the commencement of the rent-charge or rent-charges therein awarded or agreed upon, it shall be lawful, notwithstanding that the apportionment of the said rent-charge or rent-charges may have been confirmed, for the landowners and titheowners, having such an interest in the land and tithes of the parish as is required for making a parochial agreement, to enter into a supplemental agreement for fixing the period at which the rent-charge or rent-charges to be paid under such award or agreement shall commence; provided always, that such supplemental agreement shall be of no force or effect unless the same shall be confirmed by the said commissioners under their hands and seal; and a copy of every such supplemental agreement shall be deposited with the registrar of the diocese, and in the parish, in like manner as instruments of apportionment are deposited under the said first-recited act.

Such agree-
ment to be
confirmed, and
a copy de-
posited.

In making
special adjudi-
cation an
account may
be taken of
parochial
agreements.

“IV. And whereas by the first-recited act power is given to the said commissioners to make awards in cases reserved for special adjudication, having regard to the average rate which shall be awarded in respect of lands of the like description and similarly situated in the neighbouring parishes; and whereas it sometimes happens that voluntary agreements for the commutation of tithes have been made in the greater part of such neighbouring parishes; be it enacted, that, in awarding the rent-charge in any case so reserved, the commissioners shall be empowered to have regard to the average rate of commutation in respect of lands of the like description and similarly situated, not only in the neighbouring parishes in which there has been an award by the commissioners, but also in those in which there has been a parochial agreement for the commutation of tithes.

Powers for
defining and
exchanging
glebe.

“V. And whereas it will be beneficial to both titheowners and landowners if the tithe commissioners are empowered to define the glebe lands in those cases in which the quantity of glebe is known, but cannot be identified, and also to exchange the glebe lands or part thereof for other land; be it enacted, that for the purpose of defining and settling the glebe lands of any benefice, on the application of the spiritual person to whom the same belongs in right of such benefice, and with the consent of the landowner or landowners having or claiming title to the land so defined as glebe, and being in possession thereof, the tithe commissioners shall, during the continuance of the commission, as well before as after the completion of any commutation, have the same powers which they have for ascertaining, drawing, and defining the boundaries of the lands of any landowners on their application; and also upon the like application of any spiritual person the said commissioners shall have power to exchange the glebe lands, or any part thereof, for other land within the same or any adjoining parish, or otherwise conveniently situated, with the consent of the ordinary and patron of the benefice and of the landowner or landowners having or claiming title to the land so to be given in exchange for the glebe lands, and being in actual possession thereof as aforesaid, such consent to be testified as their consent under the first-recited act is testified to anything for

CXII. STAT. 5 & 6 VICTORIÆ, cap. xxxv. A.D. 1842.

"An Act to extend the Provisions of two Acts, of the second year of King William the Fourth, and the first year of Her present Majesty, relating to the Free Grammar School of King Edward the Sixth in Birmingham, in the County of Warwick."

STAT. 5 & 6
VICT. cap.
xxxv.

CXIII. STAT. 5 & 6 VICTORIÆ, cap. xxxix. A.D. 1842.

"An Act to amend and explain the Act passed in the seventh and eighth years of His late Majesty George the Fourth, Chapter 11, intituled, An Act to explain and modify the Trust Settlement of the late Louis Cauvin, for the Endowment and Maintenance of an Hospital for the Support and Education of Boys; and further to explain and modify the said Trust Settlement."

STAT. 5 & 6
VICT. cap.
xxxix.

CXIV. STAT. 5 & 6 VICTORIÆ, cap. xl. A.D. 1842.

"An Act for enabling the Trustees for the time being of Hel's Charity Estates to grant Leases for absolute terms, not exceeding twenty-one years, of certain Estates vested in them as such Trustees, and situate in the Parishes of Clist Saint Laurence, Broadclyst, Stokeinteignhead, Bovey Tracey, and Newton Ferrers, in the County of Devon; and for confirming certain Leases of Parts of such Estates already granted, and for fixing the Proportions in which the Rents reserved and to be reserved by such Leases, and such other Profits of the said Estates as have accrued and shall accrue after the granting of such Leases thereof respectively shall be divided and enjoyed; and for other Purposes."

STAT. 5 & 6
VICT. cap. xl.

CXV. STAT. 5 & 6 VICTORIÆ, c. 54. A.D. 1842.

"An Act to amend the Acts for the Commutation of Tithes in England and Wales, and to continue the Officers appointed under the said Acts for a Time to be limited."

STAT. 5 & 6
VICT. c. 54.

"Whereas by an act passed in the seventh year of the reign of his late majesty, intituled, 'An Act for the Commutation of Tithes in England and Wales,' it was among other things enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person appointed under the said act should hold his office for a longer period than five years next after the day of the passing of the said act, and thenceforth until the end of the then next session of parliament; and that after the expiration of the said period of five years and of the then next session of parliament so much of the said act as authorizes any such appointment should cease; and whereas by an act passed in the last session of parliament it was among other things provided, that so much of the last-recited act as is hereinbefore recited should be repealed, and that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person so to be appointed, should hold his office for a longer period than until the thirty-first day of July, one thousand eight hundred and forty-two; and that after the said thirty-first day of July so much of the last-recited act as authorizes any such appointment should cease: and whereas it is expedient that the said commission be further continued; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that so much of the last-recited act as is hereinbefore recited shall be repealed, except so far as it repeals any part of the first-recited act; and that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person so appointed or to be appointed shall hold his office for a longer period than the thirty-first day of July, in the year one thousand eight hundred and forty-seven, and to the end of the then next session of parliament.

6 & 7 Gul. 4,
c. 71.

5 Vict. c. 7.

Last-recited
act in part
repealed.
Continuance
of tithe com-
mission.

"II. And whereas by the first-recited act power is given to the landowners and titheowners of any parish to make and execute an agreement for the commutation of the tithes of that parish as therein specified; and power is also given to the said commissioners, after the first day of October in the year one thousand eight hun-

Agreements
may be made
pending pro-
ceedings to-

STAT. 5 & 6
VICT. C. 54.

wards an
award.

Parties may
make a sup-
plemental
agreement as
to commence-
ment of rent-
charge.

Such agree-
ment to be
confirmed, and
a copy de-
posited.

In making
special adjudi-
cation an
account may
be taken of
parochial
agreements.

Powers for
defining and
exchanging
glebe.

dred and thirty-eight, to make compulsory awards for the commutation of tithes in any parish in which no such agreement shall have been made as aforesaid, and confirmed by the said commissioners: and whereas doubts have been entertained whether, pending the proceedings toward a compulsory award, the landowners and titheowners can make and execute a voluntary agreement which, if confirmed by the said commissioners, shall be valid, and it is expedient that such doubts be removed; be it declared and enacted, that a parochial agreement for the payment of a rent-charge instead of tithes, as provided by the said act, may be made in the manner therein specified, at any time before the confirmation of any award for the commutation of the tithes of the same parish; and such agreement may contain provisions for declaring how the expenses of the parties, or any of them, shall be defrayed, which shall have been incurred in contesting the award; and every such agreement, whether made before or after the passing of this act, if confirmed by the commissioners, shall be as valid as if made and executed before any proceedings had been taken toward making a compulsory award, and shall have the effect of making null and void all the proceedings toward such compulsory award, or incident thereunto, except so far as the same shall be adopted in such agreement.

“III. And be it enacted, that in all cases where no time is fixed by any award or agreement commuting the tithes of a parish for the commencement of the rent-charge or rent-charges therein awarded or agreed upon, it shall be lawful, notwithstanding that the apportionment of the said rent-charge or rent-charges may have been confirmed, for the landowners and titheowners, having such an interest in the land and tithes of the parish as is required for making a parochial agreement, to enter into a supplemental agreement for fixing the period at which the rent-charge or rent-charges to be paid under such award or agreement shall commence; provided always, that such supplemental agreement shall be of no force or effect unless the same shall be confirmed by the said commissioners under their hands and seal; and a copy of every such supplemental agreement shall be deposited with the registrar of the diocese, and in the parish, in like manner as instruments of apportionment are deposited under the said first-recited act.

“IV. And whereas by the first-recited act power is given to the said commissioners to make awards in cases reserved for special adjudication, having regard to the average rate which shall be awarded in respect of lands of the like description and similarly situated in the neighbouring parishes; and whereas it sometimes happens that voluntary agreements for the commutation of tithes have been made in the greater part of such neighbouring parishes; be it enacted, that, in awarding the rent-charge in any case so reserved, the commissioners shall be empowered to have regard to the average rate of commutation in respect of lands of the like description and similarly situated, not only in the neighbouring parishes in which there has been an award by the commissioners, but also in those in which there has been a parochial agreement for the commutation of tithes.

“V. And whereas it will be beneficial to both titheowners and landowners if the tithe commissioners are empowered to define the glebe lands in those cases in which the quantity of glebe is known, but cannot be identified, and also to exchange the glebe lands or part thereof for other land; be it enacted, that for the purpose of defining and settling the glebe lands of any benefice, on the application of the spiritual person to whom the same belongs in right of such benefice, and with the consent of the landowner or landowners having or claiming title to the land so defined as glebe, and being in possession thereof, the tithe commissioners shall, during the continuance of the commission, as well before as after the completion of any commutation, have the same powers which they have for ascertaining, drawing, and defining the boundaries of the lands of any landowners on their application; and also upon the like application of any spiritual person the said commissioners shall have power to exchange the glebe lands, or any part thereof, for other land within the same or any adjoining parish, or otherwise conveniently situated, with the consent of the ordinary and patron of the benefice and of the landowner or landowners having or claiming title to the land so to be given in exchange for the glebe lands, and being in actual possession thereof as aforesaid, such consent to be testified as their consent under the first-recited act is testified to anything for

which their consent is therein required; and in every such case the tithe commissioners shall make an award in like manner as awards are made under the first-recited act, setting forth the contents, description, and boundary of the glebe lands as finally settled by them, and of the lands awarded to the several parties to whom any lands theretofore part or reputed part of the glebe lands are to be awarded; and every such award shall have all the incidents of an agreement confirmed by the said commissioners for giving land instead of tithes, and in every case of exchange shall operate as a conveyance of the lands theretofore part or reputed part of the glebe lands to the several persons to whom the same shall be awarded, and to their heirs and successors, executors and administrators, as the case may be; and such lands shall thereupon be holden by the same tenure, and upon the like uses and trusts, and subject to the like incidents, as the land awarded as glebe in exchange for the same was formerly holden; and the expense of so defining, exchanging, and settling any glebe lands shall be borne in such manner as the tithe commissioners shall think just.

STAT. 5 & 6
VICT. c. 54.

“VI. And whereas the power of giving land instead of tithes has been found beneficial to both titheowners and landowners, but such power has been inoperative in a great degree by reason that the landowners by giving land instead of vicarial tithe cannot free their lands from the liability to rectorial tithe, and the converse; be it enacted, that it shall be lawful for any titheowner, with the consent of the patron and ordinary in the case of spiritual tithes, to be testified as their consent under the first-recited act is testified to anything for which their consent is therein required, and subject in that case to the limitation of quantity of land provided by the first-recited act, and subject to the approval of the tithe commissioners, to agree for the assignment to any other owner of tithes issuing out of the same lands of so much of his tithes arising within the same parish, or of the rent-charge agreed or awarded to be paid instead of such tithes, as shall be an equivalent for the tithes belonging to such other titheowner issuing out of the same lands, or for the rent-charge agreed or awarded to be paid instead thereof, for the purpose of enabling any landowner who shall be desirous of giving land instead of tithes to free his lands, or any part thereof, from both rectorial and vicarial tithes, and from the payment of any rent-charge in respect thereof; and every such agreement shall be carried into effect by means of an award or supplemental award, to be made by the said commissioners either before or after the confirmation of the apportionment, in like manner as awards or supplemental awards are made by them pursuant to the powers vested in them before the passing of this act.

Extending
power of giving
land for tithes.

“VII. And be it enacted, that where any agreement shall have been made before the passing of the first-recited act for giving land or money, or both, instead of tithes or glebe or commonable or other rights or easements, which is not of legal validity, and such lands or money, or both, shall appear to the commissioners to be a fair equivalent for the said tithes or glebe, or rights or easements, they shall be empowered to confirm and render valid such agreement; and in case the same shall not appear to be a fair equivalent, the said commissioners shall nevertheless be empowered to confirm such agreement, and also to make an award for such rent-charge, which with the said land or money, or both, will be a fair equivalent for the said tithes or glebe, or rights or easements, and, subject to such confirmation and award, to extinguish the right of the titheowners to the perception of the said tithes, or his title to the said glebe rights or easements, or to the receipt of any rent-charge instead thereof, other than the rent-charge awarded over and above the lands or money, or both, so confirmed to them.

Confirmation
of old agree-
ments for
giving land for
tithes.

“VIII. And be it enacted, that in every case in which any spiritual person shall have died or vacated his benefice before exercising the powers vested in him of borrowing money for the purpose of defraying so much of the expenses of commutation as is to be defrayed by him, and of charging the rent-charge with the repayment of the money borrowed, it shall be lawful for the tithe commissioners, with the consent of the ordinary, to borrow money for that purpose, and to charge the repayment thereof upon the rent-charge, or so much thereof as they, with the like consent, shall think just, with interest thereupon, and for that purpose to assign the rent-charge in like manner as such spiritual person, if living or in

Power to
charge ex-
penses of com-
mutation on
benefices
extended.

STAT. 5 & 6
VICT. c. 54.

For settling
questions of
arrears and
costs in suits
in equity.

possession of his benefice, could himself have done; and the person in whose favour such charge shall have been made, and his assigns, shall have the like remedies for enforcing payment of the principal and interest of the money so borrowed, in case of any arrear in payment of the said charge, as if such charge had been made by the person so dying or vacating his benefice.

“IX. And be it enacted, that in all cases, whether the tithes of any parish have been commuted or not, where any question as to the liability of any lands to the render of tithes, or as to the existence of any modus or composition real, or prescriptive or customary payment, or any claim of exemption from or non-liability to the payment of tithes in respect of any lands, shall have been heard and determined by the said commissioners, or by any assistant commissioner under their direction, it shall be lawful for the said commissioners or any assistant commissioner, after the time for appeal to a court of law from the said determination has elapsed, or in case there has been such appeal, after the judgment of the court on such appeal, to make an award, founded on the decision of the said commissioners or assistant commissioner, or the judgment of any court of law to which appeal shall have been made from the decision of the said commissioners or assistant commissioner, for the determination of all questions of arrears of tithes claimed in any suit which may be pending in any court of equity for the purpose of trying, as to the same lands, such liability, or the legality of such claim, modus, composition, or customary payment, and of the liability of any of the parties to payment of the costs of the proceedings in such suit, for which purpose they respectively shall have all the powers which under the said recited acts or any of them they have for ascertaining the value of the tithes of such lands; and such award shall have the effect of the verdict of a jury, on an issue directed by the court of Chancery satisfactory to the judge or court directing the same, and shall be received by the court of Chancery as conclusive evidence of the liability or non-liability of such lands, and of the amount of such arrears, and of the liability of the several parties to the payment of costs in such suit; and any order of the court of Chancery made thereon shall be binding on all parties, and no appeal to any other judge or court shall be brought against such order.

The act 2 & 3
Gul. 4, c. 100,
not to have
any operation
as to any
award of the
commissioners
in certain
cases.

“X. And be it enacted, that where any question is or shall be brought for the decision of the tithe commissioners or any assistant commissioner, relative to any of the matters mentioned in an act passed in the third year of the reign of his late majesty, intituled, ‘An Act for shortening the Time required in Claims of *Modus Decimandi*, or Exemption from or Discharge of Tithes,’ as to which any such suit shall have been commenced and shall be pending as would have prevented the operation of the said recited act, such recited act shall not have any operation as to any award or decision respecting such question to be made by the said tithe commissioners or any assistant commissioner.

Provision for
fixing the same
days of pay-
ment of all
parts of the
same rent-
charge.

“XI. And be it enacted, that in any parish where any rent-charge has been agreed or awarded to be paid instead of tithes, and security has been given for payment of such rent-charge, and the lands in such parish have been discharged from payment or render of tithes or composition, or rent in the nature thereof, instead of tithes, before the apportionment of such rent-charge, it shall be lawful for the tithe commissioners, by a declaration in writing under the hands of any two of them, and their seal of office, to fix the same half-yearly days of payment of the whole rent-charge after apportionment thereof; and in consideration that the payment of some sums will be thereby accelerated, and the payment of other sums will be thereby deferred and retarded, to make such alterations and allowances in the payments to be made in the first year after the apportionment, both by way of interest for every sum of which payment will be thereby deferred, and by way of discount to be allowed for every sum of which payment will be thereby accelerated, as to the commissioners shall seem just.

Power to
owner of rent-
charge to let
land taken
under writ of
possession.

“XII. And be it enacted, that it shall be lawful for any owner of rent-charge, having taken possession of any land for non-payment of the rent-charge under the provisions of the first-recited act, from time to time during the continuance of such possession to let such land, or any part thereof, for any period not exceeding one year in possession, at such rent as can be reasonably obtained for the same; and

the restitution of such land, on payment or satisfaction of the rent-charge, costs, and expenses, shall be subject and without prejudice to any such tenancy.

“XIII. And be it enacted, that it shall be lawful for any board of guardians of any parish or union, with the consent of the poor law commissioners, and subject to such conditions as the said poor law commissioners may prescribe, to pay out of the rates of any parish any portion of the cost of making or providing any map or plan which shall have been confirmed under the hands and seal of the tithe commissioners, or any other sum of money by way of consideration for the use of the said map or plan, for the purpose of estimating the net annual value of property in respect of which rates may be assessed for the relief of the poor; and after the tithe commissioners shall have certified in writing that such money has been paid, the overseers of the parish, or any person authorized by them in writing, or any officer of the said board of guardians, or any person authorized by them in writing, shall at all reasonable times have access to the copy of the said map or plan deposited with the incumbent and church or chapel wardens of the parish, or other persons approved by the said tithe commissioners, and may inspect and make copies or extracts from the said copy, without paying anything for such access or inspection, or for making such copies or extracts.

“XIV. And whereas by the first-recited act power is given for altering apportionments of rent-charge by the commissioners of land tax, on the application of the owner of the lands charged therewith, and it is expedient that the power thereby given should be extended, and also that during the continuance of the tithe commission the like power should be vested in the tithe commissioners; be it enacted, that if at any time after the confirmation of any instrument of apportionment it shall appear that the lands charged with one entire rent-charge belong to or have become vested in several owners, and that any of the owners of such lands shall be desirous that the apportionment thereof should be altered, it shall be lawful for the commissioners of land tax for the county or place where the said lands are situated, or any three of them, to appoint, by notice under their hands, a time and place for hearing the parties to such application, and all other parties interested therein; and upon satisfactory proof of such notice having been served on all parties interested full twenty-one days before the day of hearing, to proceed to alter the apportionment in such manner and in such proportion amongst the said lands as to them shall seem just, subject nevertheless to the consent of two justices of the peace, as in the said first-recited act provided; and further, that upon such application being made to the said tithe commissioners, they shall have the same power of making such alteration as by the said first-recited act and by this act is vested in the commissioners of land tax, and that without any such consent of two justices of the peace; provided, that no alteration of any apportionment shall be made under the first-recited act or this act whereby any rent-charge shall be subdivided, so that any subdivision thereof shall be less than five shillings.

“XV. And whereas it is expedient to make further provision for recording all such alterations of apportionment; be it enacted, that the registrar of every diocese, as soon as conveniently may be after the passing of this act, shall cause to be made and sent to the office of the tithe commissioners a copy, certified under his hand, of every instrument of altered apportionment in his custody which was made before the passing of this act, the reasonable cost of making and sending which copy shall be defrayed by the tithe commissioners as part of the expense of putting in execution the acts for the commutation of tithes; and after the passing of this act three counterparts shall be made of every instrument of altered apportionment at the expense of the landowner desiring the alteration; and two of the said counterparts shall be sent as provided by the first-recited act, and the third shall be sent to or deposited in the office of the tithe commissioners, or, after the expiration of the tithe commission, shall be sent to and kept by the person having custody of the records and papers of the said commission, and shall be annexed to the instrument of apportionment in the custody of the said commissioners, or the person having the custody of their records and papers.

“XVI. And be it enacted, that in case any land charged with one amount of rent-charge shall belong to two or more landowners in several portions, and the

STAT. 5 & 6
VICT. c. 54.

Power in certain cases to use tithe commutation maps for parochial purposes.

Power to alter apportionments.

Copy of instrument of altered apportionment to be sent to tithe office.

Remedy for enforcing pay-

STAT. 5 & 6
VICT. c. 54.
ment of con-
tribution to
rent-charge.

owner of any one of such portions, or his tenant, shall have paid the whole of such rent-charge, or any portion thereof greater than shall appear to him to be his just proportion, and contribution thereto shall have been refused or neglected to be made by any other of the said landowners, or his tenant, after a demand in writing made on them, or either of them, for that purpose, it shall be lawful for any justice of the peace acting for the county or other jurisdiction in which the land is situated, upon the complaint of any such landowner, or his tenant or agent, to summon the owner so refusing or neglecting to make contribution, or his tenant, to appear before any two or more such justices of the peace, who, upon proof of the demand and of service of the summons, as hereinafter provided, whether or not the party summoned shall appear, shall examine into the merits of the complaint, and determine the just proportion of the rent-charge so paid as aforesaid which ought to be contributed by the landowner of such other portion of the said land, and by order under their hands and seals shall direct the payment by him of what shall in their judgment be due and payable in respect of such liability to contribution, with the reasonable costs and charges of such proceedings, to be ascertained by such justices; and thereupon it shall be lawful for the complainant to take the like proceedings for enforcing payment of the said amount of contribution and costs, and with the like restriction as to the arrears recoverable, as are given to the owner of the rent-charge by the said first-mentioned act or this act for enforcing payment of the rent-charge.

Service of
summons, &c.

“XVII. And be it enacted, that service of the said demand in writing, and summons, or of any notice to distrain, or copy of writ to assess the arrears of rent-charge, or notice of the execution thereof under the said first-recited act, or the several acts to amend the same, or this act, upon any person occupying or residing on the land chargeable with the rent-charge, or in case no person shall be found thereon, then affixing the same in some conspicuous place on the land, shall be deemed good service of any such summons, notice, writ, or other proceeding.

Provision for
general avowry
in actions of
replevin for
rent-charge.

“XVIII. And be it enacted, that it shall be lawful for all defendants in replevin, brought on any distress for rent-charge payable under the said first-recited act, or the several acts to amend the same, or this act, to avow or make cognizance generally that the lands and tenements whereon such distress was made were chargeable with or liable to the payment of a certain yearly amount of rent-charge under the provisions of the statutes for the commutation of tithes in England and Wales, which rent-charge, or some part thereof, was in arrear and unpaid for the space of twenty-one days next after some half-yearly day of payment thereof, and after ten days notice in writing, as required by the said acts, and that a certain amount of such rent-charge, according to the prices of corn, as directed by the said acts, was at the time of the said distress due to the person entitled to the rent-charge.

Irregularity
not to vitiate
proceedings.

“XIX. And be it enacted, that where any distress shall be made for any rent-charge payable under the said recited acts or any of them, or this act, and justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent, in the conduct, sale, or disposition of the distress, the distress itself shall not be therefore deemed to be unlawful, nor the party making it deemed a trespasser from the beginning, but the party aggrieved by such unlawful act or irregularity may recover full satisfaction for the special damage in an action upon the case; provided nevertheless, that no plaintiff shall recover in any action for any such unlawful act or irregularity, if ten days notice in writing shall not have been given to the defendant by the plaintiff of his intention to bring such action before the commencement thereof, or if tender of sufficient amends has been made by the party distraining, or his agent, before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

Act to be con-
strued with
6 & 7 Gul. 4,
c. 71.
Application of
certain pro-
visions.

“XX. And be it enacted, that this act shall be construed with and as part of the first-recited act, as amended by the several acts passed for the amendment thereof and by this act; and that all provisions in any of the said acts relating to land of copyhold tenure shall apply to land of customary tenure, or any other tenure subject to arbitrary fine; and that all provisions in the said acts or in the

act relating to glebe land shall apply to all land holden by any spiritual person in right of his benefice. STAT. 5 & 6 VICT. c. 54.

“XXI. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.” Act may be amended.

CXVI. STAT. 5 & 6 VICTORIÆ, c. 58. A.D. 1842.

STAT. 5 & 6 VICT. c. 58.

“An Act for further suspending, until the first day of October, One thousand eight hundred and forty-three, the Operation of the new Arrangement of Dioceses, so far as it affects the existing Ecclesiastical Jurisdictions.”

“Whereas an act was passed in the seventh year of the reign of his late majesty, intituled, ‘An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage;’ and the said act contains certain temporary provisions relating to the state and jurisdiction of all the ecclesiastical courts in England and Wales: and whereas the said temporary provisions, having been from time to time continued by certain other acts of parliament, were further continued, together with a further provision respecting the visitations of bishops and archdeacons, and now stand continued by an act passed in the fifth year of her majesty’s reign, intituled, ‘An Act to explain and amend two several Acts relating to the Ecclesiastical Commissioners for England,’ until the first day of August next, and, if parliament shall be then sitting, until the end of the then session of parliament: and whereas it is expedient that the said temporary provisions, and such further provisions as aforesaid, should be further continued for a limited time: be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that so much of the last-recited act as relates to the said temporary provisions, and to the visitations of bishops and archdeacons, shall continue and be in force until the first day of October in the year one thousand eight hundred and forty-three. 6 & 7 Gul. 4, c. 77, ss. 20 & 25.

4 & 5 Vict. c. 39, s. 28.

Existing ecclesiastical courts not to be affected by diocesan changes for another year.

Act may be amended this session.

“II. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.”

CXVII. STAT. 5 & 6 VICTORIÆ, CAP. LXI. [IRELAND.] A.D. 1842.

STAT. 5 & 6 VICT. CAP. LXI. [IR.]

“An Act for authorizing the Conveyance of a Piece of Land upon which a Church at Kingstown, in the County and Diocese of Dublin and Parish of Monkstown, has been erected, and for providing for the due Celebration of Divine Service in the said Church, and for assigning a District thereto.”

CXVIII. STAT. 5 & 6 VICTORIÆ, c. 65. A.D. 1842.

STAT. 5 & 6 VICT. c. 65.

“An Act to divide the Forest of Dean, in the County of Gloucester, into Ecclesiastical Districts.”

“Whereas her majesty’s forest of Dean in the hundred of Saint Briavel’s, in the county of Gloucester, is extra-parochial, and contains a population of ten thousand persons and upwards, and it is expedient that such part thereof as is after mentioned should be divided into ecclesiastical districts, in order to enable the spiritual persons who may serve the churches or chapels therein to perform all ecclesiastical duties within such districts, and for the due ecclesiastical superintendence of such districts, and the preservation and improvement of the religious and moral habits of the persons residing therein; and whereas three churches or chapels have been built within the said forest, which have been set apart and consecrated for the performance of divine service according to the rites and ceremonies of the united church of England and Ireland as by law established, (that is to say,) Christchurch chapel, Holy Trinity chapel, and Saint Paul’s chapel; and it is intended to build a church or chapel for the performance of divine service, according to the rites and ceremonies of the said united church aforesaid, at or near Cinderford in the said

STAT. 5 & 6
VICT. C. 65.

forest, by and out of funds subscribed or to be subscribed by certain well-disposed individuals; and whereas Christchurch chapel was built from funds voluntarily contributed; and the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy having granted certain monies to the said chapel, part of the same were invested in lands by the said governors for the augmentation of the endowment of the said chapel, and the remainder was invested by the said governors, in their names, in the purchase of the sum of one hundred and seventeen pounds thirteen shillings and seven-pence three per centum reduced bank annuities, for the augmentation of the endowment of the said chapel; and whereas the annual income of the said chapel, after deducting the usual outgoing, is one hundred and eighteen pounds ten shillings and sixpence, or thereabouts; and whereas the chapel of the Holy Trinity was built from funds collected by voluntary contributions, and was augmented by the said governors with the sum of two thousand two hundred pounds out of the parliamentary grant, to which the sum of one hundred pounds was added by the minister of the said chapel, and the sum of one hundred pounds was added by the Pynecombe charity, and the further sum of three hundred pounds was added by the governors of the bounty of Queen Anne, making together the sum of two thousand seven hundred pounds, which was invested in the purchase of three thousand and fifty-five pounds three shillings and two-pence three per centum reduced bank annuities, now standing in the names of the said governors, producing annually the sum of ninety-one pounds thirteen shillings; and whereas Saint Paul's chapel was built from funds voluntarily contributed, and the endowment of the minister thereof consists of the sum of two thousand four hundred and eighty-nine pounds seven shillings and ten-pence three per centum reduced bank annuities, standing in the names of the governors of the bounty of Queen Anne, producing an annual income of seventy-four pounds thirteen shillings and sixpence; and whereas five acres of land, parcel of the hereditary revenues of the crown, were granted to trustees for the purposes of the sites of each of the said three chapels and the burial grounds thereof respectively, and for the sites of the residences of the ministers thereof, and otherwise for their benefit respectively; and whereas in the year one thousand eight hundred and thirty the sum of eight hundred and forty-three pounds fifteen shillings sterling was invested by the commissioners of his majesty's woods, with consent of the commissioners of the Treasury, in the purchase of the sum of one thousand pounds three per centum consolidated bank annuities, in the names of the then first commissioner of his majesty's woods and the Bishop of Gloucester, upon trust for the purpose for ever thereafter to apply the dividends of such stock towards the repairs of the fabrics of the said three chapels so built as aforesaid; and whereas on the endowment of the said chapel of Saint Paul the right of presentation of the minister thereto was reserved to the Bishop of Gloucester for the time being, and the said chapel is now served by a minister or curate appointed by the said bishop; and whereas the right of patronage or nomination to the said chapels of Christchurch and Holy Trinity is now vested in the Right Honourable Nicholas Baron Bexley, and the Right Honourable George Gough Baron Calthorpe, and the Reverend Charles Bryan, clerk, the majority of whom, in consideration of the addition to the endowment to the said chapels by virtue of this act, have consented that the patronage of the said chapels shall for ever hereafter be vested in her majesty, her heirs and successors; and whereas, in order to provide a decent maintenance for the ministers of the said three chapels so built, and of the said chapel intended to be built at Cinderford, it is expedient that the commissioners of her majesty's woods, forests, land revenues, works, and buildings for the time being, for and on behalf of her majesty, should be authorized to make such additional endowments to the said three chapels, as to make up the net annual income of the ministers thereof respectively to the annual sum of one hundred and fifty pounds, as after mentioned, and also to enable the said chapel to be built at Cinderford with the annual sum of one hundred and fifty pounds, as after mentioned; may it therefore please your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this

present parliament assembled, and by the authority of the same, that her majesty's commissioners for building new churches shall, within two years from the passing of this act, with the consent of the Bishop of Gloucester and Bristol for the time being, (within whose diocese the said forest is,) and of any two of the commissioners of her majesty's woods, forests, land revenues, works, and buildings, to be signified in writing under their hands and seals, divide all such part of the said forest of Dean and hundred of Saint Briavel's, as is extra-parochial, and bounded on or towards the north by the parishes of Ruardean, Hope Mansel, Weston-under-Penyard, and Lea, on or towards the north-east by the parishes of Mitchel Dean and Abinghall, on or towards the east by the parishes of Flaxley, Westbury, Newland, Little Dean, the hamlet of Lea, the said parish of Flaxley, and the said parish of Little Dean, on or towards the east by the parish of Newnham, on or towards the south-east by the parishes of Awre and Lydney, on or towards the south, south-west, and part west by the parish of Newland, and on or towards the west and north-west by the parish of English Bicknor, into separate districts for ecclesiastical purposes, and shall set out such districts by metes and bounds; and one of such districts shall contain the said chapel of Christchurch, and shall be called the ecclesiastical district of Christchurch; one other of such districts shall contain the said chapel of Holy Trinity, and shall be called the ecclesiastical district of Holy Trinity; one other of such districts shall contain the said chapel of Saint Paul, and shall be called the ecclesiastical district of Saint Paul; and one other of such districts shall contain the said chapel to be built at Cinderford aforesaid, and shall be called the ecclesiastical district of Saint John; and the instrument ascertaining and setting out the said districts shall be registered in the registry of the Bishop of the diocese of Gloucester and Bristol, and enrolled in the office of Land Revenue Records and Enrolments; and when such instrument shall have been so registered and enrolled, the said districts shall be taken and considered as ecclesiastical districts attached to the said chapels therein respectively, in all respects as if the same districts had been divided and made by her majesty's commissioners for building new churches under the powers vested in them by law; and all laws and provisions applicable or to be made applicable to district parishes, set out and divided by such commissioners, shall apply to the districts so to be set out in pursuance of this act, save and except as is otherwise provided for by this act; provided always, that until the said intended chapel at Cinderford has been built and consecrated, her majesty's commissioners for building new churches shall not assign an ecclesiastical district thereto; and if such intended chapel shall not be built and consecrated within two years from the passing of this act, it shall in that case be lawful for the said commissioners, and they are hereby required, to assign such ecclesiastical district within two years after such intended chapel has been built and consecrated.

"II. And be it enacted, that the said chapels to which the said districts shall be assigned shall, from and after such registry and enrolment, be deemed perpetual curacies, and the ministers of the said chapels shall be perpetual curates of such districts; and each of such curacies shall be considered in law as a benefice presentative, so far only as that the licence thereto shall operate in the same manner as institution to any such benefice, and shall render voidable other livings in like manner as institution to any such benefice; and the spiritual persons now or hereafter serving the same shall be considered as the incumbents thereof respectively; and such incumbents thereof, from the time of such registry and enrolment as aforesaid, shall have perpetual succession, and shall be and are hereby declared to be bodies politic and corporate, and may receive and take endowments in land or tithes, or both, or any such augmentation as shall be granted to them or their successors; and all lands and other endowments now vested in any trustees or trustee for the ministers of the said chapels respectively, (other than the said funds in the names of the said governors of the bounty of Queen Anne,) and the said chapels and burial grounds, and the sites thereof, shall, from and after such registry and enrolment as aforesaid, be vested in the ministers of the said chapels respectively, and their successors respectively, for ever, in the same manner as the

STAT. 5 & 6
VICT. c. 65.

The commissioners for building new churches to divide the forest of Dean into ecclesiastical districts.

The chapels to which districts shall be assigned to be perpetual curacies, and incumbents to have perpetual succession, and empowered to receive endowments in land or tithes.

STAT. 5 & 6
VICT. c. 65.

Marriages,
baptisms,
burials, &c.
may be so-
lemnized in
the chapels.

The commis-
sioners of
woods, on
behalf of her
majesty, to
augment the
endowments of
the three ex-
isting chapels
and to endow
an intended
new chapel
when built and
consecrated.

same would be vested in the incumbent of a pariah; and all laws in force relating to ecclesiastical property shall apply to such premises; and all persons presenting or appointing any such incumbents shall respectively be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions, regulations, penalties, or forfeitures contained in any act of parliament from time to time in force relating thereto; and in case of any failure in presenting or nominating any such incumbent for the space of six calendar months, such presentation or appointment shall lapse, as in cases of actual benefices; and all the said chapels shall be subject to the jurisdiction of the Bishop of Gloucester and Bristol and the Archdeacon of Gloucester, and shall be within the forest deanery.

“III. And be it enacted, that marriages, baptisms, churchings, and burials may be solemnized and performed in the said chapels, and fees, to be from time to time fixed and allowed by the Bishop of Gloucester and Bristol for the time being, may be taken for the same by the respective incumbents for the time being of the said chapels and intended chapel, and all acts of parliament, laws and customs relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, and offerings, shall apply to such districts, when the same shall be registered and enrolled as aforesaid, in like manner in every respect as if the same districts were ancient and distinct parishes, and the said chapels and intended chapel were respectively parish churches in law, to all intents and purposes.

“IV. And be it enacted, that the commissioners of her majesty's woods, forests, land revenues, works, and buildings shall, by and out of any monies which may from time to time be at the disposal of the said commissioners, purchase, in the names of the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, such a sum of the stock called three per centum reduced bank annuities as will be sufficient when purchased to produce the annual dividend of thirty-one pounds nine shillings and sixpence, and such stock shall for ever thereafter form part of the endowment of the said chapel of Christchurch, and the dividends thereof be paid to the minister or perpetual curate of such chapel or benefice; and further shall purchase, in the names of the aforesaid governors, such a further sum of the said stock as will be sufficient when purchased to produce the annual dividend of fifty-eight pounds seven shillings, and such stock shall for ever thereafter form part of the endowment of the said chapel of the Holy Trinity, and the dividends thereof be paid to the minister or perpetual curate of the said chapel or benefice; and further shall purchase, in the names of the said governors, such a further sum of the said stock as will be sufficient when purchased to produce the annual dividend of seventy-five pounds six shillings and sixpence, and such stock shall for ever thereafter form part of the endowment of the said chapel of Saint Paul, and the dividends thereof be paid to the minister or perpetual curate of the said chapel or benefice, to the end that the endowments of the said three chapels may be augmented so as to produce the annual sum of one hundred and fifty pounds each; and shall, (when and after the said chapel at Cinderford shall have been built and consecrated,) purchase, in the names of the aforesaid governors, such a further sum of the said stock as will be sufficient when purchased to produce the annual dividend of one hundred and fifty pounds, and the dividends thereof be paid to the minister or perpetual curate of the said chapel or benefice; and all such several endowments may be sold, and the produce thereof applied in all respects as the governors of the bounty of Queen Anne are authorized to dispose of any funds appropriated by them to the augmentation of the endowment of any benefice; and until such stocks shall be so purchased the said commissioners of her majesty's woods, forests, land revenues, works, and buildings shall, on behalf of her majesty, out of any monies which may be from time to time at their disposal, pay the said annual sums of thirty-one pounds nine shillings and sixpence, fifty-eight pounds seven shillings, seventy-five pounds six shillings and sixpence, and one hundred and fifty pounds, half-yearly to the said governors, to be applied in the same manner as is before directed with respect to the dividends of the said sums of stock so to be purchased as aforesaid; such payments, as regards the three exist-

chapels of Christchurch, Holy Trinity, and Saint Paul, to commence from the passing of this act, and as regards the intended chapel at Cinderford, to commence from and after the time that the same shall have been built and consecrated, and a minister or curate presented and inducted thereto, and to continue until the purchase of such stock.

“V. And be it enacted, that the said commissioners of her majesty’s woods, forests, land revenues, works, and buildings shall, out of such monies as aforesaid, when the said chapel at Cinderford aforesaid shall have been built and consecrated, purchase the sum of three hundred and thirty-three pounds six shillings and eight pence three per centum consolidated bank annuities, in the names of the first commissioner of woods and the Bishop of Gloucester and Bristol for the time being, and which said sum of three hundred and thirty-three pounds six shillings and eight pence, and the said sum of one thousand pounds, like stock, so now standing in the names of the said first commissioner and the said bishop, shall be held upon trust to apply the dividends thereof as a fund for the maintaining and repairing the fabrics of the aforesaid three chapels, and the said chapel at Cinderford, when built and consecrated, such dividends to be applied in equal shares; and any part of such dividends may, at the discretion of such first commissioner and bishop, be applied in insuring the said chapels, or any of them, from loss or damage by fire.

“VI. And be it enacted, that it shall be lawful for the said commissioners of her majesty’s woods, forests, land revenues, works, and buildings, or any two of them, on behalf of her majesty, her heirs and successors, to grant to the respective ministers of the said chapels, and their successors respectively, any part of the hereditary revenues of the crown within the said forest, to be appropriated for the said chapels, as after mentioned; (that is to say,) any part not exceeding one acre for each of the said three chapels already built, to be applied for the purpose of increasing the sites of the burial grounds thereto belonging, and any part not exceeding six acres as a site for the intended chapel at Cinderford and the burial ground thereof, and the parsonage house and garden for the minister thereof.

“VII. And be it enacted, that the right of patronage or nomination of or to the said chapel of Christchurch, and of or to the said chapel of Holy Trinity, and of or to the said new chapel to be built at Cinderford, shall be for ever vested in the queen’s most excellent majesty, her heirs and successors.

“VIII. And be it enacted, that the right of patronage or nomination to the said chapel of Saint Paul shall be vested in the Lord Bishop of Gloucester and Bristol and his successors for ever.

“IX. Saving always to the queen’s most excellent majesty, her heirs and successors, all such estate, right, title, interest, privilege, prerogative, and benefit, (other than and except the rights and interests hereby expressly varied, barred, destroyed, or extinguished,) as she or they had or enjoyed in, to, or out of or from the said forest, and every part thereof, before the passing of this act, or could or might have held or enjoyed in case this act had not been passed.

“X. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.”

STAT. 5 & 6
VICT. c. 65.

Commissioners of woods to augment the existing fund set apart for the maintenance and repair of the chapels.

Commissioners of woods may make grants for increasing sites of existing burial grounds, and of intended chapel and burial ground, and parsonage house, &c.

Patronage of Christchurch, Holy Trinity, and intended new chapel, vested in her majesty.

Patronage of Saint Paul’s.

Saving rights of the crown.

Act may be amended this session.

CXIX. STAT. 5 & 6 VICTORIÆ, c. 79. A.D. 1842.

STAT. 5 & 6
VICT. c. 79.

“An Act to repeal the Duties payable on Stage Carriages and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other Duties in lieu thereof; and also to amend the Laws relating to the Stamp Duties.”

“Whereas by an act passed in the second and third years of the reign of her present majesty, intituled, ‘An Act to reduce certain of the Duties now payable on Stage Carriages,’ certain duties contained in the schedule to the said act annexed were granted and imposed, and are now payable for and in respect of every mile which a stage carriage shall be licensed to travel; and whereas by an act passed in the second and third years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to repeal the Duties under the Management of the Commissioners of Stamps, on Stage Carriages, and on Horses let for hire in Great

2 & 3 Vict.
c. 66.

2 & 3 Gul. 4,
c. 120.

STAT. 5 & 6
VICT. c. 65.

Marriages,
baptisms,
burials, &c.
may be so-
lemnized in
the chapels.

The commis-
sioners of
woods, on
behalf of her
majesty, to
augment the
endowments of
the three ex-
isting chapels
and to endow
an intended
new chapel
when built and
consecrated.

same would be vested in the incumbent of a parish; and all laws in force relating to ecclesiastical property shall apply to such premises; and all persons presenting or appointing any such incumbents shall respectively be subject to all jurisdictions and laws, ecclesiastical or common, and to all provisions, regulations, penalties, or forfeitures contained in any act of parliament from time to time in force relating thereto; and in case of any failure in presenting or nominating any such incumbent for the space of six calendar months, such presentation or appointment shall lapse, as in cases of actual benefices; and all the said chapels shall be subject to the jurisdiction of the Bishop of Gloucester and Bristol and the Archdeacon of Gloucester, and shall be within the forest deanery.

“III. And be it enacted, that marriages, baptisms, churchings, and burials may be solemnized and performed in the said chapels, and fees, to be from time to time fixed and allowed by the Bishop of Gloucester and Bristol for the time being, may be taken for the same by the respective incumbents for the time being of the said chapels and intended chapel, and all acts of parliament, laws and customs relating to publishing banns of marriage, marriages, christenings, churchings, and burials, and the registering thereof, and to all ecclesiastical fees, oblations, and offerings, shall apply to such districts, when the same shall be registered and enrolled as aforesaid, in like manner in every respect as if the same districts were ancient and distinct parishes, and the said chapels and intended chapel were respectively parish churches in law, to all intents and purposes.

“IV. And be it enacted, that the commissioners of her majesty's woods, forests, land revenues, works, and buildings shall, by and out of any monies which may from time to time be at the disposal of the said commissioners, purchase, in the names of the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, such a sum of the stock called three per centum reduced bank annuities as will be sufficient when purchased to produce the annual dividend of thirty-one pounds nine shillings and sixpence, and such stock shall for ever thereafter form part of the endowment of the said chapel of Christchurch, and the dividends thereof be paid to the minister or perpetual curate of such chapel or benefice; and further shall purchase, in the names of the aforesaid governors, such a further sum of the said stock as will be sufficient when purchased to produce the annual dividend of fifty-eight pounds seven shillings, and such stock shall for ever thereafter form part of the endowment of the said chapel of the Holy Trinity, and the dividends thereof be paid to the minister or perpetual curate of the said chapel or benefice; and further shall purchase, in the names of the said governors, such a further sum of the said stock as will be sufficient when purchased to produce the annual dividend of seventy-five pounds six shillings and sixpence, and such stock shall for ever thereafter form part of the endowment of the said chapel of Saint Paul, and the dividends thereof be paid to the minister or perpetual curate of the said chapel or benefice, to the end that the endowments of the said three chapels may be augmented so as to produce the annual sum of one hundred and fifty pounds each; and shall, (when and after the said chapel at Cinderford shall have been built and consecrated,) purchase, in the names of the aforesaid governors, such a further sum of the said stock as will be sufficient when purchased to produce the annual dividend of one hundred and fifty pounds, and the dividends thereof be paid to the minister or perpetual curate of the said chapel or benefice; and all such several endowments may be sold, and the produce thereof applied in all respects as the governors of the bounty of Queen Anne are authorized to dispose of any funds appropriated by them to the augmentation of the endowment of any benefice; and until such stocks shall be so purchased the said commissioners of her majesty's woods, forests, land revenues, works, and buildings shall, on behalf of her majesty, out of any monies which may be from time to time at their disposal, pay the said annual sums of thirty-one pounds nine shillings and sixpence, fifty-eight pounds seven shillings, seventy-five pounds six shillings and sixpence, and one hundred and fifty pounds, half-yearly to the said governors, to be applied in the same manner as is before directed with respect to the dividends of the said sums of stock so to be purchased as aforesaid; such payments, as regards the three existing

chapels of Christchurch, Holy Trinity, and Saint Paul, to commence from the passing of this act, and as regards the intended chapel at Cinderford, to commence from and after the time that the same shall have been built and consecrated, and a minister or curate presented and inducted thereto, and to continue until the purchase of such stock.

“V. And be it enacted, that the said commissioners of her majesty’s woods, forests, land revenues, works, and buildings shall, out of such monies as aforesaid, when the said chapel at Cinderford aforesaid shall have been built and consecrated, purchase the sum of three hundred and thirty-three pounds six shillings and eight pence three per centum consolidated bank annuities, in the names of the first commissioner of woods and the Bishop of Gloucester and Bristol for the time being, and which said sum of three hundred and thirty-three pounds six shillings and eight pence, and the said sum of one thousand pounds, like stock, so now standing in the names of the said first commissioner and the said bishop, shall be held upon trust to apply the dividends thereof as a fund for the maintaining and repairing the fabrics of the aforesaid three chapels, and the said chapel at Cinderford, when built and consecrated, such dividends to be applied in equal shares; and any part of such dividends may, at the discretion of such first commissioner and bishop, be applied in insuring the said chapels, or any of them, from loss or damage by fire.

“VI. And be it enacted, that it shall be lawful for the said commissioners of her majesty’s woods, forests, land revenues, works, and buildings, or any two of them, on behalf of her majesty, her heirs and successors, to grant to the respective ministers of the said chapels, and their successors respectively, any part of the hereditary revenues of the crown within the said forest, to be appropriated for the said chapels, as after mentioned; (that is to say,) any part not exceeding one acre for each of the said three chapels already built, to be applied for the purpose of increasing the sites of the burial grounds thereto belonging, and any part not exceeding six acres as a site for the intended chapel at Cinderford and the burial ground thereof, and the parsonage house and garden for the minister thereof.

“VII. And be it enacted, that the right of patronage or nomination of or to the said chapel of Christchurch, and of or to the said chapel of Holy Trinity, and of or to the said new chapel to be built at Cinderford, shall be for ever vested in the queen’s most excellent majesty, her heirs and successors.

“VIII. And be it enacted, that the right of patronage or nomination to the said chapel of Saint Paul shall be vested in the Lord Bishop of Gloucester and Bristol and his successors for ever.

“IX. Saving always to the queen’s most excellent majesty, her heirs and successors, all such estate, right, title, interest, privilege, prerogative, and benefit, (other than and except the rights and interests hereby expressly varied, barred, destroyed, or extinguished,) as she or they had or enjoyed in, to, or out of or from the said forest, and every part thereof, before the passing of this act, or could or might have held or enjoyed in case this act had not been passed.

“X. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.”

CXIX. STAT. 5 & 6 VICTORIÆ, c. 79. A.D. 1842.

“An Act to repeal the Duties payable on Stage Carriages and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other Duties in lieu thereof; and also to amend the Laws relating to the Stamp Duties.”

“Whereas by an act passed in the second and third years of the reign of her present majesty, intituled, ‘An Act to reduce certain of the Duties now payable on Stage Carriages,’ certain duties contained in the schedule to the said act annexed were granted and imposed, and are now payable for and in respect of every mile which a stage carriage shall be licensed to travel; and whereas by an act passed in the second and third years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to repeal the Duties under the Management of the Commissioners of Stamps, on Stage Carriages, and on Horses let for hire in Great

STAT. 5 & 6
VICT. c. 65.

Commissioners of woods to augment the existing fund set apart for the maintenance and repair of the chapels.

Commissioners of woods may make grants for increasing sites of existing burial grounds, and of intended chapel and burial ground, and parsonage house, &c.

Patronage of Christchurch, Holy Trinity, and intended new chapel, vested in her majesty.

Patronage of Saint Paul’s.

Saving rights of the crown.

Act may be amended this session.

STAT. 5 & 6
VICT. c. 79.

2 & 3 Vict.
c. 66.

2 & 3 Gul. 4,
c. 120.

STAT. 5 & 6
VICT. c. 79.

55 Geo. 3,
c. 184.

Duties re-
pealed :

on stage car-
riages ;

railway pas-
sengers ;

bills of lading ;

charter-party ;

collations, pre-
sentations, &c.
to benefices.

New duties to
be levied, as
set forth in the
schedule.

Britain, and to grant other Duties in lieu thereof; and also to consolidate and amend the Laws relating thereto, certain duties contained in the schedule (A) to the last-mentioned act annexed were granted for and in respect of every licence for keeping, using, and employing any stage carriage, and for and in respect of all passengers conveyed for hire along any railway in Great Britain in or upon carriages drawn or impelled by the power of steam or otherwise: and whereas by an act passed in the fifty-fifth year of the reign of King George the Third, intituled, 'An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, and the Duties on Fire Insurances, and on Legacies and Successions to Personal Estate upon Intestacies, now payable in Great Britain; and for granting other Duties in lieu thereof,' certain stamp duties were granted and imposed, amongst others, upon bills of lading and charter-parties in Great Britain, and upon instruments of collation, donation, presentation, and institution of and to any ecclesiastical benefice, dignity, or promotion in England, and upon certain licences hereinafter mentioned; and it is expedient that all the said duties should be repealed, and others granted in lieu thereof; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the commencement of this act the aforesaid duties granted and imposed by the said act passed in the second and third years of her majesty's reign for and in respect of every mile which any stage carriage shall be licensed to travel, and the aforesaid duties granted and imposed by the said act passed in the second and third years of the reign of his late majesty King William the Fourth, for and in respect of every licence for keeping, using, or employing any stage carriage, and for and in respect of passengers conveyed for hire along any railway in Great Britain, and the duties hereinafter mentioned, granted and imposed by the said act passed in the fifty-fifth year of the reign of King George the Third, (that is to say,) the duty of three shillings upon any bill of lading of or for any goods, merchandize, or effects to be exported or carried coastwise, and the several duties of one pound fifteen shillings and one pound five shillings upon any charter-party, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing between the captain, master, or owner of any ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel, and the several and respective duties of twenty pounds and ten pounds upon any collation, donation, or presentation of or to any ecclesiastical benefice, dignity, or promotion in England, and the several and respective duties of two pounds, thirty pounds, and fifteen pounds upon any institution in and to any ecclesiastical benefice, dignity, or promotion in England, and the duty of two pounds upon any licence which shall pass the seal of any archbishop, bishop, chancellor, or other ordinary, or of any ecclesiastical court in England, so far as relating to any licence to hold a perpetual curacy in England, not proceeding upon a nomination, shall severally cease and determine, and the same shall be and are hereby repealed, save and except such of the said respective duties, or so much and such part or parts thereof respectively as shall have become due or payable or have been incurred before or upon the day appointed for the commencement of this act with regard to such duties respectively, all which said duties or parts of duties so due or incurred, or remaining to be paid as aforesaid, shall be recoverable by the same ways and means, and with and under the same penalties, and in the same manner, in all respects, as if this act had not been made.

"II. And be it enacted, that in lieu of the duties by this act repealed there shall be raised, levied, collected, and paid, unto and for the use of her majesty, her heirs and successors in and throughout Great Britain, for and in respect of every licence for keeping, using, or employing any stage carriage in Great Britain, and for and in respect of every stage carriage, and for and in respect of the passengers conveyed upon any railway, and also for and in respect of the several instruments, matters, and things mentioned and described in the schedule to this act annexed, or for or in respect of the vellum, parchment, or paper upon which such instruments

matters, and things, or any of them, shall be written or printed, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the same schedule; and that the said schedule shall be deemed and taken to be a part of this act; and that all the said duties shall be under the care and management of the commissioners of stamps and taxes for the time being, and shall be denominated and deemed to be stamp duties.

“XXIII. And whereas by the said recited act of the fifty-fifth year of the reign of King George the Third the commissioners of the Treasury are authorized to allow time for making claims for a return of stamp duty paid upon probates of wills and letters of administration in cases where an executor or administrator hath paid debts out of the personal or moveable estate of any deceased person, and it is expedient to authorize the commissioners of stamps and taxes to allow time for making such claims; be it therefore enacted, that where it shall be proved by oath and proper vouchers, to the satisfaction of the said commissioners of stamps and taxes, that an executor or administrator hath paid debts due and owing from the deceased, and payable by law out of his or her personal or moveable estate, to such an amount as, being deducted from the amount or value of the estate and effects of the deceased for or in respect of which a probate or letters of administration shall have been granted in England after the thirty-first day of August, one thousand eight hundred and fifteen, or which shall be included in any inventory duly exhibited and recorded after that day in a commissary court in Scotland, shall reduce the same to a sum which, if it had been the whole gross amount or value of such estate or effects, would have occasioned a less stamp duty to be paid on such probate or letters of administration or inventory than shall have been actually paid thereon, it shall be lawful for the said commissioners of stamps and taxes and they are hereby required to return the difference, provided the same shall be claimed within three years after the date of such probate or letters of administration, or the recording of such inventory as aforesaid; but where, by reason of any proceeding at law or in equity, the debts due from the deceased shall not have been ascertained and paid, or the effects of the deceased shall not have been recovered and made available, and in consequence thereof the executor or administrator shall be prevented from claiming such return of duty as aforesaid within the said term of three years, it shall be lawful for the said commissioners of stamps and taxes to allow such further time for making the claim as may appear to them to be reasonable under the circumstances of the case.”

STAT. 5 & 6
VICT. c. 79.

To be under the commissioners of stamps and taxes.

A return of duty on probates, &c. to be made in respect of debts, if claimed in three years.

SCHEDULE.

And also the duties on the instruments, matters, and things herein mentioned and described; (that is to say,)		Duty.		
		£	s.	d.
Collation or appointment by any archbishop or bishop to any cathedral, prebend, dignity, office, or honorary canonry, having no endowment or emolument attached or belonging thereto		2	0	0
Collation by any archbishop or bishop to any ecclesiastical benefice, dignity, or promotion in England, other than as aforesaid		7	0	0
And where the net yearly value of such benefice, dignity, or promotion shall amount to 300 <i>l.</i> or upwards, then for every 100 <i>l.</i> thereof, over and above the first 200 <i>l.</i> , a further duty of.....		5	0	0
Donation or presentation by her majesty, or her heirs or successors, of or to any ecclesiastical benefice, dignity, or promotion in England.....		5	0	0
And where the net yearly value of such benefice, dignity, or promotion shall amount to 300 <i>l.</i> or upwards, then for every 100 <i>l.</i> thereof, over and above the first 200 <i>l.</i> , a further duty of.....		5	0	0
Institution granted by any archbishop, bishop, chancellor, or other ordinary, or by any ecclesiastical court, to any ecclesiastical benefice, dignity, or promotion in England:				
Where the same shall proceed upon a presentation.....		2	0	0

STAT. 5 & 6
VICT. C. 79.

And where it shall proceed upon the petition of the patron to be himself admitted and instituted	2 s. d.
And if in the latter case the net yearly value of such benefice, dignity, or promotion shall amount to 300 <i>l.</i> or upwards, then for every 100 <i>l.</i> thereof, over and above the first 200 <i>l.</i> , a further duty of	7 0 0
<i>Note.</i> —The value of such benefice, dignity, or promotion in any and every of the cases aforesaid to be ascertained by the certificate of the ecclesiastical commissioners for England: provided always, that two or more benefices episcopally or permanently united shall be deemed one benefice only.	5 0 0
Licence to hold a perpetual curacy not proceeding upon a nomination	3 10 0

STAT. 5 & 6
VICT. C. 82.

CXX. STAT. 5 & 6 VICTORIÆ, C. 82. A.D. 1842.

"An Act to assimilate the Stamp Duties in Great Britain and Ireland, and to make Regulations for collecting and managing the same, until the tenth day of October, One thousand eight hundred and forty-five."

Marriage
licences ex-
empt, if not
special.
Duties granted
as specified in
schedule
annexed.

"IV. Provided also, and be it enacted, that no licence for marriage in Ireland, if not special, shall be liable to any stamp duty.

"VI. And be it enacted, that from and after the commencement of this act, in lieu and instead of certain other of the duties by this act repealed, there shall be granted, raised, levied, collected, and paid, in Ireland, unto and for the use of her majesty, her heirs and successors, for and in respect of the several instruments, articles, matters, and things mentioned, enumerated, and described in the schedule to this act annexed, (except those standing under the head of 'exemptions,') the several sums of money and duties respectively inserted, described, and set forth in words and figures against the same respectively in the said schedule; and that the said schedule, and every clause, regulation, matter, and thing therein respectively contained, shall be deemed, taken, and considered as part of this act.

Every notary
public in Ire-
land to deliver
a note con-
taining his
place of abode,
&c. to the
stamp office in
Dublin, and
take out a
certificate
yearly.

"XV. And be it enacted, that every person who shall act as a notary public in Ireland shall annually, before he shall so act, deliver or cause to be delivered to the proper officer at the stamp office in Dublin a paper or note in writing containing the name and usual place of residence of such person, and stating whether he has been admitted or enrolled, or authorized to act, or has acted, as a notary public three years or not; and thereupon, and upon payment of the duty which shall then be by law imposed upon him in respect of such certificate as is herein mentioned, according to the place of his residence, and the time he shall have been admitted or enrolled, or authorized to act or has acted, as a notary public, as stated in such paper or note, every such person shall be entitled to a certificate, duly stamped, to denote the payment of the said duty by him, describing him in such certificate according to the description contained in the said note so given in by him, which certificate the commissioners of stamps and taxes, or their proper officer, shall cause to be forthwith issued under the hand of such officer, in such manner and form as the said commissioners shall devise; and every such certificate shall bear date on the day on which the same shall be issued, and shall be in force from such day until the twenty-fifth day of March next following; and if any person required by this act to obtain such annual certificate as aforesaid shall, after the twenty-fifth day of March, one thousand eight hundred and forty-three, act as a notary public, or do or perform any notarial act whatever, without having obtained and having such certificate then in force, he shall forfeit for every such offence the sum of fifty pounds, and be incapable of maintaining any action or suit in any court of law or equity for the recovery of any fee, reward, or disbursement on account of any business done by him as a notary public without having such certificate.

Penalty for
acting without
a certificate,
50*l.*

Any notary or
attorney, &c.
delivering in a
false note as
to his resi-

"XVI. And be it enacted, that if any notary public, or any attorney, solicitor, proctor, agent, or procurator, or any sworn clerk, clerk in court, or other clerk or officer required by law to take out an annual certificate, shall deliver in, or cause to be delivered in, to the commissioners of stamps and taxes, or to their officer, as

the stamp office in Dublin, any paper or note in writing containing a place of residence as the place of his residence, contrary to the directions of this act, or any other act requiring the same, or which shall not be the true place of his residence within the intent and meaning of this act, or containing any statement, matter, or thing which shall not be true, with intent to evade the payment of the higher duty by this act granted on certificates to be taken out by attorneys and others, every such person shall for every such offence forfeit the sum of fifty pounds: provided always, that, to prevent evasion of such higher duties, if any person required to obtain any such certificate shall ordinarily carry on his business within the city of Dublin, or within the distance of three miles therefrom, or shall, for the space of forty days or more in any one year, reside within the limits aforesaid, every such person shall be deemed to be resident within such limits within the true intent and meaning of this act, and shall be liable to the higher duties hereby imposed on such certificates, notwithstanding he may at other times in such year reside elsewhere without the limits aforesaid; and provided that any certificate taken out by any person as aforesaid chargeable with or upon payment of a lower duty than is hereby required or ought to be paid shall not be deemed to be a certificate within the meaning of this or any other act, but the same shall be null and void.

“XXXV. And for better securing the duties on probates of wills and letters of administration by this act granted, be it enacted, that from and after the commencement of this act, if any person shall take possession of and in any manner administer any part of the personal estate and effects of any person deceased, without obtaining probate of the will or letters of administration of the estate and effects of the deceased within six calendar months after his decease, or within two calendar months after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such, which shall not be ended within four calendar months after the death of the deceased, every person so offending shall forfeit the sum of one hundred pounds, and also a further sum at and after the rate of ten pounds per centum on the amount of the stamp duty payable on the probate of the will or letters of administration of the estate and effects of the deceased.

“XXXVI. And be it enacted, that it shall be lawful for the commissioners of stamps and taxes, and they are hereby required to provide a stamp, distinguishable from all other stamps, for the purpose of stamping any piece of vellum, parchment, or paper, whereon any probate of a will or letters of administration shall be ingrossed, printed, or written in relation to any estate in respect whereof any former probate or letters of administration shall have been taken out, and the full amount of the duties payable thereon by any act or acts then in force, according to the full value of such estate, shall have been duly paid and discharged; and in every case where any probate or letters of administration shall have been taken out, duly stamped according to the full value of the estate in respect whereof the same shall have been granted, then and in such case any further or other probate or letters of administration which shall be at any time thereafter applied for in respect of such estate shall and may be issued and granted upon any piece of vellum, parchment, or paper stamped with the stamp provided by the said commissioners in pursuance of this act, for such other probate or letters of administration as aforesaid; and every such other probate or letters of administration, which shall be duly stamped with such stamp as last aforesaid, shall be as available in the law, and of the like force and effect in all respects whatever, as if the vellum, parchment, or paper whereon the same shall be ingrossed, printed, or written had been duly stamped with the stamp denoting the full amount of the duties payable in respect of the probate or letters of administration taken out on the full value of such estate.

“XXXVII. And be it enacted, that the duties by this act granted on legacies and on successions, and on residues and shares of residues, given by the wills or passing by the intestacies of persons deceased, and payable out of their personal estate, shall be accounted for, answered, and paid by the person having or taking the burden of the execution of the will or other testamentary instrument, or the administration of the personal estate of any person deceased, upon retainer for his

STAT. 5 & 6
VICT. c. 82.

dence, &c.
with intent to
evade the
higher duties,
to forfeit 50*l*.
What shall be
deemed a resi-
dence within
the limits re-
quiring the
higher duties.

Penalty for not
proving wills
or taking out
letters of ad-
ministration,
100*l*., and 10*l*.
per centum on
the duty.

Stamp to be
provided for
marking pro-
bates, &c.
relating to any
estate in re-
spect whereof
probate, &c.
shall have been
before taken
out and the
proper duty
paid thereon.

Legacy duty
to be paid by
executors or
administrators
on retaining or
paying lega-
cies.

STAT. 5 & 6
VICT. c. 82.

If duty be not paid, although deducted by the executor, the amount to be a debt to her majesty from executor.

If not deducted by executor, the amount to be a debt to her majesty from both executor and legatee.

Trustees to pay duties on legacies charged on real estate.

In default, the duty to be a debt to her majesty.

What shall be deemed a legacy under this act.

own benefit, or for the benefit of any other person, of any legacy, or any part of any legacy, or of the residue of any personal estate, or any part of such residue, which he shall be entitled so to retain, either in his own right, or in the right or for the benefit of any other person, and also upon delivery, payment, or other satisfaction or discharge whatsoever of any legacy, or any part of any legacy, or of the residue of any personal estate, or any part of such residue, to which any other person shall be entitled; and in case any person, having or taking the burden of such execution or administration as aforesaid, shall retain for his own benefit, or for the benefit of any other person, any legacy or any part of any legacy, or the residue of any personal estate, or any part of such residue, which such person shall be entitled so to retain, either in his own right or in the right or for the benefit of any other person, and upon which any duty shall be chargeable by virtue of this act, not having first paid such duty, or shall deliver, pay, or otherwise howsoever satisfy or discharge any legacy, or any part of any legacy, or the residue of any personal estate, or any part thereof, to which any other person shall be entitled, and upon which any duty shall be chargeable by virtue of this act, having received or deducted the duty so chargeable, then and in every such case the duty which shall be due and payable upon every such legacy, and part of legacy, and residue, and part of residue respectively, and which shall not have been duly paid and satisfied according to the provisions of this act, shall be a debt of such person having or taking the burden of such execution or administration as aforesaid to her majesty, her heirs and successors; and in case any such person, so having or taking the burden of such execution or administration as aforesaid, shall deliver, pay, or otherwise howsoever satisfy or discharge any such legacy or residue, or any part of any such legacy or residue, to or for the benefit of any person entitled thereto, without having received or deducted the duty chargeable thereon, (such duty not having been first duly paid, according to the provisions herein contained,) then and in every such case such duty shall be a debt to her majesty, her heirs and successors, both of the person who shall make such delivery, payment, satisfaction or discharge, and of the person to whom the same shall be made; and that the duties by this act granted upon legacies charged upon or made payable out of any real estate, or out of any monies to arise by the sale of any real estate, or upon residues, or parts or shares of residues, of any such monies, shall be accounted for, answered, and paid by the trustee to whom the real estate shall be devised out of which the legacy or share of any money arising out of the sale, mortgage, or other disposition of such real estate shall be to be paid or satisfied; or if there shall be no trustee, then by the person entitled to such real estate, subject to any such legacy, or by the person empowered or required to pay or satisfy any such legacy: and the said duties shall be retained by the person paying or satisfying any such legacy or share of money, and shall be accounted for, satisfied, and paid, at such times, in such manner, and according to such rules and regulations as are heretofore specified and prescribed in respect of the duties granted on legacies payable out of personal estate; and in case the said duties shall not be paid or satisfied according to the provisions herein contained, then and in every such case such duty shall be a debt to her majesty, her heirs and successors, of and from the trustee of such real estate as aforesaid, or the person entitled thereto, subject to such legacy as aforesaid, and also of and from the person to whom the same shall have been paid, without the duty chargeable thereon having been first deducted.

“XXXVIII. And be it enacted, that every gift by any will or testamentary instrument of any deceased person, which, by virtue of any such will or testamentary instrument, shall have effect or be satisfied out of the personal estate of such person so dying, or out of any personal estate which such person shall have power to dispose of as he shall think fit, or which shall have been charged upon or made payable out of any real estate, or be directed to be satisfied out of any monies to arise by the sale of any real estate, of the person so dying, or which such person may have the power to dispose of, whether the same shall be given by way of annuity or in any other form, shall be deemed and taken to be a legacy within the

true intent and meaning of this act; and every gift which shall have effect as a donation, *mortis causa*, shall also be deemed a legacy within the intent and meaning of this act; and the value of any legacy given by way of annuity, whether payable annually or otherwise, for any life or lives, or for years or other period of time, shall be calculated, and the duty chargeable thereon shall be charged, according to the tables annexed to an act passed in the parliament of Great Britain in the thirty-sixth year of the reign of King George the Third, intituled, 'An Act for repealing certain Duties on Legacies and Shares of Personal Estates, and for granting other Duties thereon, in certain Cases:' provided always, that nothing herein contained shall be construed to extend to the charging with the duties by this act granted any specific sum of money, or any share or proportion thereof, charged by any marriage settlement or deed upon any real estate, in any case in which any such specific sum, or share or proportion thereof, shall be appointed or apportioned by any will or testamentary instrument under any power given for that purpose by any such marriage settlement or deed: provided also, that nothing herein contained shall extend or be construed to extend to charge with duty in Ireland any legacy given for the education or maintenance of poor children in Ireland, or to be applied in support of any charitable institution in Ireland, or for any purpose merely charitable.

"XXXIX. And be it enacted, that every receipt or discharge for any legacy or residue, or part thereof, shall be brought, within the space of twenty-one days after the date thereof, to the head office of the commissioners of stamps and taxes in Dublin, or to some other office to be appointed by the said commissioners for such purpose, to be stamped, paying the duty for the same; and upon such payment, either at the said head office, or any other office to be appointed as aforesaid, the receiver-general, or other proper officer to be appointed for that purpose by the said commissioners, as the case shall require, shall write upon such receipt or discharge an acknowledgment of the payment of the duty so paid in words at length, and bearing date the day on which such payment shall be made, and shall subscribe his name thereto, and enter an account thereof in a book to be provided for that purpose, to the intent that he may be thereby charged with the sum so paid; and in case the duty shall be so paid at the said head office, then the receipt or discharge so brought to be stamped shall be forthwith stamped with such stamp as the case may require; and in case the duty shall be so paid at any other office to be appointed by the said commissioners as aforesaid, the receipt or discharge whereon such acknowledgment of the payment of duty shall be so written and subscribed, shall be transmitted, within the space of twenty-one days from the day of payment of such duty, to the said head office, to be stamped, and the same shall be stamped accordingly with such stamp as aforesaid; and in case the person paying such duty at any such office to be appointed as aforesaid shall be desirous that the same should be transmitted to the said head office by the officer to whom such duty shall be paid, and shall leave the same with such officer for that purpose, such officer shall thereupon sign and deliver an acknowledgment that such receipt or discharge has been left with him for such purpose, and shall transmit such receipt or discharge to such head office to be stamped as aforesaid, and the same shall be sent again to such officer as soon as conveniently may be after the stamping thereof; and such officer shall deliver back the same to the person entitled thereto, upon redelivery to him of the acknowledgment which he shall have given for the same: provided always, that if any such receipt or discharge shall not be so brought to any such office as aforesaid within such space of twenty-one days as aforesaid, it shall nevertheless be lawful to carry such receipt or discharge to the said head office, to be stamped in like manner, within three calendar months after the date thereof, paying the duty for the same, and also the further sum of ten pounds per centum on such duty by way of penalty for not having before paid such duty; on payment of which duty and penalty the said commissioners are hereby authorized and required to stamp such receipt or discharge in the same manner as if the same had been brought to the said office within the space of twenty-one days from the date thereof; and where any such receipt or discharge as aforesaid shall have been signed

STAT. 5 & 6
VICT. c. 82.

36 Geo. 3, c. 52.

Exemption of
legacies to
charities in
Ireland.

Receipts for
legacies to be
stamped with-
in twenty-one
days after the
date.

Penalty if not
stamped with-
in twenty-one
days.

f their respective sees, for any term of years only, and absolute, not exceeding twenty-one years in possession, without any clause or covenant for the renewal thereof, on the first skin or piece of vellum, parchment, or paper of each and every part thereof:

£ s. d. STAT. 5 & 6
VICT. c. 82.

Where the annual amount of the rent reserved or agreed to be reserved (any penal rent, or any increased or reserved rent in the nature of a penal rent, not being included in such amount,) shall not exceed 10*l*. and the fine or consideration for the same shall not exceed 100*l*.

0 5 0

Where the amount

of such Rent			or			of such Fine or Consideration			
shall exceed			and shall not exceed			shall exceed			
£	s.	d.	£	s.	d.	£	s.	d.	£ s. d.
10	0	0	20	0	0	100	0	0	0 10 0
20	0	0	50	0	0	150	0	0	0 15 0

And where there shall be both rent and fine, the duty only to be paid in respect of such rent or fine as shall be liable to the higher rate of duty.

And for every skin or piece of vellum or parchment, or sheet or piece of paper, in any such indenture, lease, release, or deed, minute, memorandum, or legal or equitable article, after the first skin or sheet, a duty of

0 10 0

Provided always, that in any case where the annual amount of such rent reserved shall exceed 50*l*., or such fine or consideration shall exceed 200*l*., such lease, release, or deed, minute, memorandum, or legal or equitable article or instrument, shall be chargeable with the duty or duties specified in the schedule of the act 55 Geo. 3, c. 184.

Licence to hold a perpetual curacy not proceeding upon a nomination..... 3 10 0

Exemption.—Licences to stipendiary curates, wherein the annual amount of the stipend shall be specified.

Presentation or donation by her majesty, her heirs or successors, or by any other patron, to any ecclesiastical benefice, dignity, or promotion in Ireland 5 0 0

And where the net yearly value of such benefice, dignity, or promotion shall amount to 300*l*. or upwards, then for every 100*l*. thereof over and above the first 200*l*. a further duty of..... 5 0 0

The value to be ascertained as in the case of collation. See Collation.

Provided, that two or more benefices episcopally united shall be deemed one benefice only.

CXXI. STAT. 5 & 6 VICTORIÆ, CAP. CIII. A.D. 1842.

"An Act for providing additional Burial Grounds in the Parish of Leeds, in the West Riding of the County of York."

STAT. 5 & 6
VICT. CAP.
CIII.

CXXII. STAT. 5 & 6 VICTORIÆ, C. 108. A.D. 1842.

"An Act for enabling Ecclesiastical Corporations, aggregate and sole, to grant Leases for long Terms of Years."

STAT. 5 & 6
VICT. c. 108.

"Whereas it would be advantageous to the estates of ecclesiastical corporations, aggregate and sole, and for the interests of the church, if such corporations were empowered to grant leases for long terms of years, under proper reservations and restrictions: may it therefore please your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for any eccle-

Ecclesiastical

STAT. 5 & 6
VICT. c. 108.

or persons, all or any of the water flowing, or which shall or may flow or be made to flow, in, through, upon, or over any lands or hereditaments belonging to such corporation in his or their corporate capacity, or any part or parts thereof, (except as hereinafter is mentioned,) and also any wayleaves or waterleaves, canals, watercourses, tramroads, railways, and other ways, paths, or passages, either subterraneous or over the surface of any lands, store yards, wharfs, or other like easements or privileges in, upon, out of, or over any part or parts of the lands belonging to such corporation, in his or their corporate capacity, (except as hereinafter is mentioned,) for any term or number of years not exceeding sixty years, to take effect in possession and not in reversion or by way of future interest, so as there be reserved on every such grant by way of lease as last aforesaid, payable half-yearly or oftener, during the continuance of the term of years thereby created, the best yearly rent or rents, either in the shape of a stated or fixed sum of money, or by way of toll or otherwise, that can be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, for the making thereof, (other than any provision or provisions which it may be deemed expedient to insert in any such grant, rendering it obligatory on the grantee or lessee, or grantees or lessees, to repair or contribute to the repair of any roads or ways, or to keep open or otherwise use, in any specified manner, any water or watercourse to be comprised in or affected by any such grant or lease;) and so as there be contained in every such grant by way of lease as last aforesaid a condition or power of re-entry, or a power to make void the same, in case the rent thereby reserved or made payable, or any part thereof, shall not be paid within some reasonable time to be therein specified in that behalf; and so as the respective grantees or lessees do execute counterparts of the respective grants or leases, and generally that in and by each or any such grant by way of lease as last aforesaid there shall or may be reserved and contained any other reservations, covenants, agreements, provisoes, or stipulations whatsoever not inconsistent with those hereby required to be reserved or contained in each such grant by way of lease which it shall be deemed expedient to introduce therein.

Power to confirm leases voidable for informality, and to accept surrenders and grant new leases or apportioned leases.

“V. And be it enacted, that it shall be lawful for any corporation hereby empowered to grant leases, from time to time, with such consent as is hereby declared to be requisite to the validity of any lease to be granted by such corporation under the provisions of this act, to confirm any lease, grant, or general deed purporting to have been granted or made under the authority of this act, in any case in which for some technical error, informality, or irregularity in exercising the powers of this act, such lease, grant, or deed shall be voidable or questionable, or to accept an actual or virtual surrender of any lease or grant which shall have been made and executed, or which shall purport to have been made and executed, by virtue of this act; and so far as regards any mines, minerals, quarries, or beds, watercourses, ways, or other easements, which may be comprised in any such surrendered lease or grant, with such consent as aforesaid, to make any new lease or grant thereof in the same manner from time to time, as if the powers of leasing herein contained had not been previously exercised; and so far as regards any lands and houses comprised in any such surrendered lease which may have been granted for building or repairing purposes, in any case where, at the time when such surrender shall be accepted, one fourth part or more than one fourth part of the term originally granted shall remain unexpired, with such consent as aforesaid, to make a new lease or several apportioned leases of the lands and houses comprised in such surrendered lease, for any time not exceeding the then residue of the term granted, or mentioned or intended to be granted, by such surrendered lease, and at a rent or apportioned rents equal in amount to or exceeding the former rent or rents, yet so nevertheless that no one rent shall be less than forty shillings, and so that the rent to be reserved by any apportioned lease shall in no case exceed one fifth part of the rack-rent value of the land to be comprised in such lease, and of the houses erected or to be erected thereon, when finished and fit for habitation: and so far as regards any lands and houses comprised in any such surrendered lease which may have been granted for building or repairing purposes, in any case

payment of the rent or rents to be thereby reserved, or for non-performance of any of the covenants, provisoes, and conditions to be therein contained, on the part of the lessee, his executors, administrators, or assigns, and with or without a proviso that no breach of any of the covenants, provisoes, and conditions to be therein contained, (except the covenant for payment of the rent, and other such covenants, provisoes, or conditions, if any, as may be agreed between the parties to be so excepted,) shall occasion any forfeiture of such lease, or of the term thereby granted, or give any right of re-entry, unless or until judgment shall have been obtained in an action for such breach of covenant, nor unless the damages and costs to be recovered in such action shall have remained unpaid for the space of three calendar months after judgment shall have been obtained in such action; and every such lease may also contain any other covenants, provisoes, conditions, agreements, and restrictions which shall appear reasonable to the lessor for the time being, and the person or persons whose consent is hereby declared to be essential to the validity of such lease, and particularly any provision for apportioning the rent to be reserved by any lease made under this power, and for exonerating any part of the lands or houses to be comprised in any such lease from the payment of any specified portion of the whole rent to be thereby reserved; and so that the respective lessees execute counterparts of their respective leases.

STAT. 5 & 6
VICT. c. 109.

"II. And be it enacted, that on every or any building or repairing lease to be granted under the authority of this act it shall be lawful for the corporation granting such lease to reserve a small rent, during the six first years of the term thereby created, or during any of such six first years to be specified in that behalf in such lease, and to reserve, in addition to the rent to be so reserved, an increased rent or increased rents, to become payable after the expiration of such six first years, or after any of such six years to be specified in that behalf in such lease, (as the case may be,) or otherwise to make any such increased rent or rents first payable at any time not exceeding six years after the commencement of the term created by such lease when a stipulated progress shall have been made in the buildings, rebuildings, or reparations in respect of the erection, construction, or reparation of which the same lease shall have been granted.

Power to re-
serve increased
rent.

"III. And be it enacted, that it shall be lawful for any corporation hereby empowered to grant leases as aforesaid, with such consent as is hereby declared to be requisite to the validity of any lease to be granted by such corporation under the provisions of this act, to lay out and appropriate any part or parts of the lands and grounds which such corporation shall be empowered or authorized to lease, on building or repairing leases, under the provisions of this act, as and for a way or ways, yard or yards, garden or gardens, to the buildings erected or to be erected on any of the same lands or grounds, or on any of the adjoining lands or grounds so to be leased as aforesaid, or for yards or places necessary or convenient for carrying on any manufacture or trade, and also to appropriate any part of the same lands and grounds as and for ways, streets, squares, avenues, passages, sewers, or otherwise for the general improvement of the estate, and the accommodation of the lessees, tenants, and occupiers thereof, in such manner as shall be mentioned and agreed upon in any lease to be granted as aforesaid, or in any general deed to be executed for that purpose, (such general deed, if any, to be duly executed by the corporation hereby authorized to make such deed, and to be made with such consent as last aforesaid, and to be enrolled in one of her majesty's courts of record at Westminster within six calendar months from the date of such deed,) and also by such lease or general deed to give such privileges and other easements as the corporation hereinbefore authorized to grant such lease or make such deed shall, with such consent as aforesaid, deem reasonable or convenient.

Land may be
appropriated
for streets,
yards, &c.

"IV. And be it enacted, that it shall be lawful for any ecclesiastical corporation, aggregate or sole, except as aforesaid, from time to time after the passing of this act, with such consent and under such restrictions as are hereinafter mentioned, by any deed or deeds duly executed, to grant by way of lease, unto any person or persons whomsoever, any liberties, licences, powers, or authorities to have, use, or take, either in common with or to the exclusion of any other person

Ecclesiastical
corporations
may lease
running water,
and water-
leaves and
wayleaves.

or persons, all or any of the water flowing, or which shall flow, in, through, upon, or over any lands or hereditaments in his or their corporate capacity, or any course, tramroads, railways, and other ways, or over the surface of any lands, store or privileges in, upon, out of, or over any such corporation, in his or their corporate possession, for any term or number of years in possession and not in reversion or reserved on every such grant by way or oftener, during the continuance yearly rent or rents, either in the way of toll or otherwise, that or out taking any fine, premium, mium, or foregift, for the maintenance which it may be deemed necessary on the grantee or lessee for the repair of any roads or in any manner, any water or grant or lease;) and as last aforesaid a same, in case the not be paid with so as the resp grants or lease lease as last vations, content with way of,

emp
der
ti

such improvement; and if such improvement be so directed to be paid to such bishop, or if such improvement be directed to be paid by or to such bishop, then a charge of excess in the one case, or to the whole of such improvement in the other, shall, by the like authority, be forthwith directed to be charged upon the revenues of such see; and the increased or reduced or new revenues (as the case may be) shall take effect upon the avoidance of the see next after such improvement, and not sooner.

"XI. And be it enacted, that the provisions of the said recited act, and of any act passed in the fourth year of her majesty's reign, intituled, 'An Act to consolidate and amend two several Acts relating to the Ecclesiastical Commissioners for England,' under which provisions the incomes of the deans and canons of the cathedral church of Saint Paul in London, and of the collegiate churches of Westminster and Manchester, are to be so charged as to leave to such deans and canons such yearly annual incomes respectively specified in the same acts, shall be extended so as to apply to all other deans and canons of cathedral and collegiate churches, and except the dean and canons of the cathedral church of Christ in Oxford, whose annual incomes shall be improved beyond the amounts of such several annual incomes respectively; and that upon any improvement in the annual value of any cathedral or collegiate church, after the gazetting of any order in that behalf made, the incomes of the dean or canons thereof, the amount of which, by such order shall, by the authority in the first-recited act, be directed to be increased to the extent of such improvement, shall be increased at any improvement in the annual value of the revenues of the said cathedral church of Christ in Oxford by means of the provisions of this act, and not otherwise, shall be regulated by the provisions of this act affecting deans and canons of other cathedral churches."

also, that no charge so created, nor any increase of any such income of any dean or canon in possession at the time of

STAT. 5 & 6
VICT. c. 108.

ted, that in the case of any archdeaconry the annual
ved by means of any lease granted under this act, it
v provided in the said first-recited act, forthwith to
cancy of such archdeaconry next following the
the rent, royalty, or other consideration reserved
shall be deemed expedient shall be paid, and
time be paid to the ecclesiastical commis-
subject to the provisions of the same act;
come of the archdeacon shall not be
unds.

Improved
value of arch-
deaconries
above a certain
amount to be
paid to com-
missioners.

of any benefice the annual value of
anted by the incumbent thereof
provided in the first-recited act,
lease, to direct that from and
h date such portion of the

Improved
value of bene-
fices above a
certain amount
to be paid to
commissioners.

use as by the like autho-
same shall accordingly
sioners for England,
the provisions of
of souls: provided
ons of such benefice, of
his previously to such scheme
and the objections (if any) of such
her majesty in council together with such
verage annual income of such benefice shall not
at a less sum than six hundred pounds if the popu-
to two thousand, nor at a less sum than five hundred
ulation thereof amount to one thousand, nor in any other case
than three hundred pounds: provided also, that in making any
provision for the cure of souls out of rent, royalty, or other consideration
erved by any lease as aforesaid, the wants and circumstances of the places in
which the lands, mines, minerals, quarries, or beds demised by such lease are
situate shall be primarily considered.

“XIV. Provided always, and be it enacted, that in case of any lease of mines,
minerals, quarries, or beds granted under this act, such portion of the improved
value accruing thereunder as by the like authority shall be determined, not being
more than three fourth parts nor less than one moiety of such improved value,
shall forthwith, and from time to time as the same shall accrue, be paid to the said
ecclesiastical commissioners for England, and shall be subject to the provisions
relating to monies payable to them; and the remainder of such improved value
shall be deemed to be an improvement within the meaning of the provisions relating
to the incomes of archbishops and bishops, deans and canons, archdeacons, and
incumbents of benefices respectively.

Portion of
improved
value under
mining leases
to be paid to
commissioners.

“XV. And be it enacted, that all the powers and authorities vested in her
majesty in council and in the said commissioners by the first-recited act with
reference to the matters therein contained, and all other the provisions of the
same act relating to schemes and orders prepared, made, and issued for the pur-
poses thereof, shall be continued and extended and apply to her majesty in council
and to the said commissioners, and to all schemes and orders prepared, made,
and issued by them respectively with reference to all matters contained in this act.
as fully and effectually as if the said powers, authorities, and other provisions were
repeated herein.

Powers of
3 & 4 Vict.
c. 113, ex-
tended to this
act.

“XVI. And be it enacted, that any lease or leases may be granted under the
powers of this act, on the surrender of any existing lease or leases (which shall
not have been granted under the provisions of this act), of all or any part of

Leases under
the act may be
made on the

STAT. 5 & 6
VICT. c. 108.

House of residence, garden, &c. not to be leased.

Improved value of episcopal estates to be paid to commissioners. 3 & 4 Vict. c. 113.

Improved value of chapter property above a certain amount to be paid to commissioners. 4 & 5 Vict. c. 39.

granted under the powers of this act) which shall be granted by any such corporation as aforesaid, of any lands or houses which shall have been leased for building or repairing purposes under any of the powers of this act, there shall be reserved the best improved rent, payable half yearly or oftener, which can be obtained for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, for making or granting the same.

“IX. Provided always, and be it enacted, that this act shall not authorize the granting of a lease, or the laying out or appropriating, for the purposes in this act mentioned, of the palace or usual house of residence of or belonging to any archbishop or bishop, or any other corporation sole hereby empowered to grant leases as aforesaid, or of or belonging to any corporation aggregate or to any member of any corporation aggregate hereby authorized to grant leases as aforesaid, or of any offices, outbuildings, yards, gardens, orchards, or pleasure grounds to any such palace or other house of residence adjoining or appurtenant, and which may be necessary or convenient for actual occupation with such palace or other house of residence, or the grant or lease of any mines, minerals, quarries, or beds, water-courses, ways, or other easements, the grant whereof may be prejudicial to the convenient enjoyment of any such palace or house of residence, or the pleasure grounds belonging thereto, or the leasing for the purposes aforesaid of any lands which any such corporation sole or aggregate, or any member of any such corporation aggregate, is expressly restrained from leasing by the provisions of any local or private act of parliament now in force.

“X. And be it enacted, that upon any improvement in the annual value of any see, by means of any lease granted under this act or otherwise, the annual sum, if any, directed to be charged upon the revenues of such see by any order in council, shall, by the authority provided in an act passed in the fourth year of her majesty's reign, intituled, ‘An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues,’ be forthwith directed to be increased to the extent of such improvement; or the annual sum (if any) directed by any like order to be paid to the bishop of such see shall, by the like authority, be forthwith directed to be reduced to the like extent, or to be altogether annulled, if not exceeding such improvement; and if such improvement shall exceed the annual sum so directed to be paid to such bishop, or if no annual sum shall have been directed to be paid by or to such bishop, then a fixed annual sum, equal to the excess in the one case, or to the whole of such improvement in the other case, shall, by the like authority, be forthwith directed to be charged upon the revenues of such see; and the increased or reduced or new payment (as the case may be) shall take effect upon the avoidance of the see next after such improvement, and not sooner.

“XI. And be it enacted, that the provisions of the said recited act, and of an act passed in the fourth year of her majesty's reign, intituled, ‘An Act to explain and amend two several Acts relating to the Ecclesiastical Commissioners for England,’ under which provisions the incomes of the deans and canons of the cathedral church of Saint Paul in London, and of the collegiate churches of Westminster and Manchester, are to be so charged as to leave to such deans and canons the average annual incomes respectively specified in the same acts, shall be extended so as to apply to all other deans and canons of cathedral and collegiate churches, (save and except the dean and canons of the cathedral church of Christ in Oxford,) whose annual incomes shall be improved beyond the amounts of such average annual incomes respectively; and that upon any improvement in the annual revenues of any cathedral or collegiate church, after the gazetting of any order in council for charging the incomes of the dean or canons thereof, the amount of the charge created by such order shall, by the authority in the first-recited act provided, be forthwith directed to be increased to the extent of such improvement; provided always, that any improvement in the annual value of the revenues of the dean and canons of the said cathedral church of Christ in Oxford by means of any lease granted under the provisions of this act, and not otherwise, shall be subject to the provisions of this act affecting deans and canons of other cathedral or collegiate

churches; provided also, that no charge so created, nor any increase of any such charge, shall affect the income of any dean or canon in possession at the time of such improvement.

STAT. 5 & 6
VICT. c. 108.

"XII. And be it enacted, that in the case of any archdeaconry the annual value of which shall be improved by means of any lease granted under this act, it shall be lawful, by the authority provided in the said first-recited act, forthwith to direct, that from and after the vacancy of such archdeaconry next following the date of such lease such portion of the rent, royalty, or other consideration reserved by such lease as by the like authority shall be deemed expedient shall be paid, and the same shall accordingly from time to time be paid to the ecclesiastical commissioners for England, and become and be subject to the provisions of the same act; provided always, that the average annual income of the archdeacon shall not be thereby left at a less sum than five hundred pounds.

Improved value of archdeaconries above a certain amount to be paid to commissioners.

"XIII. And be it enacted, that, in the case of any benefice the annual value of which shall be improved by means of any lease granted by the incumbent thereof under this act, it shall be lawful, by the authority provided in the first-recited act, at any time within three years from the date of such lease, to direct that from and after the vacancy of such benefice next following such date such portion of the rent, royalty, or other consideration reserved by such lease as by the like authority shall be deemed expedient shall be paid, and the same shall accordingly from time to time be paid to the said ecclesiastical commissioners for England, and shall be by them from time to time applied according to the provisions of the same act in making additional provision for the cure of souls: provided always, that notice shall be given to the patron or patrons of such benefice, of any scheme affecting the same, three calendar months previously to such scheme being laid before her majesty in council; and the objections (if any) of such patron or patrons shall be laid before her majesty in council together with such scheme; provided also, that the average annual income of such benefice shall not under this provision be left at a less sum than six hundred pounds if the population thereof amount to two thousand, nor at a less sum than five hundred pounds if the population thereof amount to one thousand, nor in any other case at a less sum than three hundred pounds: provided also, that in making any such provision for the cure of souls out of rent, royalty, or other consideration reserved by any lease as aforesaid, the wants and circumstances of the places in which the lands, mines, minerals, quarries, or beds demised by such lease are situate shall be primarily considered.

Improved value of benefices above a certain amount to be paid to commissioners.

"XIV. Provided always, and be it enacted, that in case of any lease of mines, minerals, quarries, or beds granted under this act, such portion of the improved value accruing thereunder as by the like authority shall be determined, not being more than three fourth parts nor less than one moiety of such improved value, shall forthwith, and from time to time as the same shall accrue, be paid to the said ecclesiastical commissioners for England, and shall be subject to the provisions relating to monies payable to them; and the remainder of such improved value shall be deemed to be an improvement within the meaning of the provisions relating to the incomes of archbishops and bishops, deans and canons, archdeacons, and incumbents of benefices respectively.

Portion of improved value under mining leases to be paid to commissioners.

"XV. And be it enacted, that all the powers and authorities vested in her majesty in council and in the said commissioners by the first-recited act with reference to the matters therein contained, and all other the provisions of the same act relating to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and apply to her majesty in council and to the said commissioners, and to all schemes and orders prepared, made, and issued by them respectively with reference to all matters contained in this act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein.

Powers of 3 & 4 Vict. c. 113, extended to this act.

"XVI. And be it enacted, that any lease or leases may be granted under the powers of this act, on the surrender of any existing lease or leases (which shall not have been granted under the provisions of this act), of all or any part of

Leases under the act may be made on the

STAT. 5 & 6
VICT. c. 108.
surrender of
the existing
leases.

the premises proposed to be comprised in such new lease or leases, and may be granted either to the person or persons surrendering the existing lease or leases, or to any other person or persons whomsoever; and each holder of any existing lease or leases granted otherwise than under the provisions of this act, of any lands or houses, or of any mines, minerals, quarries, or beds, which, if not in lease, would be capable of being leased under the powers of this act, is hereby authorized to surrender such lease or leases with a view to the granting of a new lease or several new leases thereof, or of any part thereof, under the powers of this act, whether at the time of making such surrender the period at which such existing lease or leases may be legally or accustomedly renewable shall or shall not have arrived; and in the case of any lease granted under the powers of this act on the surrender of any existing lease or leases as aforesaid, an adequate deduction shall be made from the rent, royalty, or other consideration to be reserved on the new lease, in proportion to the value of the term or interest which shall be surrendered as aforesaid in the lands or houses, mines, minerals, quarries, or beds, or any part thereof respectively, comprised in such new lease.

Not necessary
to surrender
under-leases
before the
grant of a
lease under
this act.
4 Geo. 2, c. 28.
s. 6.

“XVII. And be it enacted, that whenever a surrender shall be made of any existing lease for the purpose of taking a new lease or new leases by virtue of this act, whether the existing lease shall or shall not have been granted under the provisions of this act, the new lease shall be deemed to be a renewal of the surrendered lease within the scope and meaning of the sixth section of an act passed in the fourth year of the reign of King George the Second, intitled, ‘An Act for the more effectual preventing of Frauds committed by Tenants, and for the more easy Recovery of Rents and Renewal of Leases,’ so far as to render unnecessary the surrender of any under-leases previously to the grant of such new lease, and to give full effect to such new lease in all respects, notwithstanding any under-lease or under-leases may not be surrendered: provided that in any such case as is herein contemplated, if any subsisting unsurrendered under-lease shall contain any covenant or provision for the renewal or extension of the interest conferred by such under-lease, on payment by the under-lessee of a proportionate part of the fines and fees attending the renewal of the chief lease, the under-lessee shall not compel a renewal of the under-lease under such covenant, except upon the terms of securing to the under lessor a rent, royalty, or other consideration bearing the same proportion to the whole rent, royalty, or other consideration reserved to the corporation exercising the powers of this act, upon the new lease granted under this act, as the amount which upon any ordinary renewal ought to have been paid by such under-lessee of the fines and fees of or attending such renewal would have borne to the whole amount of the fines and fees attending such renewal.

Surveyor to
make maps,
valuation, &c.
when a new
lease is in-
tended.

“XVIII. And be it enacted, that whenever any lease or apportioned lease, or grant by way of lease, is or are intended to be granted or made, or any land or ground is proposed to be laid out or appropriated, under the authority of this act, a competent surveyor shall be appointed in writing by the ecclesiastical commissioners for England, with the consent of the corporation proposing to grant such lease or apportioned leases, or make such grant, or to lay out or appropriate such land or ground (as the case may be); and such surveyor shall make any such report, map, plan, statement, valuation, or certificate, as shall be deemed necessary, and be required by the said commissioners or by such corporation.

As to dilapidations.

“XIX. And be it enacted, that no person being or having been an ecclesiastical corporation sole, nor the private estate or representatives of such person, shall be liable to the successor of such corporation for or on account of any dilapidations which shall occur in or about any houses or buildings belonging to such corporation whilst the same shall be held under any lease for building or repairing purposes granted under the powers of this act.

Consents re-
quisite to the
validity of
leases granted
under this act.

“XX. And be it enacted, that each lease or grant to be granted or made under the provisions of this act shall be made with the consent of the said ecclesiastical commissioners for England, and also with such further consent as hereinafter mentioned; (that is to say,) each lease or grant granted or made by any incumbent of

a benefice, with the consent of the patron thereof; and each lease or grant by any corporation, either aggregate or sole, under the provisions of this act, of any lands or houses, mines, minerals, quarries, or beds, of copyhold or customary tenure, or of any water-courses, ways, or easements in, upon, over, or under any such lands, where the copyhold or customary tenant thereof is not authorized to grant or make leases or grants for the term of years intended to be created by such lease or grant, without the licence of the lord of the manor, shall be made with the consent of the lord for the time being of the manor of which the same lands or houses, mines, minerals, quarries, or beds, shall be holden, in addition to the other consents hereby made requisite to the validity of such lease or grant, and such consent shall amount to a valid licence to lease or grant the same lands or houses, mines, minerals, quarries, or beds, water-courses, ways, or easements, (as the case may be,) for the time for which the same shall be expressed to be demised or granted by such lease or grant.

STAT. 5 & 6
VICT. c. 108.

“XXI. And be it enacted, that the consent of each person whose consent is hereby required to any deed to be made under the authority of this act shall be testified by such person being made a party to such deed, and duly executing the same.

Consenting parties to be parties to the deeds.

“XXII. And be it enacted, that in any case in which the consent or concurrence of the patron of any benefice is hereby required, and the patronage of such benefice shall be in the crown, the consent or concurrence of the crown shall be testified in the manner hereinafter mentioned; (that is to say,) if such benefice shall be above the yearly value of twenty pounds in the King's Books, the instrument by which such consent or concurrence is to be testified shall be executed by the lord high treasurer or first commissioner of the Treasury for the time being; and if such benefice shall not exceed the yearly value of twenty pounds in the King's Books, such instrument shall be executed by the lord high chancellor, lord keeper or lords commissioners of the great seal, for the time being; and if such benefice shall be within the patronage of the crown in right of the duchy of Lancaster, such instrument shall be executed by the chancellor of the said duchy for the time being; and the execution of such instrument by such person or persons shall be deemed and taken, for the purposes of this act, to be an execution by the patron of the benefice.

How consent of patron to be testified where patronage in the crown;

“XXIII. And be it enacted, that in any case in which the consent or concurrence of the patron of any benefice is hereby required, and the right of patronage of such benefice shall be part of the possessions of the duchy of Cornwall, the consent or concurrence of the patron of such benefice to the exercise of such power shall be testified in the manner hereinafter mentioned; (that is to say,) the instrument by which such consent or concurrence is to be testified shall, whenever there shall be a Duke of Cornwall, whether he be of full age or otherwise, be under his great or privy seal, or if there be no Duke of Cornwall, and such benefice shall be in the patronage of the crown in right of the duchy of Cornwall, such instrument shall be executed by the same person or persons who is or are authorized to testify the consent or concurrence of the crown; and such instrument, being so sealed or executed, shall be deemed and taken, for the purposes of this act, to be an execution by the patron of the benefice.

How where patronage is attached to the duchy of Cornwall;

“XXIV. And be it enacted, that in any case in which the consent or concurrence of the patron of any benefice, or of the lord for the time being of any manor, is hereby required, and the patron of such benefice, or the lord for the time being of such manor, as the case may be, shall be a minor, idiot, lunatic, or feme covert, or beyond seas, it shall be lawful for the guardian, committee, husband, or attorney, as the case may be, of such patron or lord, but in case of a feme covert not being a minor, idiot, or lunatic, or beyond the seas, with her consent in writing, to execute the instrument by which such consent or concurrence is to be testified, in testimony of the consent or concurrence of such patron or lord; and such execution shall, for the purposes of this act, be deemed and taken to be an execution by the patron of the benefice, or by the lord of the manor, as the case may be.

How where patron or lord of manor is an incapacitated person.

“XXV. And be it enacted, that the person or persons, if not more than two,

Persons enti-

STAT. 5 & 6
VICT. c. 108.

tied to present
on vacancy
shall be con-
sidered the
patron.

Same party
may consent in
more than one
character.

Corporations
aggregate to
act by their
common seal.

Act to extend
to lands held
in trust for
corporations.

or the majority of the persons if more than two, or the corporation, who or which would for the time being be entitled to the turn or right of presentation to any benefice if the same were then vacant, shall, for the purposes of this act, be considered to be the patron thereof; provided nevertheless, that in the case of the patronage being exercised alternately by different patrons, the person or persons, if not more than two, or the majority of the persons, if more than two, or the corporation, who or which would for the time being be entitled to the second turn or right of presentation to any benefice if the same were then vacant, shall for the purposes of this act, jointly with the person or persons or corporation entitled to the first turn or right of presentation, be considered to be the patron thereof.

"XXVI. And be it enacted, that in all cases in which any person shall sustain more than one or all of the characters in which his execution of or consent to a concurrence in any deed or act is required by this act, such person shall or may at any time act in both or all of the characters which he shall so sustain as aforesaid, and execute and do all or any of such deeds and acts as are hereby authorized to be executed and done, as effectually as different persons, each sustaining one of these characters, could execute and do the same.

"XXVII. And be it enacted, that in all cases in which the consent or concurrence of any corporation aggregate having a common seal shall be requisite to any lease, grant, appointment of a surveyor, or other deed, writing, or instrument, to be made in pursuance and for the purposes of this act, the consent or concurrence of such corporation shall be testified by the sealing of the lease, grant, appointment, or other deed, writing, or instrument with the common seal of such corporation.

"XXVIII. And be it enacted, that whenever any lands are or shall be vested in any trustee or trustees, in trust or for the benefit of any corporation, aggregate or sole, hereby empowered to grant leases as aforesaid, in such a manner as that the net income, or three fourth parts at the least of the net income, of such lands is or shall be payable for the exclusive benefit of such corporation, all the powers of this act which, in case such lands had been legally vested in such corporation for the sole and exclusive benefit of such corporation, might have been exercised by such corporation in relation to or affecting the same lands, shall or may be exercised by such corporation in the same or the like manner as the same might have been exercised by such corporation in case the same lands were legally vested in such corporation as aforesaid; but in order to give legal effect to any lease, grant, confirmation, or general deed to be executed in relation to any such lands in pursuance of this act, the trustee or trustees of the land intended to be affected thereby shall be made a party or parties to such lease, grant, confirmation, or general deed, (as the case may be,) in addition to the other parties whose concurrence is hereby declared to be requisite to any such deed, and shall join in the demise, grant, confirmation, or appropriation intended to be thereby made; and the trustee or trustees of any such lands is and are hereby directed and required at all times to execute any deed to which he or they may be made a party or parties, with a view to give legal effect to any such lease, grant, general deed, or confirmation as aforesaid, so soon as the same may be tendered to him or them for execution after the same shall have been duly executed by the corporation beneficially entitled to such lands as aforesaid; and the person or corporation, or several persons or corporations, whose consent is hereby declared to be requisite to the validity of any lease granted by any such corporation, and the fact that any such deed is executed by the other parties whose execution shall be necessary to give effect to the same shall be a sufficient authority for the execution thereof by the trustee or trustees of the same land, and it shall not at any time afterwards be necessary for such trustee or trustees or for any other person or persons to prove that such deed was executed by such other parties, or any of them, prior to the execution thereof by such trustee or trustees; provided that no trustee shall by virtue of or under this provision be compellable to execute any deed whereby he shall render himself in any way liable, further than by a covenant for quiet enjoyment by any lessee or grantee as against the acts of the trustee executing such deed.

"XXIX. And be it enacted, that the part which shall belong to any corporation exercising any of the powers conferred by this act of any lease, grant, or confirmation which shall be granted or made under the authority of this act, and every map, plan, statement, certificate, valuation, and report relating thereto, shall, within six calendar months next after the date of such lease, grant, apportioned lease, confirmation, or general deed, (as the case may be,) be deposited with the said ecclesiastical commissioners for England, and shall be for ever thereafter perpetually kept and preserved in the office of the said commissioners, who shall, upon any such deposit being so made, give unto the corporation by or on behalf of whom such deposit shall have been made a certificate of such deposit; and any instruments or documents which may have been deposited as aforesaid shall be produced at all proper and usual hours, at such office, to the corporation to whose lands or estate the same relate, or to the patron of the benefice, or to any person or persons applying to inspect the same on behalf of any such person or corporation as aforesaid; and an office copy of any such instrument or document, certified under the seal of the said commissioners, (and which office copy so certified the said commissioners shall in all cases, upon application in that behalf, give to any corporation or person to whom such liberty of inspection is given as aforesaid,) shall in any action against the lessee, and in all other cases, be admitted and allowed in all courts whatsoever as legal evidence of the contents of such instrument or document, and of the due execution thereof, by the parties who on the face of such office copy shall appear to have executed the same, and in the case of any lease, grant, or confirmation, of the due execution by the lessee of the counterpart thereof.

STAT. 5 & 6
VICT. c. 108.
Counterparts
of leases and
certain other
instruments to
be deposited,
and to be open
to inspection;
and office
copies to be
evidence.

"XXX. And be it enacted, that if, in the case of any lease, grant, or confirmation granted or made under this act, any fine, premium, or foregift, or anything in the nature thereof, shall directly or indirectly have been paid or given by or on behalf of the lessee or grantee, and taken or received by the lessor or grantor, such lease, grant, or confirmation shall be absolutely void.

Lease to be
void if any
fine or pre-
mium paid.

"XXXI. And be it enacted, that in the construction and for the purposes of this act the several following words shall have the meanings hereinafter assigned to them respectively, unless there shall be something in the subject or context repugnant to such construction; (that is to say,) the word 'person' shall be construed to include the queen's majesty, and any corporation, aggregate or sole, as well as a private individual: the word 'lands' shall be construed to include lands of any tenure, whether the same shall or shall not have any houses or other erections or buildings thereon: the word 'houses' shall be construed to include all erections and buildings whatsoever, whether for residence or for commercial or any other purposes: the word 'benefice' shall be construed to comprehend every rectory, with or without cure of souls, vicarage, perpetual curacy, donative, endowed public chapel, parochial chapelry, and district chapelry, the incumbent or holder of which in right thereof shall be a corporation sole: and every word importing the singular number shall extend and be applied to several persons or parties as well as one person or party, and several things as well as one thing: and every word importing the plural number shall extend and be applied to one person or party or thing as well as several persons or parties or things: and every word importing the masculine gender shall extend and be applied to a female as well as male.

Interpretation
of act.

"Person."

"Lands."

"Houses."

"Benefice."

Number.

Gender.

Act to extend
only to Eng-
land and
Wales, Isle of
Man, &c.

Act may be
amended, &c.
this session.

"XXXII. And be it enacted, that this act shall extend only to that part of the United Kingdom called England and Wales, and to the Isle of Man, and to the Islands of Guernsey, Jersey, Alderney, and Sark.

"XXXIII. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

CXXIII. STAT. 5 & 6 VICTORIÆ, c. 109. A.D. 1842.

STAT. 5 & 6
VICT. c. 109.

"An Act for the Appointment and Payment of Parish Constables."

[VI. All clergymen in holy orders; all priests of the Roman catholic faith who shall have duly taken and subscribed the oaths and declarations required by law; all persons who shall teach or preach in any congregation of protestant

STAT. 5 & 6
VICT. C. 109.

dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law; have been exempted from serving the office of constable.]

STAT. 5 & 6
VICT. CAP.
CIX.

CXXIV. STAT. 5 & 6 VICTORIÆ, CAP. CIX. A.D. 1842.

"An Act for establishing a General Cemetery for the Interment of the Dead in the Parish of Sonning, near the Town of Reading, in the County of Berks."

STAT. 5 & 6
VICT. C. 112.

CXXV. STAT. 5 & 6 VICTORIÆ, C. 112(1). A.D. 1842.

"An Act for suspending, until the first day of October, One thousand eight hundred and forty-three, Appointments to certain Ecclesiastical Preferments in the Dioceses of Saint Asaph and Bangor; and for securing certain Property to the said Sees."

5 & 6 Gul. 4,
c. 30.

"Whereas a temporary act was passed in the sixth year of the reign of his late majesty, intituled, 'An Act for protecting the Revenues of vacant Ecclesiastical Dignities, Prebends, Canonries, and Benefices without Cure of Souls, and for preventing the Lapse thereof during the pending Inquiries respecting the State of the Established Church in England and Wales;' and another temporary act was passed in the seventh year of the same reign, intituled, 'An Act for suspending, for one Year, Appointments to certain Dignities and Offices in Cathedral and Collegiate Churches, and to Sinecure Rectories;' and the said acts, so far as they apply to the dioceses and cathedral churches of Saint Asaph and Bangor, have been and are continued until the first day of August next, and if parliament be then sitting, until the end of the then session of parliament; and it is expedient further to continue the same for a limited time: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said acts, so far as they apply to the said dioceses and cathedral churches of Saint Asaph and Bangor, shall continue and be in force until the first day of October in the year one thousand eight hundred and forty-three.

Recited acts,
so far as they
apply to
St. Asaph and
Bangor, con-
tinued to 1st
October, 1843.

Certain tithes,
&c. annexed to
the sees.

"II. And be it enacted, that all lands, tithes, tenements, and other hereditaments and endowments whatsoever, held, possessed, or received by the Right Reverend William Carey, bishop of Saint Asaph, and the Right Reverend Christopher Bethell, bishop of Bangor, respectively, as such bishops, not being so held, possessed, or received in respect of any benefice with cure of souls, shall be and be deemed to be to all intents and purposes part and parcel of the lands, tithes, tenements, and other hereditaments and endowments of the respective sees of Saint Asaph and Bangor, or of the united see of Saint Asaph and Bangor, as the case may be, and shall continue to be held, possessed, and received by the bishops of the same sees for the time being; subject nevertheless to any order in council issued under the provisions of an act passed in the seventh year of the reign of his late majesty, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' or of any other act of parliament.

6 & 7 Gul. 4,
c. 77.

Act may be
amended, &c.
this session.

"III. And be it enacted, that this act may be repealed or amended during this session of parliament."

STAT. 5 & 6
VICT. C. 113.
[1E.]

CXXVI. STAT. 5 & 6 VICTORIÆ, C. 113(2). [IRELAND.] A.D. 1842.

"An Act for Confirmation of certain Marriages in Ireland."

Marriages
heretofore ce-

"Whereas marriages have in divers instances been had and celebrated in Ireland by presbyterian and other protestant dissenting ministers or teachers, or those

(1) Vide Stat. 6 & 7 Vict. c. 77.

(2) Vide Stat. 6 & 7 Vict. c. 39.

who at the time of such marriages had been such, between persons being of the same or different religious persuasions, and it is expedient to confirm such marriages: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all marriages heretofore had and celebrated in Ireland by presbyterian or other protestant dissenting ministers or teachers, or those who at the time of such marriages had been such, shall be, and shall be adjudged and taken to have been and to be, of the same force and effect in law as if such marriages had been had and solemnized by clergymen of the said united church of England and Ireland, and of no other force nor effect whatsoever.

"II. Provided always, and be it enacted, that nothing in this act contained shall extend or be construed to extend to or affect any marriage declared invalid by any court of competent jurisdiction before the passing of this act, nor any marriage where either of the parties shall, at any time afterwards during the life of the other party, have lawfully intermarried with any other person, nor any marriage respecting which any criminal prosecution shall be depending at the time of the passing of this act.

"III. Provided further, and be it enacted, that nothing in this act contained shall extend or be construed to extend to or affect any act done before the passing of this act under the authority of any court, or in the administration of any personal estate or effects, or the execution of any will or testament, or the performance of any trust.

"IV. And be it enacted, that this act may be amended, altered, or repealed by any act to be passed in this present session of parliament."

STAT. 5 & 6
VICT. c. 113.
[1a.]

celebrated by
presbyterian
or other dis-
senting mi-
nisters, &c. to
be of force as
if solemnized
by clergymen
of established
church.

This act not to
affect certain
marriages.

Any act already
done under the
authority of
any court, &c.
not affected.

Act may be
amended, &c.
this session.

CXCVII. STAT. 5 & 6 VICTORIÆ, c. 119. A.D. 1842.

"An Act to enable Her Majesty to grant Furlough Allowances to the Bishops of Calcutta, Madras, and Bombay, who shall return to Europe for a limited Period after residing in India a sufficient Time to entitle them to the highest Scale of Pension."

"Whereas by law the salaries of the Bishops of Calcutta, Madras, and Bombay respectively are payable to them respectively only so long as they respectively exercise the functions of their several offices in the East Indies, and no longer; and the pensions which her majesty is empowered to grant to such bishops respectively can by law be granted only on their respective resignation of their said offices: and whereas it is expedient to enable her majesty to make a moderate provision for such of the said bishops who, after such residence in the East Indies as hereinafter mentioned, shall, with her majesty's permission, return to Europe for a period not exceeding eighteen calendar months, and also to provide for making a further payment to the Bishop of Madras and the Bishop of Bombay respectively, if during such absence of the Bishop of Calcutta such Bishop of Madras or Bombay shall perform the functions of the said Bishop of Calcutta; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in case her majesty shall be pleased from time to time or at any time to grant permission to any Bishop of Calcutta who shall have resided in the East Indies for a period of ten years, and to any Bishop of Madras or of Bombay who shall have resided in the East Indies for a period of fifteen years, to return to Europe for a period not exceeding eighteen calendar months from the time of departure from the East Indies, then and in every such case it shall be lawful for her majesty, in manner mentioned in an act of the fifty-third year of the reign of his majesty George the Third as to the grant of the pension to the Bishop of Calcutta, to grant to such Bishop of Calcutta, Madras, or Bombay respectively, so returning to Europe, a furlough allowance not exceeding the highest amount of pension which her majesty is by law empowered to grant to any such bishop, and for a period not exceeding eighteen calendar months from the time of the departure of such bishop from the East Indies.

STAT. 5 & 6
VICT. c. 119.

Empowering
her majesty
to grant al-
lowances to
East India
bishops absent
on leave.

STAT. 5 & 6
VICT. C. 119.

Further furlough and allowance may be granted.

Allowance to but one bishop at a time.

Additional allowance to bishops performing functions of bishops absent on furlough.

"II. And be it enacted, that it shall be lawful for her majesty to grant to any such bishop who, having obtained such furlough and received such furlough allowance, shall have returned to the East Indies, and have resumed the functions of his office, a second furlough of similar duration and of similar amount, to commence from and after the expiration of five years from the time of such bishop's resuming the exercise of his functions in the East Indies.

"III. Provided always, and it is hereby enacted, that it shall not be lawful for her majesty to grant such furlough allowance to more than one such bishop at one and the same time.

"IV. And be it enacted, that in case it shall please her majesty to extend the ecclesiastical jurisdiction and functions of the Bishops of Madras and Bombay, or of either of them, so as to enable such last-mentioned bishop, during such absence of the Bishop of Calcutta, to perform the functions of the said Bishop of Calcutta, then and in that case, so long as the Bishop of Madras or the Bishop of Bombay shall perform the functions of the Bishop of Calcutta, the said Bishop of Madras or the Bishop of Bombay shall, in addition to his salary as Bishop of Madras or Bombay, have and be entitled to a further annual allowance of ten thousand company's rupees for so long time as he shall perform the functions of such Bishop of Calcutta."

STAT. 6 & 7
VICT. C. 6.

CXXVIII. STAT. 6 & 7 VICTORIÆ, C. 6. A.D. 1843.

"An Act to alter the Hours within which certain Oaths and Declarations are to be made and subscribed in the House of Peers."

30 Car. 2, St.
II.

Extension of the time for peers to make oaths, &c. in the House of Lords till five o'clock in the afternoon.

"Whereas by an act passed in the thirtieth year of the reign of King Charles the Second, intituled, 'An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament,' certain oaths and declarations are required to be made and subscribed by peers and members of the House of Peers, which said oaths and declarations are required to be made and subscribed between the hours of nine in the morning and four in the afternoon: and whereas it is expedient that the time for making the said oaths and subscribing the said declarations by peers and members of the House of Peers should be extended as hereinafter mentioned: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act the said oaths and declarations, and all other oaths or declarations required to be made and subscribed by peers and members of the House of Peers at the table of the said house, shall and may be made and subscribed betwixt the hours of nine in the morning and five in the afternoon; and that the said oaths and declarations made and subscribed between the hours last aforesaid shall be as effectual to all intents and purposes as if made and subscribed within the hours mentioned in the said recited act."

STAT. 6 & 7
VICT. C. 10.

CXXIX. STAT. 6 & 7 VICTORIÆ, C. 10. A.D. 1843.

"An Act for removing Doubts as to the Punishment which may be awarded under the Provisions of an Act of the fourth and fifth years of Her present Majesty, 'for taking away the Punishment of Death in certain Cases,' for certain Offences therein specified."

4 & 5 Vict.
c. 56.

7 & 8 Geo. 4,
c. 30.

"Whereas in and by an act passed in the fourth and fifth years of the reign of her present majesty, intituled, 'An Act for taking away the Punishment of Death in certain Cases, and substituting other Punishments in lieu thereof,' it was amongst other things enacted, that whereas by an act passed in the eighth year of the reign of his late majesty King George the Fourth, intituled, 'An Act for consolidating and amending the Laws relating to malicious Injuries to Property,' it was amongst other things enacted, that if any persons riotously and tumultuously assembled together to the disturbance of the public peace should unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church or chapel, or any chapel for the religious wor-

ship of persons dissenting from the united church of England and Ireland, duly registered or recorded, or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hopoust, barn, granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine, every such offender should be deemed guilty of felony, and being convicted thereof should suffer death as a felon; and that in case of every felony punishable under that act every principal in the second degree and every accessory before the fact should be punishable with death or otherwise, in the same manner as the principal in the first degree was by that act punishable: and whereas it was expedient that the said last-mentioned offences should be no longer punishable with death; that from and after the commencement of the said act of the fourth and fifth years of the reign of her present majesty, if any person should be convicted of any of the offences hereinbefore specified, whether as principal, or as principal in the second degree, or as accessory before the fact, such person should not be subject to any sentence, judgment, or punishment of death, but should, instead of the sentence or judgment in and by the said act hereinbefore first recited ordered to be given and awarded against persons convicted of the abovementioned offences or any of them respectively, be liable, at the discretion of the court, to be transported beyond the seas for any term not less than seven years, or to be imprisoned for any time not exceeding three years: and whereas doubts have arisen whether such offenders are liable, under the provisions of the said act of the fourth and fifth years of the reign of her present majesty hereinbefore recited, to be transported beyond the seas for the term of their natural lives: and whereas it is expedient to put an end to such doubts: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, if any person shall be convicted of any of the offences hereinbefore in the said act first above recited specified, such person shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such person, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any time not exceeding three years."

STAT. 6 & 7
VICT. c. 10.

Punishment
for offences
hereinbefore
specified.

CXXX. STAT. 6 & 7 VICTORIÆ, cap. xvi. A.D. 1843.

"An Act for the Division of the Rectory of Walton-on-the-Hill, in the County Palatine of Lancaster, and for authorizing Sales and Conveyances in fee, or Leases for long terms of years, for Building Purposes, and other Dispositions, to be made of the Lands and Revenues belonging to the said Rectory, and to the Vicarage of Walton-on-the-Hill, for the Endowment of such separate Rectories and the Augmentation of such Vicarage."

STAT. 6 & 7
VICT. cap. xvi.

CXXXI. STAT. 6 & 7 VICTORIÆ, CAP. XXIV. A.D. 1843.

"An Act for establishing a Cemetery in Birkenhead and Cloughton-cum-Grange, or one of them, in the County of Chester."

STAT. 6 & 7
VICT. CAP.
XXIV.

CXXXII. STAT. 6 & 7 VICTORIÆ, c. 28. [IRELAND.] A.D. 1843.

"An Act to abolish the Roman Catholic Oath as a Qualification for Voters at Elections in Ireland."

STAT. 6 & 7
VICT. c. 28.
[I.R.]

CXXXIII. STAT. 6 & 7 VICTORIÆ, CAP. XXXVI. A.D. 1843.

"An Act for amending the Act establishing 'The London Cemetery Company.'"

STAT. 6 & 7
VICT. CAP.
XXXVI.

STAT. 6 & 7
VICT. C. 37.

CXXXIV. STAT. 6 & 7 VICTORIÆ, C. 37. A.D. 1843.

"An Act to make better Provision for the Spiritual Care of Populous Parishes."

Queen Anne's
bounty board
may lend
ecclesiastical
commissioners
for England a
sum of stock.

Bounty board
may lend fur-
ther sums of
stock.

Commissioners
to pay divi-
dends half-
yearly.

The whole
property of the
commissioners
under the
Cathedral Acts
to be security
for every such
loan.
3 & 4 Vict. c.
113.
4 & 5 Vict. c.
39.

"Whereas it is expedient to make better provision for the spiritual care of populous parishes, and to render the estates and revenues vested in 'the ecclesiastical commissioners for England,' and the funds at the disposal of 'the governors of the bounty of Queen Anne for the augmentation of the maintenance of the poor clergy,' applicable immediately to such purpose: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said ecclesiastical commissioners for England may, upon the conditions hereinafter mentioned, forthwith borrow, and the said governors of the bounty of Queen Anne, together with the Most Reverend William Howley Lord Archbishop of Canterbury, may, upon the security hereinafter mentioned, forthwith lend and transfer to the said commissioners, the capital sum of six hundred thousand pounds three pounds per centum reduced bank annuities, part of a certain sum of such stock now standing in the names of the said governors and of the said archbishop in the books of the governor and company of the bank of England.

"II. And be it enacted, that at any time and from time to time the said commissioners may borrow, and the said governors and the Archbishop of Canterbury for the time being may, if they shall think fit, lend and transfer to the said commissioners, in like manner, and upon the like security and conditions, any further capital sum or sums of stock, being part of the stock so standing as aforesaid.

"III. And be it enacted, that the said commissioners shall, upon the transfer of any such stock as aforesaid into their names in the books of the said governor and company, accept the same in such books, and shall pay or cause to be paid to the said governors, by half-yearly payments on the tenth day of April and the fourteenth day of October in every year, a sum equal in amount to the amount of the dividends which such stock, or so much thereof as shall on such days respectively remain unreplaced, would produce; and that it shall be lawful for the said commissioners at any time to replace the whole or any part of any such sum of stock.

"IV. And be it enacted, that all the monies from time to time accruing to the said commissioners by reason of the suspension of canonries by or under the provisions of an act passed in the session of parliament held in the third and fourth years of the reign of her present majesty, intituled, 'An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues,' and of an act passed in the session of parliament held in the fourth and fifth years of the reign of her present majesty, intituled, 'An Act to explain and amend two several Acts relating to the Ecclesiastical Commissioners for England,' and all the lands, tithes, rent-charges, tenements, and other hereditaments vested or to be vested in them under the provisions of the same acts or of this act, and the rents and profits thereof, shall be and the same are hereby charged and made chargeable with all such half-yearly payments as aforesaid, and also with the repayment and replacing of the whole capital stock so to be lent and transferred to them, if any such half-yearly payment, or any part thereof, shall remain unpaid for twenty days next after either of the days upon which the same shall have become due and payable as aforesaid; and that upon any such default as last mentioned the said governors shall, by virtue of this act, and upon proof of such default, have the same and the like remedies at law against the said ecclesiastical commissioners for England, and upon and over all the monies, lands, tithes, rent-charges, tenements, and other hereditaments in their possession or power under the provisions of the said recited acts, for the recovery of such capital stock, or so much thereof as shall then remain unreplaced, together with all arrears of half-yearly payments due thereon as aforesaid, as if the said commissioners had duly executed a deed under their common seal, covenanting for repayment to the said governors of such stock, and for making such half-yearly payment on the day when

such default shall have become complete as aforesaid; and that such transfer and acceptance as aforesaid shall be sufficient evidence of such covenant.

“V. Provided also, and be it enacted, that it shall be lawful for the said governors, if they shall see fit, at or after the expiration of thirty years from the date of the lending and transferring of the said sum, and at or after the expiration of a like number of years from and after the lending and transferring of any further sum of such stock as aforesaid, to give notice to the said commissioners, in writing under their corporate seal, requiring them to replace, in the names of the said governors and of the Lord Archbishop of Canterbury for the time being, the whole of such sums of stock respectively, or such part thereof respectively as shall at the date of such notice remain unreplaced, and the said commissioners shall proceed to replace the same accordingly, by yearly instalments, amounting at the least to one twelfth part of such sums of stock respectively, or of such remaining part thereof as aforesaid, and upon default of their duly replacing any such instalment the said governors shall have the like remedies for recovering the same, as for any default in making any such half-yearly payment as aforesaid.

“VI. And be it enacted, that, notwithstanding the charge by this act created, all the same and the like rights and powers of ownership as are possessed and enjoyed respecting and over any lands, tithes, rent-charges, tenements, or other hereditaments whatsoever, by any absolute owner thereof, shall be enjoyed by the said commissioners with respect to and over all or any lands, tithes, rent-charges, tenements, and other hereditaments vested and liable to be vested in them by or under the provisions of the said recited acts, and may, subject to the provisions of the same acts and of this act, be exercised by them, by proper instruments in writing duly executed according to law, but in the case of any such lands, tithes, rent-charges, and other hereditaments not actually in their possession, with the consent of the respective holders thereof, testified by their being made parties to such instruments; and that the consent of the said governors shall not be in any case required to the exercise by the said commissioners of any such rights and powers as aforesaid, notwithstanding such charge: provided always, that every sum of money received as the consideration or purchase money for the sale, transfer, or conveyance by the said commissioners of any of such lands, tithes, tenements, or other hereditaments, or of any estate or interest therein, and also every sum of money received by them as the foregift or fine for the granting or renewing of any lease, shall, unless it be deemed expedient by the said commissioners to apply any such sum or any part thereof in replacing any stock so lent and transferred as aforesaid, which they are hereby empowered to do, be applied by them so soon as conveniently may be after the receipt thereof, in the purchase of lands, tithes, rent-charges, tenements, or other hereditaments, or of some estate or interest therein, and shall in the meantime be invested in some government or parliamentary stock or other public securities in England, the said commissioners being at liberty to apply the interest and dividends of such stock or securities, and the rents and profits of such lands, rent-charges, tithes, tenements, and other hereditaments, to the purposes of the said recited acts or of this act.

“VII. And be it enacted, that the said commissioners shall, for the purposes and subject to the provisions of the said recited acts and of this act, have full power and right of property over all the stock so lent and transferred to them by the said governors as aforesaid.

“VIII. Provided always, and be it enacted, that no part of the capital of such stock shall be applied to such purposes as aforesaid, nor shall any such lands, tithes, tenements, or other hereditaments as aforesaid be sold, transferred, or conveyed, except by the authority in the said recited acts provided; (that is to say,) by a scheme prepared by the said commissioners, and an order issued by her majesty in council ratifying such scheme.

“IX. And whereas there are divers parishes, chapelries, and districts of great extent, and containing a large population, wherein or in parts whereof the provision for public worship and for pastoral superintendence is insufficient for the spiritual wants of the inhabitants thereof; be it therefore enacted, that if at any

STAT. 6 & 7
VICT. c. 37.

Bounty board may require repayment of capital after thirty years.

Commissioners to have full rights of ownership over the lands, &c. vested in them, subject to certain conditions.

Commissioners to have full power over stock.

Stock not to be used, nor lands sold, without approval of her majesty in council.

Districts may be constituted for spiritual purposes;

STAT. 6 & 7
VICT. C. 37.

time it shall be made to appear to the said ecclesiastical commissioners for England, that it would promote the interests of religion that any part or parts of any such parish or parishes, chapelry or chapelries, district or districts, or any extra-parochial place or places, or any part or parts thereof, should be constituted a separate district for spiritual purposes, it shall be lawful by the authority aforesaid, with the consent of the bishop of the diocese under his hand and seal, to set out by metes and bounds, and constitute a separate district accordingly, such district not then containing within its limits any consecrated church or chapel in use for the purposes of divine worship, and to fix and declare the name of such district: provided always, that the draft of any scheme for constituting any such district, proposed to be laid before her majesty in council by the said commissioners, shall be delivered or transmitted to the incumbent and to the patron or patrons of the church or chapel of any parish, chapelry, or district out of which it is recommended that any such district or any part thereof should be taken, in order that such incumbent, patron or patrons, may have an opportunity of offering or making, to the said commissioners or to such bishop, any observations or objections upon or to the constituting of such district; and that such scheme shall not be laid before her majesty in council, until after the expiration of one calendar month next after such copy shall have been so delivered or transmitted, unless such incumbent and patron or patrons shall in the meantime consent to the same: provided also, that in every scheme for constituting any such district, the said commissioners shall recommend to her majesty in council, that the minister of such district, when duly licensed as hereinafter mentioned, shall be permanently endowed, under the provisions hereinafter contained, to an amount of not less than the annual value of one hundred pounds; and also, if such endowment be of less than the annual value of one hundred and fifty pounds, that the same shall be increased under the like provisions to such last-mentioned amount, at the least, as soon as such district shall have become a new parish as hereinafter provided.

and are to be
endowed to a
certain amount
at the least.

Map of district to be
annexed to
scheme, and
registered.

“X. And be it enacted, that a map or plan, setting forth and describing such metes and bounds, shall be annexed to the scheme for constituting such district, and transmitted therewith to her majesty in council, and a copy thereof shall be registered by the registrar of the diocese, together with any order issued by her majesty in council for ratifying such scheme: provided always that it shall not be necessary to publish any such map or plan in the London Gazette.

Minister to be
nominated and
licensed to
district.

“XI. And be it enacted, that upon any such district being so constituted, a minister may and shall be nominated thereto in manner hereinafter provided, and may thereupon be licensed thereto by the bishop, and shall have power to perform and shall perform within such district all such pastoral duties appertaining to the office of a minister according to the rites and usages of the united church of England and Ireland as shall be specified and set forth in his licence, and, when a building shall be licensed within such district for divine worship in manner hereinafter provided, shall also perform such services and offices as shall be specified and set forth in the same or any further licence granted in that behalf by the bishop of the diocese: and such minister shall perform such pastoral duties, services, and offices respectively, independently of the incumbent or minister of the church of any parish, chapelry, or district out of which such new district or any part thereof shall have been taken, and shall, so far as the performance of the same may be authorized by such licence or licences, have the cure of souls in and over such new district: provided always, that no burials shall be performed in such licensed building, and that nothing in this act contained shall empower such bishop to include in any such licence the solemnisation of marriages.

Style and
character of
minister;

“XII. And be it enacted, that such minister shall be styled ‘The Minister of the District of _____,’ according to the name thereof so fixed as aforesaid, and shall be in all respects subject to the jurisdiction of the bishop and archdeacon within whose diocese and archdeaconry such district shall be situate, and shall only be removable from his office of such minister for the like reasons and in the same manner as any perpetual curate is now by law removable; and such minister shall be a body politic and corporate, and shall have perpetual succession, as

and power to
law.

well by the name and in the character aforesaid, as by the name and in the character of perpetual curate hereinafter mentioned and provided, as the case may be; and such minister and perpetual curate respectively may, in such name and character respectively, notwithstanding the Statutes of Mortmain, receive and take, to him and his successors, as well every grant of endowment or augmentation made or granted by the authority aforesaid, as also any real or personal estate or effects whatsoever which any person or persons or body corporate may give or grant to him according to law.

“XIII. And be it declared and enacted, that it shall be lawful for the bishop of the diocese, at any time after the constituting of any such district as aforesaid, to license any building, within such district, which he may consider to be fit and proper for such purpose, for the performance of divine service by such minister according to the rites and usages of such united church; and such minister may for any churchings performed under any such licence receive such fees as shall be fixed and determined in manner hereinafter provided; and all laws now in force relating to the registration of baptisms shall apply to all baptisms performed under any such licence.

“XIV. Provided always, and be it enacted, that, until a church or chapel shall have been built or acquired within such district, and shall have been approved and consecrated as hereinafter provided, nothing herein contained shall prejudice or affect the right of any incumbent of any other church or chapel, who before the constituting of such district possessed the entire cure of souls within the same or any part thereof, to publish any banns, solemnize any marriages, or perform any burials in his own church or chapel which he could have published, solemnized, or performed therein, or to receive any fees, dues, or emoluments (except the fees hereinbefore authorized to be received by the minister of such district) which as such incumbent he could have received if such district had not been constituted, nor any right to attend divine service in any other church or chapel, which any inhabitant of such district possessed before such district was constituted.

“XV. And be it enacted, that, when any church or chapel shall be built, purchased, or acquired in any district constituted as aforesaid, and shall have been approved by the said commissioners, by an instrument in writing under their common seal, and consecrated as the church or chapel of such district, for the use and service of the minister and inhabitants thereof, such district shall, from and after the consecration of such church or chapel, be and be deemed to be a new parish for ecclesiastical purposes, and shall be known as such by the name of ‘The new Parish of _____,’ instead of ‘The District of _____,’ according to the name so as aforesaid fixed for such district; and such church or chapel shall become and be the church of such new parish accordingly; and any licence granted by the bishop, licensing any building for divine worship as aforesaid, shall thereupon become void; and it shall be lawful to publish banns of matrimony in such church, and according to the laws and canons in force in this realm to solemnize therein marriages, baptisms, churchings, and burials, and to require and receive such fees upon the solemnization of such offices or any of them as shall be fixed by the chancellor of the diocese in which such new parish shall be situate, and which fees, and also the fees for churchings to be received as aforesaid by the minister of such district, such chancellor is hereby empowered and required to fix accordingly; and the like Easter offerings and dues may be received within the limits of such new parish by the perpetual curate thereof as are and were, at and before the time of the passing of this act, payable to the incumbent of the church of the principal parish of which such new parish originally formed a part; and the several laws, statutes, and customs in force relating to the publication of banns of matrimony, and to the performance of marriages, baptisms, churchings, and burials, and the registering thereof respectively, and to the suing for and recovering of fees, oblations, or offerings in respect thereof, shall apply to the church of such new parish, and to the perpetual curate thereof for the time being: provided always, that it shall not be lawful for any such minister or perpetual curate to receive any fee for the performance of any baptism, within his district or new parish as the case may be, or for the registration thereof.

STAT. 6 & 7
VICT. c. 37.

Bishop may license a temporary place of worship.

Not to prevent marriages and burials in mother church, nor affect certain other rights.

District to become a new parish upon a church being consecrated.

STAT. 6 & 7
VICT. c. 37.

Minister to
become per-
petual curate
of new parish.

Churchwar-
dens to be
chosen.

Act not to
affect parochial
rights, &c.
otherwise than
as expressly
provided.

Endowment of
minister.

Compensation
to incumbent
of mother
church.

Patronage may
be conferred
upon contri-
butors to en-
dowment or to
a church, or
their no-
minees.

Remaining
patronage to
be exercised
alternately by
crown and
bishops.

"XVI. And be it enacted, that upon any such district so becoming a new parish, the minister of such district, having been duly licensed, shall, without any further process or form in law, become and be perpetual curate of such new parish and of the church thereof, and shall have exclusive cure of souls in and over such parish; and shall be a body politic and corporate, and have perpetual succession; and that such parish and church shall be and be deemed to be a perpetual curacy, and a benefice with cure of souls, to all intents and purposes.

"XVII. And be it enacted, that in every such case of a district so becoming a new parish two fit and proper persons, being members of the united church of England and Ireland, shall, within twenty-one days from the consecration of the church thereof, be chosen churchwardens for such new parish, one being chosen by the perpetual curate thereof, and the other by the inhabitants, residing therein and having a similar qualification to that which would entitle inhabitants to vote at the election of churchwardens for the principal parish as aforesaid, or the majority of such inhabitants, and such election shall take place at a meeting to be summoned in such manner in all respects as such perpetual curate shall direct; and such persons shall continue such churchwardens until the next usual period of appointing parish officers following their appointment; and at the like time in every year two such persons shall thenceforward be chosen by the perpetual curate for the time being and inhabitants assembled as aforesaid; and every person so chosen as aforesaid shall be duly admitted, and shall do all things pertaining to the office of churchwarden as to ecclesiastical matters in the said new parish: provided always, that nothing herein contained shall render any such churchwardens liable or competent to perform the duties of overseer of the poor in respect of such their office of churchwardens.

"XVIII. Provided always, and be it enacted, that, until parliament shall otherwise determine, nothing herein contained shall be construed to affect or alter any rights, privileges, or liabilities whatsoever, ecclesiastical or civil, of any parish, chapelry, or district, except as is herein expressly provided.

"XIX. And be it enacted, that the said recited acts, so far as they apply to making better provision for the cure of souls, shall extend to authorize the endowment or augmentation of the income of such ministers and perpetual curates as aforesaid, to such an amount or in such proportion, and in such manner, as shall be deemed expedient, by the authority aforesaid; and also to authorize the assigning, at any time and from time to time, to the incumbent of any church or chapel, whose fees, dues, or other emoluments shall be diminished by or in consequence of any proceeding under the provisions of this act, and, if it be deemed fit by the like authority, to his successors also, of such an annual sum as shall, upon due inquiry, appear to be a just and reasonable compensation for such diminution.

"XX. And be it enacted, any law, statute, or canon to the contrary notwithstanding, that it shall be lawful, by the authority aforesaid, at any time, to assign the right of patronage of any such district or new parish as aforesaid, and the nomination of the minister or perpetual curate thereof respectively, either in perpetuity or for one or more nomination or nominations, to any ecclesiastical corporation, aggregate or sole, or to either of the universities of Oxford, Cambridge, or Durham, or to any college therein respectively, or to any person or persons, or the nominee or nominees of such person or persons or body respectively, upon condition of such corporation, university, college, person or persons contributing to the permanent endowment of such minister or perpetual curate, or towards providing a church or chapel for the use of the inhabitants of such district or new parish, in such proportion and in such manner as shall be approved by the like authority.

"XXI. And be it enacted, that the right of patronage and nomination of every such minister and perpetual curate, unless or until such right of patronage and nomination shall be otherwise wholly assigned, or except so far as the same shall be otherwise in part assigned, under the provisions in that behalf hereinbefore last contained, shall and may be exercised, alternately, by her majesty and her successors and the bishop of the diocese for the time being in which the district or new

parish shall be situate; the first such nomination being in each case made by her majesty.

“XXII. And for the encouragement of such persons as shall be disposed to contribute towards the purposes of this act, and that their charity may be rightly applied, be it enacted, that all and every person or persons, or body corporate, having in his or their own right any estate or interest in possession, reversion, or contingency of or in any lands, tithes, tenements, or other hereditaments, or any property of or in any goods or chattels, shall have full power, licence, and authority, at his and their will and pleasure, by deed enrolled in such manner and within such time as is directed by the statute made in the twenty-seventh year of the reign of King Henry the Eighth, intituled, ‘An Act concerning Enrolments of Bargains and Contracts of Lands and Tenements,’ in the case of any lands, tithes, tenements, or other hereditaments, (but without any deed in the case of any goods or chattels,) or by his or their testament in writing, duly executed according to law, to give and grant to and vest in the said ecclesiastical commissioners for England and their successors all such his or their estate, interest, or property in such lands, tithes, tenements, or other hereditaments, goods, and chattels, or any part or parts thereof, for and towards the endowment or augmentation of the income of such ministers or perpetual curates as aforesaid, or for or towards providing any church or chapel for the purposes and subject to the provisions of this act, and to be for such purposes respectively applied, according to the will of such benefactors respectively, as in and by such deed enrolled, or such testament, executed as aforesaid, may be expressed, or, in the case of no deed or testament, as may in some other manner be directed, and in default of such expression or direction then in such manner as shall be directed by the authority hereinbefore mentioned; and such commissioners and their successors shall have full capacity and ability to purchase, receive, take, hold, and enjoy for the purposes aforesaid, as well from such persons as shall be so charitably disposed to give the same, as from all other persons who shall be willing to sell or aliene to the said commissioners any lands, tithes, tenements, or other hereditaments, goods, or chattels, without any licence or writ of *ad quod damnum*, the Statute of Mortmain, or any other statute or law, to the contrary notwithstanding.

“XXIII. And be it enacted, that all the powers and authorities vested in her majesty in council and in the said commissioners by the said recited acts, with reference to the matters therein contained, and all other the provisions of the same acts relating to schemes and orders prepared, made, and issued for the purposes thereof, shall be continued and extended and shall apply to her majesty in council and to the said commissioners, and to all schemes and orders prepared, made, and issued by them respectively, with reference to all matters contained in this act, as fully and effectually as if the said powers, authorities, and other provisions were repeated herein; and the provisions contained in an act passed in the second year of her majesty’s reign, intituled, ‘An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy,’ respecting the party or parties to be deemed patron or patrons, for the purposes of notice to be served upon and consent to be given by such patron or patrons, and also respecting the manner in which and the party by whom any such consent is to be given, shall be construed to apply to the like matters respectively under this act.

“XXIV. And whereas it may be expedient that her majesty’s commissioners for building new churches should be able to apply a portion of the funds placed at their disposal towards promoting the purposes of this act; be it enacted, that it shall be lawful for the said commissioners to make any such grant in aid of the erection of any such new church or chapel as aforesaid as shall seem fit to them, if they are authorized so to do under the Church Building Acts, although the right of patronage of such church or chapel may not belong on the consecration thereof to the incumbent of the original parish in which such church or chapel shall be situate, anything in such acts to the contrary notwithstanding.

“XXV. And whereas an act was passed in the seventeenth year of the reign of King Charles the Second, intituled, ‘An Act for uniting Churches in Cities and

STAT. 6 & 7
VICT. c. 37.

Powers of bounty board as to endowment under 2 & 3 Ann. c. 11, and 45 Geo. 3, c. 84, conferred upon commissioners for the purposes of this act.
27 Hen. 8, c. 16.

Powers of 3 & 4 Vict. c. 113, and 4 & 5 Vict. c. 39, extended to this act.

1 & 2 Vict. c. 106.

Church building commissioners may make grants for purposes of this act.

So much of 17 Car. 2, c. 3,

STAT. 6 & 7
VICT. c. 37.
as enables im-
propriators
to augment,
(repealed by
1 & 2 Vict. c.
106, s. 15,)
revived.

Act not to
extend to
Scotland or
Ireland.
Act may be
amended this
session.

Towns Corporate,' which, besides the provisions indicated by the title of the said act, contains enactments enabling impropiators to augment parsonages or vicarages in certain cases, and incumbents in certain cases to receive lands, tithes, and other hereditaments, without licence in mortmain; and whereas by an act passed in the second year of the reign of her present majesty, intituled, 'An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy,' the whole of the said act of King Charles the Second was repealed, and more extensive provisions were made for the uniting of churches, but none for augmentations or holding in mortmain according to the same act; and it is expedient that the last-mentioned enactments should be revived: be it therefore enacted, that so much of the said act of King Charles the Second as enables any owner or proprietor of any impropriation, tithes or portion of tithes, to annex the same or any part thereof unto the parsonage, vicarage, or curacy of the parish church or chapel where the same lie or arise, or to settle the same in trust for the benefit of such parsonage, vicarage, or curacy, and authorizes parsons, vicars, or incumbents to receive lands, tithes, or other hereditaments without licence of mortmain, shall be, and the same is hereby revived; and that all augmentations and grants at any time heretofore made according to the said act of King Charles the Second shall be as good and effectual as if the same had never been repealed.

"XXVI. And be it enacted, that this act shall extend only to England and Wales, the isle of Man, the islands of Guernsey, Jersey, Alderney and Sark, and the Scilly Islands.

"XXVII. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament."

STAT. 6 & 7
VICT. c. 38.

CXXXV. STAT. 6 & 7 VICTORIÆ, c. 38. A.D. 1843.

"An Act to make further Regulations for facilitating the hearing Appeals and other Matters by the Judicial Committee of the Privy Council."

Appeals, &c.
may be heard
by not less
than three
members of
the judicial
committee of
the Privy
Council under
a special order
of her majesty.

"Whereas it has been found expedient to make further regulations for hearing and making report to her majesty in appeals and other matters referred to the judicial committee of the Privy Council, and for the more effectual appointment of surrogates in ecclesiastical and maritime causes of appeal, and for making orders or decrees incidental to such causes of appeal, and for the punishment of contempt, and compelling appearances and enforcement of judgments, orders, and decrees of her majesty in council, or of the said judicial committee, or their surrogates, in such causes of appeal; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in any appeal, application for prolongation or confirmation of letters patent, or other matter referred or hereafter to be referred by her majesty in council to the judicial committee of the Privy Council, it shall be lawful for her majesty, by order in council or special direction under her royal sign manual, having regard to the nature of the said appeal or other matter, and in respect of the same not requiring the presence of more than three members of the said committee, to order that the same be heard, and when so ordered it shall be lawful that the same shall be accordingly heard by not less than three of the members of the said judicial committee, subject to such other rules as are applicable, or under this act may be applicable, to the hearing and making report on appeals and other matters by four or more of the members of the said judicial committee.

Powers of the
judicial com-
mittee and
their surro-
gates in re-
spect to ap-
peals from
ecclesiastical
and admiralty
courts.

"II. And be it enacted, that in respect of all incidents, emergencies, dependents, and things adjoined to, arising out of, or connected with appeals from any ecclesiastical court, or from any admiralty or vice-admiralty court, (save in giving a definitive sentence, or any interlocutory decree having the force and effect of a definitive sentence,) the said judicial committee and their surrogates shall have full power, subject to such rules, orders, and regulations as shall from time to time be made by the said judicial committee, (with the approval of her majesty in council,) to make all such interlocutory orders and decrees, and to administer all such oaths

and affirmations, and to do all such things as may be necessary, or the judges of the courts below appealed from or their surrogates in the cases appealed, or the judges of the courts appealed to or their surrogates, or the lords commissioners of appeals in prize causes or their surrogates, and the judges delegate or their condelegates under commissions of appeal under the great seal in ecclesiastical and maritime causes of appeal, would respectively have had before an act passed in the third year of the reign of his late majesty, intituled, 'An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council,' and another act passed in the following session of parliament, intituled, 'An Act for the better Administration of Justice in His Majesty's Privy Council,' were passed.

"III. And be it enacted, that the surrogates and examiners of the Arches court of Canterbury and the high court of Admiralty of England, and such persons as shall from time to time be appointed surrogates or examiners of the said courts, shall be by virtue of this act surrogates and examiners respectively of the judicial committee of the Privy Council in all causes of appeal from ecclesiastical courts and from any admiralty or vice-admiralty court.

"IV. And be it enacted, that all orders, decrees, and things heretofore done and expedited in such causes of appeal by the surrogates appointed by the said judicial committee of the Privy Council shall be deemed to be valid and effectual, if otherwise lawfully done and expedited, notwithstanding any informality or want of authority in respect to the same in the orders of his late majesty in council of the fourth day of February, one thousand eight hundred and thirty-three, of the said judicial committee of the fifth day of February, one thousand eight hundred and thirty-three, of the order of his late majesty in council of the ninth day of December, one thousand eight hundred and thirty-three, of an order of the said judicial committee of the tenth day of December, one thousand eight hundred and thirty-three, and an order of his late majesty in council of the twelfth day of August, one thousand eight hundred and thirty-five.

"V. And be it enacted, that, subject to such rules and regulations as may from time to time be made by the said judicial committee with the approval of her majesty in council, and save and in so much as the practice thereof may be varied by the said acts of the reign of his late majesty or by this act, the said causes of appeal to her majesty in council shall be commenced within the same times, and conducted in the same form and manner, and by the same persons and officers, as if appeals in the same causes had been made to the queen in Chancery, the high court of Admiralty of England, or the lords commissioners of appeals in prize causes respectively; and all things otherwise lawfully done and expedited in the said causes of appeal by the registrar of the high court of Admiralty of England, his deputy or deputies, in consequence of the passing of the said acts of the reign of his late majesty, shall be deemed to be valid to all intents whatsoever.

"VI. And whereas by the provisions of the hereinbefore secondly-recited act it was enacted, that the said judicial committee should have and enjoy in all respects such and the same power of punishing contempts and of compelling appearances, and that his majesty in council should have and enjoy in all respects such and the same powers of enforcing judgments, decrees, and orders, (both *in personam* and *in rem*,) as are given to any court ecclesiastical by an act of parliament passed in a session of parliament of the second and third years of the reign of his majesty King William the Fourth, intituled, 'An Act for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland,' and that all such powers as are given to courts ecclesiastical, if of punishing contempts or of compelling appearances, should be exercised by the said judicial committee, and of enforcing decrees and orders should be exercised by his majesty in council, in such and the same manner as the powers in and by such act of parliament given, and should be of as much force and effect as if the same had been thereby expressly given to the said committee or to his majesty in council: be it enacted, that so much of the said act as relates to the powers thereby given to the said judicial committee and to his majesty in council, under the last-recited act, shall be repealed.

STAT. 6 & 7
VICT. c. 38.

2 & 3 Gul. 4,
c. 92.

3 & 4 Gul. 4,
c. 41.

Who to be
surrogates and
examiners of
the judicial
committee in
ecclesiastical
and admiralty
appeals.

Past proceed-
ings of surro-
gates of the
judicial com-
mittee valid,
notwithstand-
ing certain
informalities.

Manner of
conducting
appeals before
the judicial
committee.

So much of
2 & 3 Gul. 4,
c. 93, as em-
powers the
judicial com-
mittee and his
majesty in
council to
punish con-
tempts, &c.
repealed.

STAT. 6 & 7
VICT. c. 38.

Punishing
contempts,
compelling
appearances,
enforcing
judgments,
&c. in causes
of appeal.
3 & 4 Vict.
c. 65.

Orders, &c.
may be en-
forced by
sequestration
against cer-
tain persons
pronounced
contumacious
and in con-
tempt.

Inhibitions,
&c. to be in
her majesty's
name, and of
force through-
out the British
dominions.

Monitions for
payments into
the registry of
the Admiralty
court under
orders, &c.

All appeals
from ecclesias-
tical and admiral-
ty courts
may be re-
ferred to the
judicial com-
mittee by an
order in
council.

"VII. And be it enacted, that for better punishing contempts, compelling appearances, and enforcing judgments of her majesty in council, and all orders and decrees of the said judicial committee or their surrogates, in all causes of appeal from ecclesiastical courts, and from admiralty or vice-admiralty courts, her majesty in council and the said judicial committee and their surrogates shall have the same powers, by attachment and committal of the person to any of her majesty's gaols, and subsequent discharge of any person so committed, as by any statute, custom, or usage belong to the judge of the high court of Admiralty of England; and the said judicial committee shall have the same immunities and privileges as are conferred on the judge of the high court of Admiralty of England under an act passed in the fourth year of the reign of her majesty, intituled, 'An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England,' as fully as if the same had been thereby expressly given to the said judicial committee.

"VIII. And be it enacted, that in all causes of appeal to her majesty in council from ecclesiastical courts, and from admiralty or vice-admiralty courts, in which any person duly monished or cited or required to comply with any lawful order or decree of her majesty in council, or of the said judicial committee or their surrogates, and neglecting or refusing to pay obedience to such lawful order or decree, or committing any contempt of the process under the seal of her majesty in ecclesiastical and maritime causes, shall reside out of the dominions of her majesty, or shall have privilege of peerage, or shall be a lord of parliament or a member of the house of commons, it shall be lawful for the said judicial committee or their surrogates to pronounce such person to be contumacious and in contempt, and after he shall have been so pronounced contumacious and in contempt to cause process of sequestration to issue under the said seal of her majesty against the real and personal estate, goods, chattels, and effects, wheresoever lying within the dominions of her majesty, of the person against or upon whom such order or decree shall have been made, in order to enforce obedience to the same, and payment of the expenses attending such sequestration, and all proceedings consequent thereon, and to make such further order in respect of or consequent on such sequestration, and in respect of such real and personal estate, goods, chattels, and effects sequestered thereby, as may be necessary, or for payment of monies arising from the same to the person to whom the same may be due or into the registry of the high court of Admiralty and Appeals for the benefit of those who may be ultimately entitled thereto.

"IX. And be it enacted, that all inhibitions, citations, monitions, and other instruments incidental to or arising out of such causes of appeal shall be issued in the name of her majesty, and under seal of her majesty in ecclesiastical and maritime causes, and shall be of full authority in all places throughout the dominions of her majesty.

"X. And be it enacted, that in all appeals in ecclesiastical and maritime causes to her majesty in council it shall be lawful for her majesty in council, and the said judicial committee or their surrogates, at the petition of any person interested in the same, to decree monitions for the transmission of any sum or sums of money respecting which any order or decree may be made, or any questions may be depending arising out of such causes, and the proceeds of all ships or vessels, goods, and cargoes respecting which any appeals may be depending, into the registry of the high court of Admiralty and Appeals, for the benefit of the person or persons who may be ultimately entitled thereto, or for payment thereof to the person to whom the same may be lawfully due.

"XI. And be it enacted, that it shall be lawful for her majesty, by order in council, to direct that all causes of appeal from ecclesiastical courts, and from the vice-admiralty court of the Cape of Good Hope, and all vice-admiralty courts to the westward thereof, in which the appeal and petition of reference to her majesty shall have been lodged in the registry of the high court of Admiralty and Appeals within twelve calendar months from the giving or pronouncing of any order, decree, or sentence appealed from, and all causes of appeal from vice-admiralty courts to the eastward of the Cape of Good Hope, in which the appeal and petition

of reference to her majesty shall have been lodged in the registry of the high court of Admiralty and Appeals within eighteen calendar months from the giving or pronouncing any order, decree, or sentence appealed from, shall be referred to the judicial committee of the Privy Council, and the said judicial committee and their surrogates shall have full power forthwith to proceed in the said appeals, and the usual inhibition and citation shall be decreed and issued, and all usual proceedings taken, as if the same had been referred to the said judicial committee by a special order of her majesty in council in each cause respectively.

STAT. 6 & 7
VICT. c. 38.

“XII. And be it declared and enacted, that as well the costs of defending any decree or sentence appealed from as of prosecuting any appeal, or in any manner intervening in any cause of appeal, and the costs on either side, or of any party, in the court below, and the costs of opposing any matter which shall be referred to the said judicial committee, and the costs of all such issues as shall be tried by direction of the said judicial committee respecting any such appeal or matter, shall be paid by such party or parties, person or persons, as the said judicial committee shall order, and that such costs shall be taxed as in and by the said act for the better administration of justice in the Privy Council is directed, respecting the costs of prosecuting any appeal or matter referred by her majesty under the authority of the said act, save the costs arising out of any ecclesiastical or maritime cause of appeal, which shall be taxed by the registrar hereinafter named, or his assistant registrar.

Costs may be awarded by the judicial committee, and taxed.

“XIII. And be it enacted, that the registrar of the high court of Admiralty of England for the time being may be appointed by her majesty to be registrar of her majesty in ecclesiastical and maritime causes, and shall have power to appoint an assistant registrar, as provided by an act passed in the fourth year of the reign of her majesty, intituled, ‘An Act to make Provision for the Judge, Registrar, and Marshall of the High Court of Admiralty of England,’ and shall during his good behaviour, and while he shall be registrar of the said high court of Admiralty, hold his office of registrar of her majesty in ecclesiastical and maritime causes, and shall do all such things, and shall have the same powers and privileges in respect to the same, as belong to his predecessors in the office of registrar of his majesty in ecclesiastical and maritime causes.

Appointment of registrar and assistant registrar in ecclesiastical and maritime causes.
3 & 4 Vict. c. 66.

“XIV. And be it enacted, that all records, muniments, books, papers, wills, and other documents remaining in the registry of the high court of Admiralty and Appeals, appertaining to the late high court of Delegates and Appeals for prizes, shall be and remain in the custody and possession of the said registrar of her majesty in ecclesiastical and maritime causes.

Custody of records, &c. of the court of Delegates and Appeals.

“XV. And be it enacted, that it shall be lawful for the said judicial committee from time to time to make such rules, orders, and regulations, respecting the practice and mode of proceeding in all appeals from ecclesiastical and admiralty and vice-admiralty courts, and the conduct and duties of the officers and practitioners therein, and to appoint such officer or officers as may be necessary for the execution of processes under the said seal of her majesty, and in respect to all appeals and other matters referred to them, as to them shall seem fit, and from time to time to repeal or alter such rules, orders, or regulations: provided always, that no such rules, orders, or regulations shall be of any force or effect until the same shall have been approved by her majesty in council.

Judicial committee empowered to make rules, &c. respecting practice and mode of proceeding in appeals, &c. Proviso.

“XVI. And whereas, in certain causes which were depending before the late high court of Delegates, certain decrees or orders were made and interposed, and are not yet fully carried into effect: and whereas, in consequence of the death of the judges delegate, or some of them, named in the several commissions under the great seal, such decrees or orders cannot be carried into effect; be it enacted, that all such causes of appeal and complaint which were depending before the high court of Delegates, and in which any decree, order, or thing, for the reason lastly hereinbefore mentioned, is outstanding and not fully ended and determined, shall be transferred to the judicial committee of the Privy Council; and the said judicial committee shall take up and proceed with the said causes in the same manner as if the same had been originally causes of appeal and complaint depending before the said judicial committee.

Judicial committee of Privy Council to proceed with causes depending before late high court of Delegates.

STAT. 6 & 7
VICT. C. 38.

Punishing
contempts,
compelling
appearances,
enforcing
judgments,
&c. in causes
of appeal.
3 & 4 Vict.
c. 65.

Orders, &c.
may be en-
forced by
sequestration
against cer-
tain persons
pronounced
contumacious
and in con-
tempt.

Inhibitions,
&c. to be in
her majesty's
name, and of
force through-
out the British
dominions.

Monitions for
payments into
the registry of
the Admiralty
court under
orders, &c.

All appeals
from ecclesi-
astical and admi-
ralty courts
may be re-
ferred to the
judicial com-
mittee by an
order in
council.

"VII. And be it enacted, that for better punishing contempts, compelling appearances, and enforcing judgments of her majesty in council, and all orders and decrees of the said judicial committee or their surrogates, in all causes of appeal from ecclesiastical courts, and from admiralty or vice-admiralty courts, her majesty in council and the said judicial committee and their surrogates shall have the same powers, by attachment and committal of the person to any of her majesty's gaols, and subsequent discharge of any person so committed, as by any statute, custom, or usage belong to the judge of the high court of Admiralty of England; and the said judicial committee shall have the same immunities and privileges as are conferred on the judge of the high court of Admiralty of England under an act passed in the fourth year of the reign of her majesty, intituled, 'An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of England,' as fully as if the same had been thereby expressly given to the said judicial committee.

"VIII. And be it enacted, that in all causes of appeal to her majesty in council from ecclesiastical courts, and from admiralty or vice-admiralty courts, in which any person duly monished or cited or required to comply with any lawful order or decree of her majesty in council, or of the said judicial committee or their surrogates, and neglecting or refusing to pay obedience to such lawful order or decree, or committing any contempt of the process under the seal of her majesty in ecclesiastical and maritime causes, shall reside out of the dominions of her majesty, or shall have privilege of peerage, or shall be a lord of parliament or a member of the house of commons, it shall be lawful for the said judicial committee or their surrogates to pronounce such person to be contumacious and in contempt, and after he shall have been so pronounced contumacious and in contempt to cause process of sequestration to issue under the said seal of her majesty against the real and personal estate, goods, chattels, and effects, wheresoever lying within the dominions of her majesty, of the person against or upon whom such order or decree shall have been made, in order to enforce obedience to the same, and payment of the expenses attending such sequestration, and all proceedings consequent thereon, and to make such further order in respect of or consequent on such sequestration, and in respect of such real and personal estate, goods, chattels, and effects sequestered thereby, as may be necessary, or for payment of monies arising from the same to the person to whom the same may be due or into the registry of the high court of Admiralty and Appeals for the benefit of those who may be ultimately entitled thereto.

"IX. And be it enacted, that all inhibitions, citations, monitions, and other instruments incidental to or arising out of such causes of appeal shall be issued in the name of her majesty, and under seal of her majesty in ecclesiastical and maritime causes, and shall be of full authority in all places throughout the dominions of her majesty.

"X. And be it enacted, that in all appeals in ecclesiastical and maritime causes to her majesty in council it shall be lawful for her majesty in council, and the said judicial committee or their surrogates, at the petition of any person interested in the same, to decree monitions for the transmission of any sum or sums of money respecting which any order or decree may be made, or any questions may be depending arising out of such causes, and the proceeds of all ships or vessels, goods, and cargoes respecting which any appeals may be depending, into the registry of the high court of Admiralty and Appeals, for the benefit of the person or persons who may be ultimately entitled thereto, or for payment thereof to the person to whom the same may be lawfully due.

"XI. And be it enacted, that it shall be lawful for her majesty, by order in council, to direct that all causes of appeal from ecclesiastical courts, and from the vice-admiralty court of the Cape of Good Hope, and all vice-admiralty courts to the westward thereof, in which the appeal and petition of reference to her majesty shall have been lodged in the registry of the high court of Admiralty and Appeals within twelve calendar months from the giving or pronouncing of any order, decree, or sentence appealed from, and all causes of appeal from vice-admiralty courts to the eastward of the Cape of Good Hope, in which the appeal and petition

should have obtained possession of an ecclesiastical benefice adversely to the right of presentation or gift of the patron thereof, a clerk should be presented or collated thereto by his majesty or the ordinary by reason of a lapse, such last-mentioned clerk should be deemed to have obtained possession adversely to the right of presentation or gift of such patron as aforesaid; but that when a clerk should have been presented by his majesty upon the avoidance of a benefice in consequence of the incumbent thereof having been made a bishop, the incumbency of such clerk should for the purposes of that act be deemed a continuation of the incumbency of the clerk so made bishop; and by the said act it was further enacted, that in the construction thereof every person claiming a right to present to or bestow any ecclesiastical benefice as patron thereof, by virtue of any estate, interest, or right which the owner of an estate tail in the advowson might have barred, should be deemed to be a person claiming through the person entitled to such estate tail, and the right to bring any *quare impedit*, action, or suit, should be limited accordingly: provided always, and it was thereby further enacted, that after the said thirty-first day of December, one thousand eight hundred and thirty-three, no person should bring any *quare impedit* or other action, or any suit to enforce a right to present to or bestow any ecclesiastical benefice as the patron thereof, after the expiration of one hundred years from the time at which a clerk should have obtained possession of such benefice adversely to the right of presentation or gift of such person, or of some person through whom he claims, or of some person entitled to some preceding estate or interest or undivided share, or alternate right of presentation or gift, held or derived under the same title, unless a clerk should subsequently have obtained possession of such benefice on the presentation or gift of the person so claiming, or of some person through whom he claims, or of some other person entitled in respect of an estate, share, or right held or derived under the same title; and by the said act it was further enacted, that at the determination of the period limited by that act to any person for bringing any writ of *quare impedit*, or other action or suit, the right and title of such person to the advowson, for the recovery whereof such action or suit might have been brought within such period, should be extinguished: provided always, and it was thereby further enacted, that that act should not, so far as it related to any right to present to or bestow any church, vicarage, or other ecclesiastical benefice, extend to Ireland: and whereas the hereinbefore in part recited act, save in so far as it relates to any such right as last aforesaid, is already in force in Ireland, and it is expedient to extend to Ireland the whole of the provisions of that act: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the first day of January, one thousand eight hundred and forty-four, the several clauses and enactments in the said act passed in the session of parliament held in the third and fourth years of the reign of his late majesty King William the Fourth contained, and hereinbefore recited, relating to any right to present to or bestow any church, vicarage, or other ecclesiastical benefice, (the clause thereof providing that the said act so far as it relates to any such right shall not extend to Ireland always excepted,) shall extend and apply to Ireland, and that as fully and effectually as if the same clauses and enactments were here repeated, substituting for the said date of the thirty-first day of December, one thousand eight hundred and thirty-three, the said date of the first day of January, one thousand eight hundred and forty-four.

"II. And whereas it was by the said recited act enacted, that the words and expressions therein mentioned, which in their ordinary signification have a more confined or a different meaning, should in that act, except where the nature of the provision or the context of the act should exclude such construction, be interpreted as therein follows; (that is to say,) that the person through whom another person is said to claim should mean any person by, through, or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the curtesy of England, tenant in dower,

STAT. 6 & 7
VICT. c. 54.
[18.]

Provisions of
3 & 4 Gul. 4,
c. 27, relating
to advowsons,
&c. extended
to Ireland.

Certain words
in those provisions
to be
similarly interpreted.

STAT. 6 & 7
VICT. c. 54.
[1a.]

successor, special or general occupant, executor, administrator, legatee, husband assignee, appointee, devisee, or otherwise, and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat; and that the word 'person' should extend to a body politic, corporate, or collegiate, and to a class of creditors or other persons, as well as an individual; and that every word importing the singular number only should extend and be applied to several persons or things as well as one person or thing; and that every word importing the masculine gender only should extend and be applied to a female as well as a male: be it therefore further enacted, that the same words and expressions shall in this act be similarly interpreted, extended, and applied.

Removing doubts as to the periods limited for bringing any *quare impedit* or other action.

"III. And whereas doubts have been entertained whether the several periods by the said act limited for bringing any *quare impedit* or other action, or any suit to enforce a right to present to or bestow any ecclesiastical benefice as the patron thereof, apply to the case of a bishop claiming to have right to collate to or bestow any ecclesiastical benefice in his diocese, and it is expedient that all such doubts should be removed; be it therefore enacted, that the several periods limited by the said act or by this act for bringing any *quare impedit* or other action, or any suit to enforce a right to present to or bestow any ecclesiastical benefice, shall apply to the case of any bishop claiming a right as patron to collate to or bestow any ecclesiastical benefice, and that such right shall be extinguished in the same manner and at the same periods as the right of any other patron to present to or bestow any ecclesiastical benefice: provided always, that nothing herein contained shall be deemed to affect the right of any bishop to collate to any ecclesiastical benefice by reason of lapse.

Provisions for the cases of Roman catholic patrons who shall hereafter conform.
19 Car. 2. (Ir.)

"IV. And whereas by an act passed in the Irish parliament in the session held in the seventeenth and eighteenth years of the reign of King Charles the Second, intituled, 'An Act for the explaining of some Doubts arising upon an Act, intituled, "An Act for the better Execution of His Majesty's gracious Declaration for the Settlement of his Kingdom of Ireland, and Satisfaction of the several Interests of Adventurers, Soldiers, and other his Subjects there;" and for making some Alterations of and Additions unto the said Act for the more speedy and effectual Settlement of the said Kingdom,' it was enacted, that certain advowsons and rights of patronage, and the rights of nomination, presentation, or collation to or donation of certain ecclesiastical benefices or promotions, which had been forfeited by certain Irish papist or popish recusants, should vest, remain, and continue in his majesty, his heirs and successors, until such Irish papist or popish recusant, or the next heir of such papist or recusant, should come to church, and receive the sacraments according to the rites of the church of England, and from and after such conformity should be again revested in the person so conforming and his heirs: and whereas by an act passed in the second year of the reign of her majesty Queen Anne, intituled, 'An Act to prevent the further Growth of Popery,' it was enacted, that where any papists, or persons professing the popish religion, did or should claim, enjoy, or possess any advowson or advowsons of churches, right of patronage or presentation to any ecclesiastical benefice, or where any protestant or protestants did or should hold, claim, enjoy, or possess any advowson or advowsons of churches, or right of patronage or presentation to any ecclesiastical benefice or benefices, in trust or for the use and benefit of any papist or papists whatsoever, that every such advowson, and right of patronage or presentation, should be thereby *ipso facto* vested in her majesty, her heirs and successors, according to such estates as such papist had in the same, until such time as such papist, or the heir or heirs of such papist, should take a certain oath and subscribe a certain declaration and abjuration prescribed by and set forth in the said act, and should conform to the church of Ireland as by law established; be it enacted, that no possession under any presentation by the crown, or collation by the ordinary, which may have taken place by reason of the said act of the eighteenth year of the reign of his majesty King Charles the Second, or of the said act of the second year of the reign of her majesty Queen Anne, during the nonconformity of any such patron profes-

2 Ann. c. 6.

sing the Roman catholic religion, shall be deemed an adverse possession within the meaning of this act against the right of any such patron or his heirs, or any person claiming by, through, or under him or them; provided, that in all cases in which any patron shall have conformed to the said united church within sixty years before the passing of this act, or shall hereafter conform thereto, such patron, or any person claiming by, through, or under him, shall not be barred from bringing any such *quære impedit*, or other action or suit, for the purpose in the said first herein-recited act mentioned, before the expiration of sixty years, to commence and be computed from the day on which such patron shall have so conformed as aforesaid.

STAT. 6 & 7
VICT. c. 54.
[Ir.]

“V. Provided always, and be it enacted, that this act shall not be prejudicial or available to or for any plaintiff or defendant in any action or suit already commenced, or on or before the said first day of January, one thousand eight hundred and forty-five, to be commenced, relating to any right to present to or bestow any church, vicarage, or other ecclesiastical benefice in Ireland.”

Act not to
apply to suits
commenced
before 1st Ja-
nuary, 1845.

CXXXVIII. STAT. 6 & 7 VICTORIÆ, c. 57. [IRELAND.] A.D. 1843.

“An Act to relieve Bishops succeeding to Bishoprics by Operation of the Act to alter and amend the Laws relating to the Temporalities of the Church in Ireland from certain Liabilities.”

STAT. 6 & 7
VICT. c. 57.
[Ir.]

“Whereas an act was passed in the third and fourth years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to alter and amend the Laws relating to the Temporalities of the Church in Ireland,’ and it was by the said act enacted, that the bishopric of Waterford, then void, should from and after the passing of the said act, and the other bishoprics named in the first column of the schedule (B) to the said act annexed, should, when and as the same might severally become void, be thenceforth united to and held together with the bishopric or archbishopric mentioned in conjunction therewith respectively in the second column of the said schedule (B), and that the archbishops or bishops of the archbishoprics or bishoprics in such second column named should, at such times respectively as before mentioned, be and become by virtue of the said act, and without further grant, installation, or ceremony whatsoever, bishops respectively of the said bishoprics named in such first column in conjunction therewith; and it was by the said act provided, that if any bishopric mentioned in the second column of the said schedule (B) should become void before the union of such bishopric with the bishopric mentioned in the first column of the said schedule, then the bishop of the bishopric mentioned in the first column should become by virtue of the said act, and without further grant, installation, or ceremony whatever, bishop of the bishopric in such second column named in conjunction therewith; and it was by the same act provided and enacted, that all and singular the lands, tenements, and hereditaments respectively belonging or in anywise appertaining to the bishoprics in the first column of the said schedule (B) named, together with all and singular the tithes, rents, and emoluments whatsoever to such bishoprics respectively appertaining or belonging, should in the case of the Bishop of Waterford from and after the passing of the said act, and in the case of the other bishoprics in the said schedule (B) mentioned, should, from and after the times when such bishoprics should become respectively void or united to any other bishopric as aforesaid, be and the same were thereby transferred to and vested in the ecclesiastical commissioners for Ireland and their successors for ever, nevertheless for the purposes therein mentioned; and it was by the same act further provided and enacted, that the said ecclesiastical commissioners should, from and out of the revenues of each bishopric in the first column of the said schedule mentioned, when and as the same should become vested in them, make good to the bishop thereof becoming, by virtue of the provision thereinbefore contained, bishop of the bishopric mentioned in conjunction therewith in the second column of the said schedule the sum or sums of money (if any) whereby the revenues of such bishopric in such second column mentioned should fall short of the revenues of such bishopric in such first column mentioned; but no provision is made by the said

3 & 4 Gul. 4,
c. 37

STAT. 6 & 7
VICT. c. 54.
[1a.]

successor, special or general occupant, executor, administrator, legatee, husband assignee, appointee, devisee, or otherwise, and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat; and that the word 'person' should extend to a body politic, corporate, or collegiate, and to a class of creditors or other persons, as well as an individual; and that every word importing the singular number only should extend and be applied to several persons or things as well as one person or thing; and that every word importing the masculine gender only should extend and be applied to a female as well as a male: be it therefore further enacted, that the same words and expressions shall in this act be similarly interpreted, extended, and applied.

Removing doubts as to the periods limited for bringing any *quare impedit* or other action.

"III. And whereas doubts have been entertained whether the several periods by the said act limited for bringing any *quare impedit* or other action, or any suit to enforce a right to present to or bestow any ecclesiastical benefice as the patron thereof, apply to the case of a bishop claiming to have right to collate to or bestow any ecclesiastical benefice in his diocese, and it is expedient that all such doubts should be removed; be it therefore enacted, that the several periods limited by the said act or by this act for bringing any *quare impedit* or other action, or any suit to enforce a right to present to or bestow any ecclesiastical benefice, shall apply to the case of any bishop claiming a right as patron to collate to or bestow any ecclesiastical benefice, and that such right shall be extinguished in the same manner and at the same periods as the right of any other patron to present to or bestow any ecclesiastical benefice: provided always, that nothing herein contained shall be deemed to affect the right of any bishop to collate to any ecclesiastical benefice by reason of lapse.

Provisions for the cases of Roman catholic patrons who shall hereafter conform.
19 Car. 2. (Ir.)

"IV. And whereas by an act passed in the Irish parliament in the session held in the seventeenth and eighteenth years of the reign of King Charles the Second, intituled, 'An Act for the explaining of some Doubts arising upon an Act, intituled, "An Act for the better Execution of His Majesty's gracious Declaration for the Settlement of his Kingdom of Ireland, and Satisfaction of the several Interests of Adventurers, Soldiers, and other his Subjects there;" and for making some Alterations of and Additions unto the said Act for the more speedy and effectual Settlement of the said Kingdom,' it was enacted, that certain advowsons and rights of patronage, and the rights of nomination, presentation, or collation to or donation of certain ecclesiastical benefices or promotions, which had been forfeited by certain Irish papist or popish recusants, should vest, remain, and continue in his majesty, his heirs and successors, until such Irish papist or popish recusant, or the right heir of such papist or recusant, should come to church, and receive the sacrament according to the rites of the church of England, and from and after such conformity should be again vested in the person so conforming and his heirs: and whereas by an act passed in the second year of the reign of her majesty Queen Anne, intituled, 'An Act to prevent the further Growth of Popery,' it was enacted, that where any papists, or persons professing the popish religion, did or should claim, enjoy, or possess any advowson or advowsons of churches, right of patronage or presentation to any ecclesiastical benefice, or where any protestant or protestants did or should hold, claim, enjoy, or possess any advowson or advowsons of churches, or right of patronage or presentation to any ecclesiastical benefice or benefices, in trust or for the use and benefit of any papist or papists whatsoever, that every such advowson, and right of patronage or presentation, should be thereby *ipso facto* vested in her majesty, her heirs and successors, according to such estates as such papist had in the same, until such time as such papist, or the heir or heirs of such papist, should take a certain oath and subscribe a certain declaration and abjuration prescribed by and set forth in the said act, and should conform to the church of Ireland as by law established; be it enacted, that no possession under any presentation by the crown, or collation by the ordinary, which may have taken place by reason of the said act of the eighteenth year of the reign of his majesty King Charles the Second, or of the said act of the second year of the reign of her majesty Queen Anne, during the nonconformity of any such patron profes-

2 Ann. c. 6.

said Doctor John Leslie or his representatives shall be entitled to recover such payment respectively from the next or any subsequent successor of the said Doctor John Leslie in the said united bishoprics of Kilmore, Elphin, and Ardagh, together with a proportionable part of such interest up to such day or respective days, in case the same shall happen to be on any other day than one of the said half-yearly days of payment.

STAT. 6 & 7
VICT. c. 57.
[In.]

“III. And be it enacted, that it shall be lawful for the said Doctor John Leslie or his representatives to raise, levy, and recover from the next or any subsequent successor of him the said Doctor John Leslie in the said united bishoprics of Kilmore, Elphin, and Ardagh, the said sum of thirteen thousand seven hundred and sixty pounds sixteen shillings and eight pence, or such instalment or instalments thereof as he shall have paid as aforesaid, in such proportions or instalments, and by such ways and means, and in the same manner to all intents and purposes as the representatives of the said late Doctor George de la Poer Beresford could by law have raised, levied, and recovered the same from or against his immediate or subsequent successor, or the revenues of the said bishopric of Kilmore, if the said Doctor George de la Poer Beresford had survived the said Doctor John Leslie, and the said Doctor John Leslie had not become bishop of the said united bishoprics.

The bishop or his representatives shall recover the principal of the charge from his next or subsequent successor.

“IV. And whereas doubts have arisen whether the said Doctor John Leslie as bishop of the united bishoprics of Kilmore, Elphin, and Ardagh, and other the bishops who at the time of the passing of the said recited act were bishops of the several bishoprics mentioned in the said schedule (B) to the same act annexed, and for the union of which bishoprics respectively provision was made thereby, are not after such union liable to the tax chargeable by the same act: and whereas it was not intended by the said recited act that the said Doctor John Leslie and other the bishops aforesaid should be subjected to any pecuniary loss or charge by reason of such union; be it therefore enacted and declared, that neither the income of the said Doctor John Leslie nor of any such other bishops aforesaid being or becoming the bishop or bishops of any bishoprics united by force and operation of the said recited act is or are or shall be, during his or their incumbency or respective incumbencies of such united bishoprics, liable for the payment of the said tax or rate or assessment chargeable under the provisions of the said recited act, nor are, is, or shall be bound or called upon to make the returns required by the same act for the purpose of enabling the said commissioners to compute and impose the same tax or rate or assessment.

No bishop succeeding to any bishopric united by the operation of the said act shall be taken to be a successor therein so as to make him liable to the tax on spiritual persons succeeding to ecclesiastical dignities or preferments under recited act.

“V. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.”

An act may be amended this session.

CXXXIX. STAT. 6 & 7 VICTORIÆ, c. 60 (1). A.D. 1843.

STAT. 6 & 7
VICT. c. 60.

“An Act for suspending, until the first day of October, One thousand eight hundred and forty-four, the Operation of the new Arrangement of Dioceses, so far as it affects the existing Ecclesiastical Jurisdictions.”

“Whereas an act was passed in the seventh year of the reign of his late majesty, intituled, ‘An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,’ and the said act contains certain temporary provisions relating to the state and jurisdiction of all the ecclesiastical courts in England and Wales: and whereas the said temporary provisions, having been from time to time continued by certain other acts of parliament, were further continued, together with a further provision respecting the visitations of bishops and archdeacons, contained in an act passed in the fifth year of her majesty’s reign, intituled, ‘An Act to explain and amend two several Acts relating to the Ecclesiastical Commissioners for England,’ and now stand continued until the first day of October next: and whereas it is expedient that the said temporary provisions, and such further provision as aforesaid, should be further continued for a limited time:

6 & 7 Gul. 4,
c. 77.

4 & 5 Vict.
c. 39.

Temporary provisions relating to ecclesiastical

STAT. 6 & 7
VICT. C. 60.
courts, and
provision re-
lating to
visitations,
continued.
Act may be
amended this
session.

be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said temporary provisions, and the said further provision relating to the visitations of bishops and archdeacons, shall continue and be in force until the first day of October in the year one thousand eight hundred and forty-four.

"II. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament."

STAT. 6 & 7
VICT. C. 61.
[Sc.]

CXL. STAT. 6 & 7 VICTORIÆ, C. 61. [SCOTLAND.] A.D. 1843.

"An Act to remove Doubts respecting the Admission of Ministers to Benefice in that Part of the United Kingdom called Scotland."

STAT. 6 & 7
VICT. C. 62.

CXLI. STAT. 6 & 7 VICTORIÆ, C. 62. A.D. 1843.

"An Act to provide for the Performance of the Episcopal Functions in case of the Incapacity of any Bishop or Archbishop."

Commission of
inquiry.

"Whereas it is expedient to make provision for the performance of the functions of any bishop or archbishop who shall be incapable of duly exercising them in person: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that whenever any archbishop of England or Ireland shall have reason to believe that any bishop of his province is incapable by reason of mental infirmity of duly performing his episcopal functions, it shall be lawful for such archbishop to give a notice under his hand to such bishop, that unless within fourteen days from the service thereof satisfactory cause to the contrary be shown by or on behalf of such bishop the said archbishop will issue a commission to inquire into the state of the mental capacity of the said bishop, and if within fourteen days from the service of such notice cause to the contrary be not shown to the satisfaction of the archbishop, it shall be lawful for such archbishop to issue a commission to three persons being members of the united church of England and Ireland, one of whom shall be his vicar-general, and another one of the bishops of the province, to inquire into the facts of the case: provided always, that the aforesaid notice shall be served by leaving a copy thereof with the bishop or his secretary.

Attendance of
witnesses may
be compelled.

"II. And be it enacted, that it shall be lawful in any such inquiry for any two or more of the commissioners to require the attendance of such witnesses as may be necessary; and such commissioners respectively shall have the same powers for this purpose as now belong to the Consistorial court and to the court of Arches respectively.

Proceedings
of the com-
missioners.

"III. And be it enacted, that it shall be lawful for the said commissioners to examine upon oath, or upon solemn affirmation in cases where an affirmation is allowed by law instead of an oath, all witnesses whom they may deem it necessary to summon for the purpose of fully prosecuting the inquiry, as well as all witnesses tendered to them for examination by or on behalf of the bishop concerning whom the inquiry is pending; and notice of the time and place at which the first meeting of the commissioners shall be holden for the purpose of prosecuting the inquiry shall be given in writing, under the hand of one of the said commissioners, to the bishop, and shall be served upon him by leaving one copy thereof with the bishop or his secretary, and another copy thereof with the registrar of his diocese, fourteen days at least before the meeting; and it shall be lawful for the said bishop, and his nearest friend, or one of his next of kin, or his or their counsel, proctor, or agent, to attend the proceedings of the commission, and to examine any of the witnesses: and all such proceedings shall be public, unless, on the special application of the bishop or his nearest friend, or any one or more of his next of kin, the commissioners shall think fit to direct that the same or any part thereof shall be private; and every such oath or affirmation shall be administered by the said commissioners, or one of them; provided always, that at the request or with the con-

sent of the bishop or his nearest friend, or any one or more of his next of kin, it shall be lawful for the commissioners to take evidence upon affidavit to be sworn before one of the said commissioners or a master in Chancery: provided also, that the said commissioners shall not direct the proceedings or any part thereof to be in private, nor shall take evidence upon affidavit, if the bishop, or his counsel, proctor, or agent, object thereto.

STAT. 6 & 7
VICT. c. 62.

“IV. And be it enacted, that every witness who shall be examined in pursuance of this act by or before the said commissioners, and who shall wilfully swear or affirm falsely, and also every person who shall swear to the contents of any such affidavit, knowing the same or any part thereof to be untrue, shall be deemed guilty of perjury.

Witnesses
giving false
evidence guilty
of perjury.

“V. And be it enacted, that the said commissioners, or any two of them, shall transmit to the archbishop under their hands and seals the depositions of witnesses taken before them, and all such affidavits, and also a report of the opinion of the majority of the commissioners whether or not the bishop is incapable by reason of mental infirmity of duly performing his episcopal functions, and such report shall be filed in the registry of the diocese; and the commissioners shall also, upon the application of the bishop or of his nearest friend, or any one or more of his next of kin, or his or their counsel, proctor, or agent, cause to be delivered to such party a copy of the said report and the depositions and affidavits.

Report of the
commissioners.

“VI. And be it enacted, that all the expenses of such inquiry shall be certified under the hands of two of the said commissioners, and when allowed by the archbishop by whom the commission shall have been issued, shall be defrayed out of the revenues of the bishopric.

For defraying
the expenses of
the inquiry.

“VII. And be it enacted, that the like proceedings shall be had in the case of like infirmity of any archbishop of the realm: provided always, that in such case all things hereinbefore required to be done by or with respect to the archbishop of the province shall be done by and with respect to the lord high chancellor of Great Britain, or the lord high chancellor of Ireland, accordingly as the archbishop concerning whom the inquiry is to be made is of England or Ireland; and of the three persons being members of the united church of England and Ireland to be appointed commissioners, one shall be a bishop of the province, another shall be the other archbishop of England or of Ireland respectively, as the case may be, and if the commission shall be issued by the lord high chancellor of Great Britain the third commissioner shall be the master of the rolls or one of the vice-chancellors of England, and if the commission shall be issued by the lord chancellor of Ireland the third commissioner shall be the master of the rolls or one of the barons of the exchequer of Ireland; and in every such case the report of the commissioners shall be filed in the registry of the province; and the expenses of the inquiry, when allowed by the lord chancellor by whom the commission shall have been issued, shall be defrayed out of the revenues of the archbishopric.

The like pro-
ceedings in
the case of an
archbishop.

“VIII. And be it enacted, that every commissioner to be appointed by virtue of this act shall, at or before the first meeting of the commissioners for the purpose of prosecuting the inquiry, take before the archbishop or lord chancellor issuing such commission, or before a master extraordinary in Chancery, the following oath; (that is to say,)

Commissioners
to be sworn.

“I, _____ do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me under a commission of inquiry issued by _____ relating to the capacity of [_____ Lord Bishop or Archbishop of _____] duly to perform his [episcopal or archiepiscopal] functions, and that without favour or affection, prejudice or malice. So help me God.”

“IX. And be it enacted, that at any time before the expiration of twenty-eight days after the filing of the report of the commissioners in the registry of the diocese or province, as the case may be, it shall be lawful for the bishop or archbishop concerning whom such inquiry shall have been made, or for his nearest friend, or any one or more of his next of kin, or his or their counsel, proctor, or agent, to present a petition to her majesty in council, or to the lord lieutenant or other chief

Petition to her
majesty or
lord lieutenant
of Ireland in
council.

STAT. 6 & 7
VICT. c. 62.

governor or governors of Ireland for the time being in council, praying that as such letters patent as are hereafter mentioned may be issued; and at the same time to lodge with the clerk of the council an office copy of the report of the commissioners, and of the depositions and affidavits whereon the same is founded; and the matter of such petition shall be heard or considered on such report, depositions and affidavits in England before the judicial committee of the Privy Council, in case her majesty shall be pleased to refer it to the said committee, and in Ireland before the lord lieutenant or other chief governor or governors of Ireland for the time being in council; and a copy of the order in council, containing the decision in the matter of such petition, shall, by the clerk of the council, be transmitted to the registry of the diocese or province, as the case may be, and shall be there filed.

Archbishops
and bishops,
being privy
councillors, to
be members of
judicial com-
mittee.

Appointment
of a bishop to
perform the
episcopal
functions;

“X. And be it enacted, that every archbishop and bishop of the united church of England and Ireland who now is or at any time hereafter shall be sworn of her majesty's most honourable Privy Council in England shall be a member of the judicial committee of the Privy Council for the purposes of this act.

“XI. And be it enacted, that whenever it shall appear to the archbishop or lord chancellor, as the case may be, on the report of the said commissioners, that the bishop or archbishop concerning whom the inquiry has been made is incapacitated by reason of mental infirmity of duly performing his episcopal or archiepiscopal functions, it shall be lawful for such archbishop or lord chancellor after the expiration of the said period of twenty-eight days, or in case any such petition as aforesaid shall be presented within such period of twenty-eight days, then at any time after the prayer thereof shall have been pronounced against or abandoned, to make request to her majesty for remedy thereof, and thereupon it shall be lawful for her majesty, by letters patent under the great seal of Great Britain or the great seal of Ireland, as the case may be, to appoint one of the bishops of the same province, being a bishop of England or Ireland, and not being one of the commissioners aforesaid, to exercise all the functions and powers, as well with regard to the temporalities as the spiritualities, of the bishop or archbishop so found to have become incapable; and in case of the death or incapacity, deprivation or suspension of the bishop so appointed, or in case her majesty shall, on the petition of such bishop, be pleased to relieve him from the further exercise of such functions and powers, it shall be lawful for her majesty in like manner to appoint another such bishop, and so often as the case shall happen; and it shall be lawful for the bishop so appointed, and the archbishop or lord chancellor (as the case may be) by whom the commission aforesaid was issued, or any successor of such archbishop or lord chancellor, by an instrument in writing under their hands and seals, jointly to commission and appoint a spiritual person to assist in the administration of the temporalities of the see, and in such matters of jurisdiction of the see or province of the bishop or archbishop so found to have become incapable, as shall and may be lawfully committed to him, which spiritual person shall give to the bishop and to the archbishop or lord chancellor by whom he shall be appointed, a bond, with sufficient sureties, to a sufficient sum, with a condition for his duly accounting for the monies which may come to his hands by virtue of his office; and it shall be lawful for the bishop so appointed, and the same or any succeeding archbishop or lord chancellor, at their pleasure, to revoke and cancel such appointment, and in any such case, upon the death or resignation of such spiritual person, in like manner to revoke and appoint another spiritual person, on his giving such security as before mentioned, and so from time to time as often as the case shall happen; and all things done by virtue of this act within the limits of his authority by any such bishop or spiritual person shall be done in the name of the bishop or archbishop so found to have become incapable, and under the seal of such bishop or archbishop where a seal is required to be used, and shall be as valid as if done by such archbishop or bishop; and the receipt of the bishop or spiritual person, so appointed as aforesaid, for such sums as he shall receive by virtue of his commission, shall be good and effectual discharges for the monies which in such receipts shall be acknowledged to have been received: provided always, that it shall not be law-

and of a spiri-
tual person to
assist in the
administration
of the tempo-
ralities.

Proviso.

for such bishop or spiritual person to present, collate, nominate, or license any clerk to any ecclesiastical benefice in the gift or patronage of the bishop or archbishop so found to be incapable, or to sanction the union or disunion of any benefice in such gift or patronage with or from any other benefice, without the approval of the archbishop or lord chancellor by whom the commission was issued, or, without the like approval, to appoint or displace any officer of the see or province; and that no lease, or deed of conveyance, exchange, or enfranchisement, of any lands or possessions belonging to the see or province, to be executed by any bishop or spiritual person appointed as aforesaid, shall be valid unless approved and executed by the archbishop of the province, or, in case of the incapacity of the archbishop, by the lord chancellor of Great Britain or the lord chancellor of Ireland, as the case may be, and in each case sealed also with the seal of the ecclesiastical commissioners for England or of the ecclesiastical commissioners for Ireland, as the case may be.

STAT. 6 & 7
VICT. c. 62.

“XII. And be it enacted, that the bishop and the spiritual person to be appointed by virtue of this act shall, for the purpose of enforcing payment of the revenues of the see of the bishop or archbishop found to have become incapable, severally have all the same legal rights, powers, and remedies, whether by action, suit, or distress, as the case may be, as might have been exercised by the said bishop or archbishop if no commission had been issued; provided always, that neither such bishop or spiritual person shall be accountable for any monies which may be payable to either of them by virtue of this act which shall not have been actually received by them respectively.

Power to recover revenues.

“XIII. And be it enacted, that it shall be lawful for her majesty to assign to the spiritual person to be appointed as aforesaid a yearly allowance, not exceeding one sixth part of the revenues of the bishopric or archbishopric, such as to her majesty shall seem fit, which shall be defrayed out of the revenues of the bishopric or archbishopric; and such spiritual person shall also, out of such revenues, defray and reimburse to the bishop to be appointed as aforesaid all expenses incurred by him in the execution of this act, such expenses being first allowed by the archbishop or lord chancellor, as the case may be; and that the remainder of the said revenues, after such payments as aforesaid, and such other payments (if any) as shall be made by the bishop or the spiritual person who shall be appointed by virtue of this act, in respect of rates, taxes, tenths, salaries, pensions, repairs, insurances from fire, and other expenses incident to the administration of the temporalities, or to the exercise of the jurisdiction of the bishop or archbishop so found to be incapable, shall be paid to such bishop or archbishop, or to such other person or persons as shall be by law entitled to receive the same.

Allowance to the spiritual person so appointed.

Reimbursement to the bishop.

Remainder of revenues, how to be paid.

“XIV. And be it enacted, that if at any time hereafter any bishop or archbishop shall have been found a lunatic or of unsound mind under any commission in the nature of a writ *de lunatico inquirendo*, and if the inquisition shall not have been quashed or the commission superseded, it shall be lawful for the archbishop of the province or lord chancellor, as the case may be, without further or other inquiry, to make request to her majesty, as on the report of commissioners appointed under this act; and such request shall be to all intents and purposes whatsoever of the same force and effect as a request made on such report as aforesaid.

A finding under a writ *de lunatico inquirendo* to stand in the place of a report of the commissioners.

“XV. Provided always, and be it enacted, that it shall be lawful for her majesty, with the advice of her privy council, upon a petition from the bishop or archbishop so found to be incapable, a lunatic or of unsound mind, setting forth that such incapacity, lunacy, or unsoundness of mind hath ceased, to cause inquiry to be made in such manner as to her majesty, with the advice aforesaid, shall seem fit; and if upon such inquiry it shall appear to her majesty that such incapacity, lunacy, or unsoundness of mind hath ceased, and that such bishop or archbishop hath become capable of again duly performing his episcopal or archiepiscopal functions, it shall be lawful for her majesty, by letters patent under the great seal of Great Britain or Ireland, as the case may be, to supersede and annul the letters patent so first issued; and thenceforward, and also in case of the death of the bishop

Provision in case of the recovery or death of the bishop or archbishop.

STAT. 6 & 7
VICT. c. 62.

governor or governors of Ireland for the time being in council, praying that no such letters patent as are hereafter mentioned may be issued; and at the same time to lodge with the clerk of the council an office copy of the report of the commissioners, and of the depositions and affidavits whereon the same is founded; and the matter of such petition shall be heard or considered on such report, depositions, and affidavits in England before the judicial committee of the Privy Council, in case her majesty shall be pleased to refer it to the said committee, and in Ireland before the lord lieutenant or other chief governor or governors of Ireland for the time being in council; and a copy of the order in council, containing the decision in the matter of such petition, shall, by the clerk of the council, be transmitted to the registry of the diocese or province, as the case may be, and shall be there filed.

Archbishops and bishops, being privy councillors, to be members of judicial committee.

Appointment of a bishop to perform the episcopal functions;

“X. And be it enacted, that every archbishop and bishop of the united church of England and Ireland who now is or at any time hereafter shall be sworn of her majesty’s most honourable Privy Council in England shall be a member of the judicial committee of the Privy Council for the purposes of this act.

“XI. And be it enacted, that whenever it shall appear to the archbishop or lord chancellor, as the case may be, on the report of the said commissioners, that the bishop or archbishop concerning whom the inquiry has been made is incapable by reason of mental infirmity of duly performing his episcopal or archiepiscopal functions, it shall be lawful for such archbishop or lord chancellor after the expiration of the said period of twenty-eight days, or in case any such petition as aforesaid shall be presented within such period of twenty-eight days, then at any time after the prayer thereof shall have been pronounced against or abandoned, to make request to her majesty for remedy thereof, and thereupon it shall be lawful for her majesty, by letters patent under the great seal of Great Britain or the great seal of Ireland, as the case may be, to appoint one of the bishops of the same province, being a bishop of England or Ireland, and not being one of the commissioners aforesaid, to exercise all the functions and powers, as well with regard to the temporalities as the spiritualities, of the bishop or archbishop so found to have become incapable; and in case of the death or incapacity, deprivation or suspension of the bishop so appointed, or in case her majesty shall, on the petition of such bishop, be pleased to relieve him from the further exercise of such functions and powers, it shall be lawful for her majesty in like manner to appoint another such bishop, and so often as the case shall happen; and it shall be lawful for the bishop so appointed, and the archbishop or lord chancellor (as the case may be) by whom the commission aforesaid was issued, or any successor of such archbishop or lord chancellor, by an instrument in writing under their hands and seals, jointly to commission and appoint a spiritual person to assist in the administration of the temporalities of the see, and in such matters of jurisdiction of the see or province of the bishop or archbishop so found to have become incapable, as shall and may be lawfully committed to him, which spiritual person shall give to the bishop and to the archbishop or lord chancellor by whom he shall be appointed, a bond, with sufficient surety is a sufficient sum, with a condition for his duly accounting for the monies which may come to his hands by virtue of his office; and it shall be lawful for the bishop so appointed, and the same or any succeeding archbishop or lord chancellor, at their pleasure, to revoke and cancel such appointment, and in any such case, or upon the death or resignation of such spiritual person, in like manner to commission and appoint another spiritual person, on his giving such security as before mentioned, and so from time to time as often as the case shall happen; and all things done by virtue of this act within the limits of his authority by any such bishop or spiritual person shall be done in the name of the bishop or archbishop so found to have become incapable, and under the seal of such bishop or archbishop where a seal is required to be used, and shall be as valid as if done by such archbishop or bishop; and the receipt of the bishop or spiritual person, so appointed as aforesaid, for such sums as he shall receive by virtue of his commission, shall be good and effectual discharges for the monies which in such receipts shall be acknowledged to have been received: provided always, that it shall not be lawful

and of a spiritual person to assist in the administration of the temporalities.

Proviso.

a spiritual person to be such incumbent, and also, with the like consent and with the consent of the dean and chapter to endow such parishes, or either of them, in such manner and to such amount as may appear expedient; and upon any such declaration being made in the case of the pariah of Llandaff, the respective rights and duties to be exercised and performed within and over the cathedral church by the dean and chapter, dean, canons, and minor canons thereof, and by such incumbent as aforesaid, respectively, shall be defined by the like authority, with the like consent.

“VI. And be it declared and enacted, that the average annual incomes of the deans and canons residentiary of the said four cathedral churches shall be of the same amounts respectively as are fixed as the average annual incomes of the deans and canons respectively of the cathedral churches of Saint David's and Llandaff by the said first-recited act, and that the provisions of the said recited acts, respecting the augmentation of the incomes of deans and canons, shall be construed to authorize the augmentation of the incomes of the respective deans and canons residentiary aforesaid, out of the common fund of the said first-recited act mentioned.

“VII. And be it enacted, that it shall be lawful, by the authority hereinbefore mentioned, to provide, out of the same fund, one fit house, at Saint Asaph, Bangor, and Llandaff respectively, as a house of residence for the use of the canons residentiary of the cathedral churches of the said cities respectively, and also a fit house of residence for the Dean of Llandaff.

“VIII. And be it enacted, that from and after the passing of this act the dignity and office of Archdeacon of Saint Asaph shall no longer be holden by the Bishop of Saint Asaph, and the dignities and offices of Archdeacon of Bangor and Archdeacon of Anglesea shall be dis severed from the bishopric of Bangor, and be no longer holden by the Bishop of Bangor, and the archdeaconry of Anglesea shall be incorporated with and form part of the archdeaconry of Bangor; provided that nothing herein contained shall affect any lands, tithes, tenements, or other hereditaments, or endowments, now forming part of the property and revenues of the respective sees of Saint Asaph and Bangor.

“IX. And be it enacted, that the dignity and office of Archdeacon of Llandaff may, by the authority hereinbefore mentioned, be separated from the deanery of Llandaff; provided always, that such separation shall not take place before the next vacancy of the said deanery without the consent of the present dean.

“X. And be it enacted, that within one calendar month after the passing of this act the treasurer of the governors of the bounty of Queen Anne shall deliver to the ecclesiastical commissioners for England a full and particular account, of all monies received and paid by him, under and by virtue of any act of parliament, on account of the said dioceses and cathedral churches of Saint Asaph and Bangor respectively, and of all things done by him, and of all proceedings then pending in respect thereof; and that, within such time after the delivery of such account as shall be specified in any order made upon him for that purpose by the said commissioners, he shall pay and deliver, or cause to be paid and delivered, to the said commissioners, or into such bank as shall be named in such order to their account, for the purposes of this act, all monies then remaining in his hands or to his account, and all exchequer bills and other securities for money, and all books of accounts, papers, and writings, in his possession or power in respect thereof; and that it shall be lawful for the said commissioners to allow to the said treasurer in his accounts such sum of money as shall appear to them to be just and reasonable, in compensation for his pains and trouble, and also all proper costs, charges, and expenses incurred in the execution of the trusts reposed in him by any such act in relation to the matters aforesaid; and that the receipt in writing of the said commissioners under their common seal shall be an effectual discharge to the said treasurer for all monies and other things therein expressed to be received by them.

“XI. And be it enacted, that the provisions of the first-recited act, whereby the interests of persons in possession at the time of the passing thereof were in any manner protected, shall be deemed to be repeated in this act, so as to protect the interests of all persons in possession at the time of the passing hereof, in the like respects and to the same extent as the interests of such first-mentioned persons are so protected as aforesaid.

STAT. 6 & 7
VICT. c. 77.
[W.A.]

Incomes of deans and canons may be augmented out of the common fund.

Houses of residence to be provided at St. Asaph, Bangor, and Llandaff.

Archdeaconries to be separated from bishoprics.

Archdeaconry may be separated from the deanery of Llandaff.

Treasurer of Queen Anne's bounty to pay over proceeds of suspended canonries, &c.

Vested interests protected.

STAT. 6 & 7
VICT. C. 62.
Act may be
amended this
session.

or archbishop so found to be incapable, all powers and authorities vested in any other bishop or spiritual person on behalf of such bishop or archbishop shall cease.

“XVI. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament.”

STAT. 6 & 7
VICT. C. 67.

CXLII. STAT. 6 & 7 VICTORIÆ, C. 67. A.D. 1843.

“An Act to enable Parties to sue out and prosecute Writs of Error in certain Cases upon the Proceedings on Writs of Mandamus.”

STAT. 6 & 7
VICT. CAP.
LXVII.

CXLIII. STAT. 6 & 7 VICTORIÆ, CAP. LXVII. A.D. 1843.

“An Act to establish a Cemetery for the Interment of the Dead near the Town and within the Borough of Southampton.”

STAT. 6 & 7
VICT. C. 77.
[WA.]

CXLIV. STAT. 6 & 7 VICTORIÆ, C. 77. [WALES.] A.D. 1843.

“An Act for regulating the Cathedral Churches of Wales.”

3 & 4 Vict.
c. 113.

“Whereas an act was passed in the fourth year of her majesty’s reign, intituled, ‘An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues,’ and another act was passed in the fifth year of her majesty’s reign, intituled, ‘An Act to explain and amend two several Acts relating to the Ecclesiastical Commissioners for England:’ and whereas it is expedient to extend the provisions of the said recited acts to the dioceses and cathedral churches of Saint Asaph and Bangor, and to alter and amend some of the said provisions: be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act all the provisions of the said recited acts shall, subject to the further enactments hereinafter contained, extend and apply to the said dioceses and cathedral churches of Saint Asaph and Bangor, and to the bishops of the same dioceses, and to all ecclesiastical rectories without cure of souls, and all benefices with cure of souls, and all parishes and places, therein, and to the dignities, offices, canonries, and prebends of the same churches, and the respective holders thereof.

Recited acts
extended to
St. Asaph and
Bangor.

Four canons
residential at
St. Asaph,
Bangor,
St. David’s,
and Llandaff.
Two canonries
residential to
be annexed to
two archdea-
conries.

“II. And be it enacted, notwithstanding any thing in the said recited acts contained, that in each of the chapters of the cathedral churches of Saint Asaph, Bangor, Saint David’s, and Llandaff, there shall be four canonries residential, and no more; and such canonries shall be in the direct patronage of the Bishops of Saint Asaph, Bangor, Saint David’s, and Llandaff respectively.

“III. Provided always, and be it enacted, that so soon as conveniently may be after the passing of this act, arrangements shall be made, by the authority in the said recited acts provided, for permanently annexing two of such four canonries residential, in such cathedral churches respectively, to two archdeaconries, in the respective dioceses in which such churches are situate.

Rights and
powers of dean
and canons.

“IV. And be it declared and enacted, that the dean of each of the said four cathedral churches shall be the head of the chapter thereof, and shall have precedence over all other members of such chapter; and that such dean and the canons residential respectively of each such church shall possess and may exercise all the like rights, power, and authority as are and may be possessed and exercised by the dean and canons respectively of any cathedral church in England founded by King Henry the Eighth.

3 & 4 Vict.
c. 113, ss. 38
& 40, in part
repealed, and
provision made
for the cathed-
ral parishes.

“V. And be it enacted, that so much of the said recited acts as relates to the cure of souls in the parish of Saint David in the diocese of Saint David’s, and in the parishes of Llandaff and Whitchurch in the diocese of Llandaff, shall be repealed; and that it shall be lawful, if it be deemed expedient, by the authority hereinbefore mentioned, with the consent of the Bishop of Llandaff for the time being, to declare and provide that the cure of souls in and over the respective parishes of Llandaff and Whitchurch, or either of them, shall be vested in one spiritual person as perpetual incumbent thereof, and that such bishop and his successors shall from time to time collate, or nominate and license, as the case may be,

after the first day of August one thousand eight hundred and one no person should be sworn, admitted, and enrolled as a public notary in England unless such person should have been bound, by contract in writing or by indenture of apprenticeship, to serve as a clerk or apprentice for and during the space of not less than seven years to a public notary or person using the art and mystery of a scrivener, (according to the privilege and custom of the city of London, such scrivener being also a public notary,) duly sworn, admitted, and enrolled: and whereas doubts have arisen whether a public notary, being also an attorney, solicitor, or proctor, can have and retain any person to serve him as a clerk or apprentice in his profession or business of a public notary, and also at the same time in that of an attorney, solicitor, or proctor, and whether such service is in conformity with the provisions of the said recited act: and whereas it is expedient to remove all such doubts with regard to persons who have served or are now serving or may hereafter serve as a clerk or apprentice in manner aforesaid; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act every person who has been duly admitted, sworn, and enrolled a public notary in England may take, have, and retain any clerk or apprentice to serve him under the provisions of the said recited act or of this act in the proper business of a public notary, or if such person is also an attorney or solicitor in any of the courts of law or equity, or a proctor in any ecclesiastical court in England or Wales, to serve him at the same time in the general business of a notary as well as that of an attorney, solicitor, or proctor; and that no person who shall have regularly and duly served any such public notary, being also an attorney, solicitor, or proctor, for the time required by the said recited act or this act, and be otherwise entitled to be admitted a public notary, shall be prevented or disqualified from being so admitted a public notary by reason of his having also served a clerkship to such public notary or his partner as an attorney, solicitor, or proctor during the same time or any part thereof.

“II. Provided always, and be it enacted, that no public notary may have and retain any such clerk or apprentice to serve him, under the provisions of the said act or of this act, if he has been admitted, sworn, and enrolled a public notary for the purpose only of carrying on any business, or holding or exercising any office or appointment, and not as a general practitioner; nor shall any public notary be allowed to have and retain such clerk or apprentice after he shall have discontinued or left off or during such time as he shall not actually practise and carry on the profession or business of a public notary.

“III. And whereas it is expedient to shorten the period of the service required by the said recited act; be it therefore enacted, that from and after the passing of this act, in case any person shall have been or shall be bound by any contract to serve and shall have actually served as a clerk or apprentice for the term of five years any public notary as aforesaid, and shall have caused an affidavit to be made and filed as to the due execution of such contract, and shall have complied with the other provisions of the said recited act, save as to the length of service, then and in such case every such person shall be qualified and entitled to be sworn, admitted, and enrolled a public notary to practise in England, as fully and effectually as any person having been bound and having served seven years as required by the said recited act would be qualified and entitled to be sworn, admitted, and enrolled a public notary under and by virtue of the said recited act: provided always, that no person shall be entitled to be admitted and enrolled a public notary at the expiration of the term of five years, if bound for a longer time, without the consent in writing of the public notary, if living, to whom he shall have been so bound being first obtained and produced at the time of his admission, and filed with the other papers relating thereto; and provided also, that in case the affidavit required by the said recited act as to the execution of any contract be not filed within the time required by the said act, the same may be filed by the proper officer after the expiration thereof, but the service of such clerk shall be reckoned to commence and be computed from the day of filing such affidavit, unless the

STAT. 6 & 7
VICT. c. 90.

Public notaries may retain clerks or apprentices in their business as such, or as attorneys and notaries if so practising, and persons serving them not disqualified.

No public notary to retain a clerk or apprentice, unless in actual practice.

Persons serving five years to a notary to be entitled to admission as notaries.

Proviso as to consent of notary if bound for a longer time.

If affidavit as to execution of contract be not filed within time required, the service to reckon from the day of filing, unless

STAT. 6 & 7
VICT. c. 90.
otherwise
ordered.

Master of the
faculties may
require testi-
monials of
ability, &c.

Appeal.

25 Hen. 8,
c. 21.

Saving the
rights of
scriveners'
company.

Oath on ad-
mission of
notary.

Oaths, &c.
may be taken
by commis-
sion.

master of the faculties shall otherwise order; and such service shall be as effectual, and the public notary and clerk shall be equally bound for and during the term, reckoning as aforesaid, as if such term had been originally intended and mentioned in the contract.

"IV. And be it enacted, that the master of the faculties for the time being may make any general rule or rules requiring testimonials, certificates, or proof as to the character, integrity, ability, and competency of any person who shall hereafter apply for admission or re-admission as a public notary to practise either in England or in any of her majesty's foreign territories, colonies, settlements, dominions, forts, factories, or possessions, whether such person shall have served a clerkship or not, and from time to time alter and vary such rules as to the master of the faculties shall seem meet, and may admit or reject any person so applying, at his discretion, any law, custom, usage, or prescription to the contrary notwithstanding.

"V. Provided always, and be it enacted, that if the master of the faculties shall refuse to grant any faculty to practise as a public notary to any person without just and reasonable cause, then the chancellor of England or the lord keeper of the great seal for the time being, upon complaint thereof being made, shall direct the queen's writ to the said master of the faculties to the effect, and shall proceed thereon according to the intent and meaning of the act of parliament of the twenty-fifth year of the reign of King Henry the Eighth, intituled, 'An Act concerning Peter-pence and Dispensations,' and in manner and form as is therein provided and set forth in case of the refusal of any licences, dispensations, faculties, instruments, or other writings, as fully and effectually, and with the same power and authority, as if the same were here inserted and re-enacted.

"VI. Provided always, and be it enacted, that nothing herein contained, nor any service under this act shall authorize any person to be admitted a public notary to practise within the jurisdiction of the incorporated company of scriveners of London.

"VII. And be it enacted, that from and after the passing of this act every person to be admitted and enrolled a public notary shall, before a faculty is granted to him authorizing him to practise as such, in addition to the oaths of allegiance and supremacy, make oath before the said master of the faculties, his surrogate, or other proper officer, in substance and to the effect following:

"'I, A. B., do swear, that I will faithfully exercise the office of a public notary; I will faithfully make contracts or instruments for or between any party or parties requiring the same, and I will not add or diminish anything without the knowledge and consent of such party or parties that may alter the substance of the fact; I will not make or attest any act, contract, or instrument, in which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a public notary, according to the best of my skill and ability.

"'So help me, God.'

"And that such oath shall be received and taken instead of the oath of office now in use on the admission of a notary public, which oath shall from and after the passing of this act be wholly discontinued: provided always, that in such cases where by any act an affirmation or declaration is allowed to be received instead of an oath, or any form of oath or declaration substituted instead of the oaths of allegiance and supremacy, the said master of the faculties, his surrogate or other proper officer, is hereby authorized and empowered to receive a declaration or affirmation instead of any oath required by this act, or such form of oath or declaration instead of the oaths of allegiance or supremacy as by any act of parliament is authorized and allowed.

"VIII. And be it enacted, that the master of the faculties for the time being or his surrogate, shall, and he is hereby authorized and empowered to issue commissions to take any oaths, affidavits, affirmations, or declarations required by law to be taken before the grant of any faculty, marriage licence, or other instrument issuing from the said office of faculties; and that all oaths, affidavits, affirmations, or declarations taken before the commissioner so appointed, and the faculty, mar-

riage licence, or other instrument granted in pursuance thereof, shall be as valid and effectual as if such oath, affidavit, affirmation, or declaration was taken before the said master or his surrogate, anything in any act or law to the contrary thereof notwithstanding.

STAT. 6 & 7
VICT. c. 90.

“IX. And be it enacted, that no person who has been admitted and enrolled a public notary shall be liable to be struck off the rolls for or on account of any defect in the articles of clerkship, or in the registry thereof, or in his service under such articles, or in his admission and enrolment, unless the application for striking him off the roll be made within twelve months from the time of his admission and enrolment; provided that such articles, registration, service, admission, or enrolment be without fraud.

Application to strike a notary off the roll for defect in articles, &c. to be made within twelve months.

“X. And be it enacted, that from and after the passing of this act, in case any person shall, in his own name or in the name of any other person, make, do, act, exercise, or execute or perform, any act, matter, or thing whatsoever of or in anywise appertaining or belonging to the office, function, or practice of a public notary, for or in expectation of any gain, fee, or reward, without being able to prove, if required, that he is duly authorized so to do, every such person for every such offence shall forfeit and pay the sum of fifty pounds, to be sued for and recovered by action of debt, plaint, or information, in any of her majesty's superior courts of record at Westminster, or if the cause of action shall have arisen in any colony or place to her majesty belonging out of England, then in the supreme court of law of such colony or place, provided the action for the recovery thereof shall be commenced within twelve months next after the fact committed; and that, save so far as they are altered or repealed, or repugnant to the provisions of this act, the like remedies for recovering thereof, and all other the rules, directions, powers, and provisions contained in the said recited act, and also in the act passed in the third and fourth years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to alter and amend an Act of the forty-first year of His Majesty King George the Third, for the better Regulation of Public Notaries in England,’ shall and may severally and respectively attach and be in force as fully and effectually as if the said penalties were imposed, or the said remedies were given, or the same powers, rules, directions, and provisions were particularly enacted in or by this act, or repealed and re-enacted.”

Persons practising as notaries, not being duly authorized, to forfeit 50*l*.

Like forfeitures and provisions as in former act, and all the powers thereof, and of 3 & 4 Gul. 4, c. 70, not hereby varied, to be in force as if re-enacted.

CXLVII. STAT. 6 & 7 VICTORIÆ, CAP. XC. A.D. 1843.

“An Act to incorporate the Members of the Institution called the Infant Orphan Asylum, and to enable them the better to carry on their Charitable Designs.”

STAT. 6 & 7
VICT. CAP. XC.

CXLVIII. STAT. 6 & 7 VICTORIÆ, C. 91. [IRELAND.] A.D. 1843.

“An Act to consolidate and amend the Laws for the Regulation of Charitable Loan Societies in Ireland.”

STAT. 6 & 7
VICT. c. 91.
[IR.]

“XLIV. And be it enacted, that it shall and may be lawful for every such loan society as aforesaid, or for such person or persons as shall have been duly authorized in that behalf by the rules of such society, and they are hereby required, annually to reserve a sum, not less than one tenth of their clear net profits over and above all losses, to form a fund for the security of the debenture holders, and, subject thereto, it shall be lawful for them to appropriate from time to time such portion of the residue thereof as they shall think proper to the support of any dispensary, hospital, or infirmary, in the district or county in which such society shall be established, or for such other charitable or useful local purpose as they, with the approbation of the said loan fund board, shall think fit; and as well the said reserved fund, as the residue or the whole of such net profits, if no part shall be so appropriated, shall be employed as part of the funds of such society, until such society, with the approbation of the said loan fund board, shall otherwise determine; provided, that no part of such net profits as aforesaid shall be appropriated in any way for the advantage or benefit of any member of the society, or of the

Profits of loan societies may be applied to such charitable purposes as said societies, with approbation of loan fund board, shall appoint.

STAT. 6 & 7
VICT. c. 90.
otherwise
ordered.

Master of the
faculties may
require testi-
monials of
ability, &c.

Appeal.

25 Hen. 8,
c. 21.

Saving the
rights of
scriveners'
company.

Oath on ad-
mission of
notary.

Oaths, &c.
may be taken
by commis-
sion.

master of the faculties shall otherwise order; and such service shall be as effectual, and the public notary and clerk shall be equally bound for and during the term, reckoning as aforesaid, as if such term had been originally intended and mentioned in the contract.

"IV. And be it enacted, that the master of the faculties for the time being may make any general rule or rules requiring testimonials, certificates, or proofs as to the character, integrity, ability, and competency of any person who shall hereafter apply for admission or re-admission as a public notary to practise either in England or in any of her majesty's foreign territories, colonies, settlements, dominions, forts, factories, or possessions, whether such person shall have served a clerkship or not, and from time to time alter and vary such rules as to the master of the faculties shall seem meet, and may admit or reject any person so applying, at his discretion, any law, custom, usage, or prescription to the contrary notwithstanding.

"V. Provided always, and be it enacted, that if the master of the faculties shall refuse to grant any faculty to practise as a public notary to any person without just and reasonable cause, then the chancellor of England or the lord keeper of the great seal for the time being, upon complaint thereof being made, shall direct the queen's writ to the said master of the faculties to the effect, and shall proceed thereon according to the intent and meaning of the act of parliament of the twenty-fifth year of the reign of King Henry the Eighth, intituled, 'An Act concerning Peter-pence and Dispensations,' and in manner and form as is therein provided and set forth in case of the refusal of any licences, dispensations, faculties, instruments, or other writings, as fully and effectually, and with the same power and authority, as if the same were here inserted and re-enacted.

"VI. Provided always, and be it enacted, that nothing herein contained, or any service under this act shall authorize any person to be admitted a public notary to practise within the jurisdiction of the incorporated company of scriveners of London.

"VII. And be it enacted, that from and after the passing of this act every person to be admitted and enrolled a public notary shall, before a faculty is granted to him authorizing him to practise as such, in addition to the oaths of allegiance and supremacy, make oath before the said master of the faculties, his surrogate, or other proper officer, in substance and to the effect following:

"I, A. B., do swear, that I will faithfully exercise the office of a public notary; I will faithfully make contracts or instruments for or between any party or parties requiring the same, and I will not add or diminish anything without the knowledge and consent of such party or parties that may alter the substance of the fact; I will not make or attest any act, contract, or instrument, in which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a public notary, according to the best of my skill and ability.

"So help me, God."

"And that such oath shall be received and taken instead of the oath of fealty now in use on the admission of a notary public, which oath shall from and after the passing of this act be wholly discontinued: provided always, that in such cases where by any act an affirmation or declaration is allowed to be received instead of an oath, or any form of oath or declaration substituted instead of the oaths of allegiance and supremacy, the said master of the faculties, his surrogate, or other proper officer, is hereby authorized and empowered to receive a declaration or affirmation instead of any oath required by this act, or such form of oath or declaration instead of the oaths of allegiance or supremacy as by any act of parliament is authorized and allowed.

"VIII. And be it enacted, that the master of the faculties for the time being or his surrogate, shall, and he is hereby authorized and empowered to issue commissions to take any oaths, affidavits, affirmations, or declarations required by law to be taken before the grant of any faculty, marriage licence, or other instrument issuing from the said office of faculties; and that all oaths, affidavits, affirmations, or declarations taken before the commissioner so appointed, and the faculty, mar-

riage licence, or other instrument granted in pursuance thereof, shall be as valid and effectual as if such oath, affidavit, affirmation, or declaration was taken before the said master or his surrogate, anything in any act or law to the contrary thereof notwithstanding.

STAT. 6 & 7
VICT. c. 90.

“IX. And be it enacted, that no person who has been admitted and enrolled a public notary shall be liable to be struck off the rolls for or on account of any defect in the articles of clerkship, or in the registry thereof, or in his service under such articles, or in his admission and enrolment, unless the application for striking him off the roll be made within twelve months from the time of his admission and enrolment; provided that such articles, registration, service, admission, or enrolment be without fraud.

Application to strike a notary off the roll for defect in articles, &c. to be made within twelve months.

“X. And be it enacted, that from and after the passing of this act, in case any person shall, in his own name or in the name of any other person, make, do, act, exercise, or execute or perform, any act, matter, or thing whatsoever of or in anywise appertaining or belonging to the office, function, or practice of a public notary, for or in expectation of any gain, fee, or reward, without being able to prove, if required, that he is duly authorized so to do, every such person for every such offence shall forfeit and pay the sum of fifty pounds, to be sued for and recovered by action of debt, plaint, or information, in any of her majesty's superior courts of record at Westminster, or if the cause of action shall have arisen in any colony or place to her majesty belonging out of England, then in the supreme court of law of such colony or place, provided the action for the recovery thereof shall be commenced within twelve months next after the fact committed; and that, save so far as they are altered or repealed, or repugnant to the provisions of this act, the like remedies for recovering thereof, and all other the rules, directions, powers, and provisions contained in the said recited act, and also in the act passed in the third and fourth years of the reign of his late majesty King William the Fourth, intituled, ‘An Act to alter and amend an Act of the forty-first year of His Majesty King George the Third, for the better Regulation of Public Notaries in England,’ shall and may severally and respectively attach and be in force as fully and effectually as if the said penalties were imposed, or the said remedies were given, or the same powers, rules, directions, and provisions were particularly enacted in or by this act, or repealed and re-enacted.”

Persons practising as notaries, not being duly authorized, to forfeit 50*l*.

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CXLVII. STAT. 6 & 7 VICTORIÆ, CAP. XC. A.D. 1843.

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STAT. 6 & 7
VICT. CAP. XC.

CXLVIII. STAT. 6 & 7 VICTORIÆ, C. 91. [IRELAND.] A.D. 1843.

“An Act to consolidate and amend the Laws for the Regulation of Charitable Loan Societies in Ireland.”

STAT. 6 & 7
VICT. c. 91.
[IR.]

“XLIV. And be it enacted, that it shall and may be lawful for every such loan society as aforesaid, or for such person or persons as shall have been duly authorized in that behalf by the rules of such society, and they are hereby required, annually to reserve a sum, not less than one tenth of their clear net profits over and above all losses, to form a fund for the security of the debenture holders, and, subject thereto, it shall be lawful for them to appropriate from time to time such portion of the residue thereof as they shall think proper to the support of any dispensary, hospital, or infirmary, in the district or county in which such society shall be established, or for such other charitable or useful local purpose as they, with the approbation of the said loan fund board, shall think fit; and as well the said reserved fund, as the residue or the whole of such net profits, if no part shall be so appropriated, shall be employed as part of the funds of such society, until such society, with the approbation of the said loan fund board, shall otherwise determine; provided, that no part of such net profits as aforesaid shall be appropriated in any way for the advantage or benefit of any member of the society, or of the

Profits of loan societies may be applied to such charitable purposes as said societies, with approbation of loan fund board, shall appoint.

STAT. 6 & 7
VICT. c. 91.
[1A.]

persons managing or conducting the same, or for any purpose whatsoever, except as hereinbefore provided; and provided also, that in case any such society shall have been dissolved, or otherwise deprived of the benefit of this act, the whole of the clear net profits not previously appropriated, after payment of all debts of or claims on such society, shall be appropriated to such dispensary, hospital, or infirmary, or to such other charitable or useful local purpose as the said loan fund board shall think proper."

STAT. 6 & 7
VICT. c. 94.

CXLIX. STAT. 6 & 7 VICTORIÆ, c. 94. A.D. 1843.

"An Act to remove Doubts as to the exercise of Power and Jurisdiction by Her Majesty within divers Countries and Places out of Her Majesty's Dominions, and to render the same more effectual."

The power acquired by her majesty in countries out of her dominions shall be held on the same terms as her majesty's authority in the crown colonies.

"Whereas by treaty, capitulation, grant, usage, sufferance, and other lawful means, her majesty hath power and jurisdiction within divers countries and places out of her majesty's dominions: and whereas doubts have arisen how far the exercise of such power and jurisdiction is controlled by and dependent on the laws and customs of this realm, and it is expedient that such doubts should be removed: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it is and shall be lawful for her majesty to hold, exercise, and enjoy any power or jurisdiction which her majesty now hath or may at any time hereafter have within any country or place out of her majesty's dominions, in the same and as ample a manner as if her majesty had acquired such power or jurisdiction by the cession or conquest of territory.

Acts done in pursuance of such power to be of the same effect as if done under local laws.

"II. And be it enacted, that every act, matter, and thing which may at any time be done, in pursuance of any such power or jurisdiction of her majesty, in any country or place out of her majesty's dominions, shall, in all courts ecclesiastical and temporal and elsewhere within her majesty's dominions, be and be deemed and adjudged to be, in all cases and to all intents and purposes whatsoever, as valid and effectual as though the same had been done according to the local law then in force within such country or place.

Courts authorized to procure evidence of such power by application to secretary of state.

"III. And be it enacted, that if in any suit or other proceedings, whether civil or criminal, in any court ecclesiastical or temporal within her majesty's dominions, any issue or question of law or of fact shall arise for the due determination whereof it shall, in the opinion of the judge or judges of such court, be necessary to produce evidence of the existence of any such power or jurisdiction as aforesaid, or of the extent thereof, it shall be lawful for the judge or judges of any such court, and he or they are hereby authorized, to transmit, under his or their hand and seal or hands and seals, to one of her majesty's principal secretaries of state, questions by him or them properly framed, respecting such of the matters aforesaid as it may be necessary to ascertain in order to the due determination of any such issue or question as aforesaid; and such secretary of state is hereby empowered and required, within a reasonable time in that behalf, to cause proper and sufficient answers to be returned to all such questions, and to be directed to the said judge or judges, or their successors; and such answers shall, upon production thereof, be final and conclusive evidence, in such suit or other proceedings, of the several matters therein contained and required to be ascertained thereby."

STAT. 7 & 8
VICT. cap. iii.

CL. STAT. 7 & 8 VICTORIÆ, cap. iii. A.D. 1844.

"An Act to enable the Rector, Churchwardens, and Overseers of the Poor of the Parish of Bow Brickhill, in the County of Buckingham, to sell certain Parts of Land in the said Parish which were allotted to them under the Award of the Commissioners made in pursuance of the Bow Brickhill and Fenny Stratford Inclosure Act, passed in the thirtieth year of King George the Third."

CLL. STAT. 7 & 8 VICTORIÆ, cap. xix. A.D. 1844.

STAT. 7 & 8
VICT. cap. xix.

"An Act to authorize the Sale of certain Estates and Mines belonging to the Chapel of Willenhall in the Parish of Wolverhampton, in the County of Stafford, and to provide a Residence for the Incumbent of the Chapel."

CLII. STAT. 7 & 8 VICTORIÆ, cap. xx. A.D. 1844.

STAT. 7 & 8
VICT. cap. xx.

"An Act to enable the Guardian of Henry Peach Keighley Peach, an Infant, to sell the next Presentation to the Rectory and Parish Church of Idlicote, in the County of Warwick."

CLIII. STAT. 7 & 8 VICTORIÆ, cap. xxvii. A.D. 1844.

STAT. 7 & 8
VICT. cap.
xxvii.

"An Act to enable the Trustees of the Will of Sir George William Tapps Gervie, Baronet, deceased, to convey a Church at Bournemouth, in the County of Southampton, to Her Majesty's Commissioners for building new Churches, and to endow the same."

CLIV. STAT. 7 & 8 VICTORIÆ, cap. xxxii. [IRELAND.] A.D. 1844.

STAT. 7 & 8
VICT. cap.
xxxii. [IR.]

"An Act for annexing to the united Bishoprics of Down, Connor, and Dromore, the House known as Down and Connor House, with the Appurtenances, and for other Purposes."

CLV. STAT. 7 & 8 VICTORIÆ, c. 37. A.D. 1844.

STAT. 7 & 8
VICT. c. 37.

"An Act to secure the Terms on which Grants are made by Her Majesty out of the Parliamentary Grant for the Education of the Poor; and to explain the Act of the fifth year of the Reign of Her present Majesty, for the Conveyance of Sites for Schools."

"Whereas during several years last past divers sums of money have been granted by parliament to her majesty, to be applied for the purpose of promoting the education of the poor in Great Britain, and similar grants may hereafter be made: and whereas her majesty hath appointed a committee of her council to receive applications for assistance from such grants, and to report thereon, and to advise her as to the terms and conditions upon which such assistance shall be granted, and many such reports have been made, and approved of by her majesty, and the terms and conditions having been assented to by the applicants, grants have been made out of the said fund: and whereas in some cases, by reason of the deeds of endowment of schools in respect of which such applications have been received having been executed before the grant has been made, such terms and conditions have not and cannot be made permanently binding on the estate; but the parties promoting the said schools have entered into personal obligations or assurances for the due performance of such terms and conditions, though deriving no beneficial interest from the charitable institution which they have established; and it is desirable to provide permanent security to her majesty and her successors for the due fulfilment of the terms and conditions, and to relieve the parties from the personal liabilities so entered into for the purposes aforesaid: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that where any grant hath been made or shall hereafter be made out of any sums of money heretofore granted or hereafter to be granted by parliament for the purposes of education in Great Britain, under the advice of any committee of the council on education for the time being, upon terms and conditions to provide for the inspection of the school by an inspector appointed or to be appointed by her majesty and her successors, which shall not be inserted in the conveyance of the site of the school, or in the deed declaring the trusts thereof, and such grant shall be made in aid of the purchase of the site, or of the erection, enlargement, or repair of the school, or of the residence of the master

The terms and conditions upon which parliamentary aid has been given towards the building of schools secured upon the site.

STAT. 7 & 8
VICT. c. 37.

or mistress thereof, or of the furnishing of the school, such terms and conditions shall be binding and obligatory upon the trustees or managers of the said school or other the premises for the time being, in like manner and to the like effect as though they had been inserted in the conveyance of the site of the said school, or in the declaration of the trusts thereof; and henceforth all personal obligations entered into for the purpose of securing the fulfilment of such terms and conditions shall, so far as they relate thereto, but no further, be null and void: provided nevertheless, that such terms and conditions shall have been or shall be set forth in some document in writing, signed by the trustees of the said school or the major part of them, or by the party or parties conveying the site, in the case where there shall have been a voluntary gift thereof.

The terms upon which aid shall be granted to trustees of ancient endowed schools.

"II. And whereas there are many endowments for the purpose of education of the poor in Great Britain of ancient date, the schools whereon have become dilapidated, and, the funds of such endowment being insufficient for the restoration thereof, application is made by the trustees, or by the persons acting in the discharge of the trusts thereof, for aid out of the said parliamentary grant, but the same hath been declined, because such applicants could not impose upon their lawful successors in the said trust the conditions which the said committee would have advised her majesty to require to secure the due inspection of such school, and it is expedient to enable them to do so; be it therefore enacted, that when the major part of the trustees of any endowed school for the education of the poor duly appointed under the terms of the deed of endowment, or, when such deed cannot be found or cannot be acted upon, of the persons who shall be in the possession of the endowment, and shall be acting in the execution of the trusts or the reputed trusts thereof, shall, and in cases where there shall be a visitor of such school with the consent of such visitor in writing, apply for aid out of such parliamentary grant to enable them to rebuild, repair, or enlarge the school belonging to such endowment, or the residence of the master or mistress thereof, or to furnish such school, and shall in writing assent to the said school being open to inspection on behalf of her majesty and her successors, if the said committee shall deem fit to advise that any such grant shall be made, it shall immediately after the making of such grant, and thenceforth from time to time, be lawful for any inspector of schools appointed by her majesty and her successors, in conformity with the terms contained in the writing testifying such consent as aforesaid, to enter the said school at all reasonable hours in the day for the purpose of inspecting and examining the state and condition of the school and the scholars thereat, and of making such report thereon, as he shall deem fit.

Death of donor within twelve calendar months not to avoid grant.
9 Geo. 2, c. 36.

"III. And whereas by an act passed in the fifth year of the reign of her present majesty, intituled, 'An Act to afford further Facilities for the Conveyance and Endowment of Sites for Schools,' it is enacted, that any person, being seized in fee-simple, fee-tail, or for life of and in any manor, or lands of freehold, copyhold, or customary tenure, may grant, convey, or enfranchise, and subject to the provisions therein mentioned, any quantity not exceeding one acre of land as a site for a school or otherwise, as therein likewise specified; and it is desirable to prevent any such grant, being of so limited an interest, from being defeated by the death of the grantor; be it enacted, that where any deed shall have been or shall be executed under the powers and for the purposes contained in the said act, without any valuable consideration, the same shall be and continue valid, if otherwise lawful, although the donor or grantor shall die within twelve calendar months from the execution thereof.

Site may be granted to the minister and churchwardens.

"IV. And whereas it was provided by the said act that grants of land or buildings, or any interest therein, for the purposes of the education of poor persons, might be made to the minister of any parish, being a corporation, and the churchwardens or chapelwardens and overseers of the poor and their successors, and it is sometimes found inexpedient or impracticable to introduce the overseers as parties to the legal estate; be it therefore enacted, that such grants may be made to the minister and churchwardens of any parish, such minister being the rector, vicar, or perpetual curate thereof, whether endowed or not, to hold to them and their

successors, subject to the provisions contained in the deed of conveyance thereof for the management, direction, and inspection of the school and premises.

“V. And be it enacted, that if the rector, vicar, or perpetual curate of any parish be desirous of making a grant of any land for the purposes and under the powers of the said act, being part of the glebe or other possessions of his benefice, and shall, with the consent of the patron of the said benefice, and of the bishop of the diocese within which the same shall be situated, grant the same to the minister and church or chapel wardens, or to the minister, church or chapel wardens, and overseers of the poor of the said parish, such grant shall be valid, and shall thenceforth enure for the purposes of the trust set forth therein, if otherwise lawful, notwithstanding such minister is the party making the grant.

“VI. And be it enacted, that this act may be altered by any other act in this session of parliament.”

STAT. 7 & 8
VICT. c. 37.

Rector, vicar, or perpetual curate, may grant to the minister and churchwardens, or to the minister, churchwardens, and overseers of his parish. Act may be altered this session.

CLVI. STAT. 7 & 8 VICTORIÆ, c. 38. [IRELAND.] A.D. 1844.

“An Act to amend an Act of the last Session, to consolidate and amend the Laws for the Regulation of Charitable Loan Societies in Ireland.”

STAT. 7 & 8
VICT. c. 38.
[Ir.]

CLVII. STAT. 7 & 8 VICTORIÆ, c. 44. [SCOTLAND.] A.D. 1844.

“An Act to facilitate the disjoining or dividing of Extensive or Populous Parishes, and the erecting of new Parishes, in that Part of the United Kingdom called Scotland.”

STAT. 7 & 8
VICT. c. 44.
[Sc.]

CLVIII. STAT. 7 & 8 VICTORIÆ, c. 45. A.D. 1844.

“An Act for the Regulation of Swits relating to Meeting Houses and other Property held for Religious Purposes by Persons dissenting from the United Church of England and Ireland.”

STAT. 7 & 8
VICT. c. 45.

“Whereas an act was passed in the first session of the first year of the reign of King William and Queen Mary, intituled, ‘An Act for exempting Their Majesties’ Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws;’ and whereas an act was passed in the nineteenth year of the reign of King George the Third, intituled, ‘An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters;’ and whereas an act was passed in the fifty-third year of the reign of King George the Third, intituled, ‘An Act to relieve Persons who impugn the Doctrine of the Holy Trinity from certain Penalties;’ and whereas an act was passed by the parliament of Ireland in the sixth year of the reign of his majesty King George the First, intituled, ‘An Act for exempting the Protestant Dissenters of this Kingdom from certain Penalties to which they are now subject;’ and whereas an act was passed in the fifty-seventh year of the reign of King George the Third, intituled, ‘An Act to relieve Persons impugning the Doctrine of the Holy Trinity from certain Penalties in Ireland;’ and whereas prior to the passing of the said recited acts respectively, as well as subsequently thereto, certain meeting houses for the worship of God, and Sunday or day schools, (not being grammar schools,) and other charitable foundations, were founded or used in England and Wales and Ireland respectively for purposes beneficial to persons dissenting from the church of England and the church of Ireland and the united church of England and Ireland respectively, which were unlawful prior to the passing of those acts respectively, but which by those acts respectively were made no longer unlawful; be it therefore enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that with respect to the meeting houses, schools, and other charitable foundations so founded or used as aforesaid, and the persons holding or enjoying the benefit thereof respectively, such acts, and all deeds or documents relating to such charitable foundations, shall be construed as if the said acts had been in force respectively at the respective times of founding or using such meeting houses, schools, and other charitable foundations as aforesaid.

1 G. & M.
sess. 1, c. 18.

19 Geo. 3, c. 44.

53 Geo. 3,
c. 160.

6 Geo. 1, (Ir.)

57 Geo. 3, c. 70.

Recited acts, as well as all deeds relating to such meeting houses, &c. to be construed as if the acts had been in force at the time of the foundation of such meeting houses, &c.

STAT. 7 & 8
VICT. c. 45.

The religious doctrines or opinions for the preaching or promotion of which the meeting house may be held to be collected from twenty-five years' usage, where not expressly stated in the deed of trust.

"II. And be it enacted, that so far as no particular religious doctrines or opinions, or mode of regulating worship, shall on the face of the will, deed, or other instrument declaring the trusts of any meeting house for the worship of God by persons dissenting as aforesaid, either in express terms, or by reference to some book or other document as containing such doctrines or opinions or mode of regulating worship, be required to be taught or observed or be forbidden to be taught or observed therein, the usage for twenty-five years immediately preceding any suit relating to such meeting house of the congregation frequenting the same shall be taken as conclusive evidence that such religious doctrines or opinions or mode of worship as have for such period been taught or observed in such meeting house may properly be taught or observed in such meeting house, and the right or title of the congregation to hold such meeting house, together with any burial ground, Sunday or day school, or minister's house attached thereto; and any fund for the benefit of such congregation, or of the minister or other officer of such congregation, or of the widow of any such minister, shall not be called in question on account of the doctrines or opinions or mode of worship so taught or observed in such meeting house; provided nevertheless, that where any such minister's house, school, or fund as aforesaid shall be given or created by any will, deed, or other instrument, which shall declare in express terms, or by such reference as aforesaid, the particular religious doctrines or opinions for the promotion of which such minister's house, school, or fund is intended, then and in every such case such minister's house, school, or fund shall be applied to the promoting of the doctrines or opinions so specified, any usage of the congregation to the contrary notwithstanding.

Act not to affect any judgment, &c. of a court of law or equity, and court may give defendants the benefit of act in suits now pending.

"III. Provided always, and be it enacted, that nothing herein contained shall affect any judgment, order, or decree already pronounced by any court of law or equity; but that in any suit which shall be a suit by information only and not by bill, and wherein no decree shall have been pronounced, and which may be pending at the time of the passing of this act, it shall be lawful for any defendant or defendants for whom the provisions of this act would have afforded a valid defence if such suit had been commenced after the passing of this act to apply to the court wherein such suit shall be pending; and such court is hereby authorized and required, upon being satisfied by affidavit or otherwise that such suit is so within the operation of this act, to make such order therein as shall give such defendant or defendants the benefit of this act; and in all cases in which any suit now pending shall be stayed or dismissed in consequence of this act, the costs thereof shall be paid by the defendants, or out of the property in question therein, in such manner as the court shall direct."

STAT. 7 & 8
VICT. c. 56.

CLIX. STAT. 7 & 8 VICTORIÆ, c. 56. A.D. 1844.

"An Act concerning Banns and Marriages (1) in certain District Churches or Chapels."

59 Geo. 3,
c. 134.

"Whereas an act was passed in the fifty-ninth year of the reign of King George the Third, intituled, 'An Act to amend and render more effectual an Act passed in the last Session of Parliament, for building and promoting the building

(1) *Banns and Marriages*.—The following is a tabular statement of the principal statutes which apply to banns and marriages.

Act for marriages in England	6 & 7 Gul. 4, c. 85.	} E
<i>Suspended until June, 1837, by</i>	7 Gul. 4 & 1 Vict. c. 1.	
<i>Amended and explained by</i>	7 Gul. 4 & 1 Vict. c. 22.	
Clandestine marriages, amending 26 Geo. 2, c. 33, for better preventing	3 Geo. 4, c. 75.	} E
<i>Amended by</i>	4 Geo. 4, c. 17.	
Stat. 26 Geo. 2, c. 33, and Stat. 4 Geo. 4, c. 17, <i>repealed by</i>	4 Geo. 4, c. 76.	
Provisions now in force {	3 Geo. 4, c. 75.	
	5 Geo. 4, c. 32.	} E
	11 Geo. 4 & 1 Gul. 4, c. 66.	
District churches and chapels, concerning marriages in	7 & 8 Vict. c. 56.	E
Hamburg, declaring valid, marriages solemnized there since the abolition of the British factory	3 & 4 Gul. 4, c. 45.	U E
India, removing doubts as to the validity of certain marriages solemnized in	58 Geo. 3, c. 84.	U E

of additional Churches in populous Parishes:’ and whereas another act was passed in the second year of the reign of his late majesty, intituled, ‘An Act to amend and render more effectual an Act passed in the seventh and eighth years of the Reign of His late Majesty, intituled, “An Act to amend the Acts for building and promoting the building of additional Churches in populous Parishes:”’ and whereas another act was passed in the second year of the reign of her present majesty, intituled, ‘An Act to amend and render more effectual the Church Building Acts:’ and whereas another act was passed in the fourth year of the reign of her said majesty, intituled, ‘An Act to further amend the Church Building Acts:’ and whereas doubts are entertained whether banns of matrimony can be published or marriages be solemnized in churches or chapels to which districts have been or may hereafter be assigned under the said recited act passed in the second year of the reign of his late majesty; and it is expedient to remove such doubts: be it enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in every case in which a district has been or shall be assigned to any church or chapel under the provisions of the said last-mentioned act, it shall be lawful for her majesty’s commissioners for building new churches, with the consent of the bishop of the diocese, in every such case as has come or shall come before the said commissioners under the provisions of the said last-mentioned act, and for the said bishop in every such other case, to determine whether banns of matrimony shall be published and marriages solemnized in any such church or chapel aforesaid or not.

STAT. 7 & 8
VICT. c. 56.
1 & 2 Gul. 4,
c. 38.

1 & 2 Vict.
c. 107.
3 & 4 Vict.
c. 60.

Where a district is assigned under last recited act, the church building commissioners or the bishop to decide as to banns and marriages.

Ireland, act for marriages in Ireland, and for registering such marriages	7 & 8 Vict. c. 81.	I.
Laws respecting the solemnization of marriages, amending	4 Geo. 4, c. 76.	E.
Amended by	5 Geo. 4, c. 32. 11 Geo. 4 & 1 Gul. 4, c. 66.	
Licences, rendering valid marriages solemnized by, after the passing of 3 Geo. 4, c. 75	4 Geo. 4, c. 5.	E.
Lunatics, preventing marriages of	51 Geo. 3, c. 37.	U.K.
Matrimonial contracts, extending to Ireland the provisions of an English act for annulling	58 Geo. 3, c. 81.	U.K.
Newfoundland, regulating the celebration of marriages in	57 Geo. 3, c. 51.	U.K.
Repealed, and other provisions made by	5 Geo. 4, c. 68.	
Presbyterian marriages, confirmed	5 & 6 Vict. c. 113.	I.
Registers of marriages in England, for better regulating and preserving	6 & 7 Vict. c. 39.	
Amended by	52 Geo. 3, c. 146.	E.
Registering of marriages in England, an act for	11 Geo. 4 & 1 Gul. 4, c. 66.	
Suspended until June, 1837, by	6 & 7 Gul. 4, c. 86.	E.
Amended and explained by	7 Gul. 4 & 1 Vict. c. 1. 7 Gul. 4 & 1 Vict. c. 22.	
Residence, for the solemnization of marriages near the, of the parties	3 & 4 Vict. c. 72.	E.
Roman catholic clergymen celebrating marriages contrary to law, repealing penal enactments against	3 & 4 Gul. 4, c. 102.	I.
Roman catholic priests and ministers not of the established church in Scotland, amending the laws relative to marriages celebrated by	5 & 6 Vict. c. 28.	
Saint Ann’s chapel, Wandsworth, rendering valid marriages solemnized in	4 & 5 Gul. 4, c. 28.	S.
Saint Clement’s church, Oxford, rendering valid certain marriages solemnized in	6 & 7 Gul. 4, c. 24.	E.
Saint Petersburg, declaring valid marriages solemnized there since the abolition of the British factory	6 & 7 Gul. 4, c. 92.	E.
Validity of marriages solemnized in churches or chapels in which banns had not been usually published, confirming	4 Geo. 4, c. 67.	U.K.
of marriages celebrated abroad, obviating doubts respecting	44 Geo. 3, c. 77.	U.K.
of marriages solemnized in certain churches and chapels, confirming	48 Geo. 3, c. 127.	
of certain marriages, confirming; and altering the law with respect to certain voidable marriages	6 Geo. 4, c. 92.	U.K.
	4 Geo. 4, c. 91.	
	11 Geo. 4 & 1 Gul. 4, c. 18.	E.
	5 & 6 Gul. 4, c. 54.	E.

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VICT. c. 56.

Proceedings in cases where it shall be determined that banns may be published and marriages solemnized.

How fees to be disposed of.

The validity of marriages in certain chapels with districts assigned to them not to be questioned.

Omissions to authorize marriages in chapels may be cured by supplemental order.

"II. And be it enacted, that when and so soon as it shall be determined that banns of matrimony may be published and marriages solemnized in any such church or chapel, the bishop of the diocese within which such church or chapel shall be locally situated, whether in any parish or extra-parochial place, or otherwise, shall certify the same, and such certificate shall be kept in the chest of the church or chapel with the books of registry thereof, and a copy thereof shall be entered in the books of the registry of banns and marriages, and a duplicate of such certificate shall be registered in the registry of the diocese, and such certificate shall be deemed and taken to be conclusive evidence in all courts, and in all questions relating to any banns published or marriages solemnized in any such church or chapel, that the same might according to law respectively be published and solemnized in such church or chapel, and that all banns published and marriages solemnized in any such church or chapel according to the laws and canons in force within this realm in that behalf shall after the granting of such certificate be good to all intents and purposes whatsoever: provided always, that no banns or marriages respectively published or solemnized according to the laws and canons in force within the realm in that behalf in any church or chapel in which the same are authorized to be respectively published, solemnized, and had by the said recited acts or this act, or either of them, shall be invalid by reason of any such certificate not having been duly given, or registered or entered, as hereinbefore required: provided also, that all fees, dues, offerings, and other emoluments on account of such marriages, whether of right or custom, belonging to the incumbent or clerk of any parish, chapelry, or place in which such church or chapel has been erected, shall be received by or for or on account of such incumbent or clerk respectively, and be paid over to them, except such of the said fees, dues, offerings, or other emoluments, or such portions thereof, as the said commissioners, with the consent of the bishop of the diocese, the patron, and the said incumbent respectively, in those cases which shall come before the said commissioners, by order made under their common seal, or the bishop of the diocese alone, with the consent of the patron and incumbent, in all other cases, by order under his name and seal, shall assign to the minister of such church or chapel; and every such instrument of assignment shall be registered in the registry of the bishop of the diocese within which said church or chapel shall be locally situated: provided always, that nothing hereinbefore contained shall be construed to take away from existing parish clerks any fees, dues, or emoluments to which they are now by law or custom entitled.

"III. And whereas, by error, banns have been published, and divers marriages have been solemnized, in chapels with districts assigned to them under the provisions of the hereinbefore recited acts or some of them, but in which chapels banns could not be legally published, nor marriages by law be solemnized; and it is expedient to remove all doubts, arising from the circumstances aforesaid, touching the validity of such marriages: be it therefore enacted, that banns already published, and marriages already solemnized, in such chapels as aforesaid, shall not hereafter be questioned on account of the said banns having been published, or the said marriages solemnized, in any such chapel as aforesaid; and the ministers or ministers who solemnized the same shall not be liable to any ecclesiastical censure, or to any other proceedings or penalties whatsoever, by reason thereof; and the registers of all marriages so solemnized as aforesaid, or copies of such registers shall be received in all courts of law and equity as evidence of such marriages respectively.

"IV. And be it enacted, that where a chapelry has been already or shall hereafter be assigned to any chapel under the provisions of the hereinbefore recited acts passed in the fifty-ninth year of the reign of King George the Third, and the order in council assigning such chapelry does not direct that marriages may be performed in such chapel, it shall be lawful for her majesty, by any supplemental order of council, on a representation to be made to her by the said commissioners, with the consent of the bishop of the diocese, to order that marriages may be performed thereafter in such chapel; and that all the fees arising therefrom, or a part thereof,

should thereafter belong and be paid to the minister of such chapel, or after the next avoidance of the parish church, or that all or a portion of such fees should belong and be paid to the incumbent of such parish church; and all the laws in force relating to banns of marriage, and marriages in district chapels, and the registering thereof, shall apply to marriages performed under such supplemental order in council.

“V. And be it enacted, that in any representation to her majesty in council, or in any order of council to be made thereon, or in any other matter or thing done under their common seal by the said commissioners under the authority of the hereinbefore recited acts or any other act of parliament, it shall be sufficient to refer to the section or sections as numbered in copies printed by the queen’s printer of the act or acts under the authority whereof such representation or order in council is made, or such matter or thing done, and it shall not be necessary to recite any of the provisions of such section or sections.

“VI. And be it enacted, that every order in council under the provisions of the hereinbefore recited acts or any of them, or under the provisions of any other of the Church Building Acts, shall, as soon as may be after the making thereof by her majesty in council, be inserted and published in the London Gazette in like manner as any order in council made under the acts regulating the proceedings of the ecclesiastical commissioners of England is published in such Gazette, and it shall not be necessary to enrol in the court of Chancery any map or plan or description of the boundaries of any division or district formed under the provisions of the hereinbefore recited acts or any other of the Church Building Acts; and a map or plan on which shall be marked such boundaries, and which shall be sealed with the common seal of the said commissioners for building new churches, and the order in council annexed thereto, shall be registered in the registry of the diocese in the manner directed by the act passed in the fourth year of the reign of her present majesty, intituled, ‘An Act to carry into effect, with certain Modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues,’ and shall be subject to such and the like provisions in all respects relating thereto as are contained in the same act: provided always, that nothing in this act contained shall be taken to repeal or affect any of the authorities contained in an act of parliament passed in the seventh year of the reign of his late majesty, intituled, ‘An Act for Marriages in England,’ for licensing any churches or chapels for the solemnization of marriages therein.”

CLX. STAT. 7 & 8 VICTORIÆ, c. 59. A.D. 1844.

“An Act for better regulating the Offices of Lecturers and Parish Clerks.”

“Whereas in divers districts, parishes, and places, there now are or hereafter may be certain lecturers or preachers in the holy orders of deacon or priest of the united church of England and Ireland elected or otherwise appointed to deliver or preach lectures or sermons only, without the obligation of performing other clerical or ministerial duties: and whereas it is expedient in many cases that such lecturers or preachers should be authorized and required to perform other clerical and ministerial duties, and to act if necessary as assistant curates, in such districts, parishes, or places; be it therefore enacted by the queen’s most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that from and after the passing of this act it shall be lawful for the bishop of the diocese wherein any such lecturers or preachers shall be so elected or appointed as aforesaid, if he shall think fit, with the assent of the incumbent of every such district, parish, or place, to require, by writing under his hand and seal, any such lecturer or preacher to undertake and perform such other clerical or ministerial duties, as assistant curate or otherwise, within such district, parish, or place, as the said bishop, with the assent of such incumbent as aforesaid, shall think proper, and also to vary from time to time, if necessary, and with the like assent, the particular duties so required to be performed as aforesaid; and in case such lecturer or preacher shall at any time refuse or neglect duly and faithfully to perform such

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VICT. c. 56.

In any representation to the queen in council, &c. the number of the section of the act under which such representation, &c. is made, need only be recited.

Every order in council under the Church Building Acts to be inserted in the London Gazette, and registered with a map and description of boundaries, but the map not required to be enrolled in Chancery. 3 & 4 Vict. c. 113.

Not to affect 6 & 7 Gul. 4, c. 85, as to licensing churches, &c. for solemnisation of marriages.

STAT. 7 & 8
VICT. c. 59.

Lecturers or preachers may be required to perform other clerical duties in certain cases.

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VICT. C. 59.

additional duties, and to act in the manner required by the said bishop as aforesaid, it shall be lawful for the said bishop to summon the said lecturer or preacher to appear before him, and thereupon the said bishop, with the assistance of one at least of the archdeacons, and also of the chancellor of such diocese, shall proceed summarily to inquire into the facts of the case, and to adjudicate thereon, and, if necessary, to suspend or remove the said lecturer or preacher from his said office, and to declare the same vacant; but nevertheless such lecturer or preacher may, within fourteen days next after the passing or making of any such sentence or declaration, appeal therefrom to the archbishop of the province, who shall thereupon forthwith summarily hear and determine the same: and if no such appeal be made within the time aforesaid, or if the said sentence or declaration shall upon such appeal be affirmed by the said archbishop, the said bishop shall then cause the same to be forthwith duly published in the church or chapel wherein the said lecturer or preacher hath been used to deliver or preach his said lectures or sermons by virtue of his said office, and thereupon the said office shall be and be deemed to be vacant, and the parties entitled to elect or appoint a person to the same shall be entitled and required to elect or appoint a successor thereto, in the same manner as if the said lecturer or preacher were dead, and the right and interest of such lecturer or preacher to and in the said office, and to and in all the emoluments and advantages thereof, shall wholly cease and determine: provided that nothing herein contained shall affect or be deemed applicable to any lecturer or preacher who shall have been elected or appointed to his said office before the passing of this act, unless such lecturer or preacher shall consent to be bound thereby.

Saving the
rights of pre-
sent holders.

Power to ap-
point persons
in holy orders
to the office of
church clerk,
and to require
such persons
to act as as-
sistant curates,
if necessary.

“II. And be it enacted, that when and so often after the passing of this act as any vacancy shall occur in the office of church clerk, chapel clerk, or parish clerk, in any district, parish, or place, it shall be lawful for the rector or other incumbent or other the person or persons entitled for the time being to appoint or elect such church clerk, chapel clerk, or parish clerk as aforesaid, if he shall think fit, to appoint or elect a person in the holy orders of deacon or priest of the united church of England and Ireland to fill the said office of church clerk, chapel clerk, or parish clerk; and such person so appointed or elected as aforesaid shall, when duly licensed as hereinafter provided, be entitled to have and receive all the profits and emoluments of and belonging to the said office, and shall also be liable in respect thereof, so long as he shall hold the same, to perform all such spiritual and ecclesiastical duties within such district, parish, or place, as the said rector or other incumbent, with the sanction of the bishop of the diocese, may from time to time require; but such person in holy orders so appointed or elected as aforesaid shall not by reason of such appointment or election have or acquire any freehold or absolute right to or interest in the said office of church clerk, chapel clerk, or parish clerk, or to or in any of the profits or emoluments thereof, but every such person in holy orders so appointed or elected as aforesaid shall at all times be liable to be suspended or removed from the said office, in the same manner and by the same authority, and for such or the like causes, as those whereby any stipendiary curate may be lawfully suspended or removed; such suspension or removal nevertheless being subject to the same power of appeal to the archbishop of the province to which any stipendiary curate is or may be entitled.

Such person
to be licensed
by the bishop,
and when ap-
pointed other-
wise than by
the bishop to
be subject to
the approval
of the incum-
bent.

“III. Provided always, and be it enacted, that every such appointment or election as last aforesaid, if made by any other person or persons than the rector or other incumbent of such district, parish, or place, shall be subject to the consent and approval of such rector or other incumbent of such district, parish, or place; and that no person in holy orders so appointed or elected as aforesaid shall be competent to perform any of the duties of his said office, or any other spiritual or ecclesiastical duties, within such district, parish, or place, or to receive or take any of the profits or emoluments of his said office, unless and until he shall have duly obtained from the bishop of the diocese within which such district, parish, or place, is situate, such licence and authority in that behalf

are required and usual in respect of stipendiary curates; but nevertheless, such licence and authority, when so obtained as aforesaid, shall entitle the person so obtaining it to hold the said office, and to receive and take the profits and emoluments thereof as aforesaid, until he shall have resigned the same, or have been so suspended or removed as aforesaid, without any annual or other re-appointment or re-election thereto.

“IV. Provided also, and be it enacted, that no rector or other incumbent of any district, parish, or place, wherein any such person or persons shall be so employed as aforesaid, or wherein any lecturer or preacher shall have been required to undertake and perform other clerical and ministerial duties, in the manner hereinbefore provided, or wherein any person in holy orders shall have been appointed or elected to fill the office of church clerk, chapel clerk, or parish clerk as aforesaid, shall by reason of any such provisions be exempt from any duty or obligation of employing within the same district, parish, or place, any curate or other assistant to which by any law, statute, canon, or usage he is or may be already liable; but it shall be lawful for the bishop of the diocese from time to time to require every such rector or other incumbent to provide, or for the said bishop to nominate and license, such other curates and assistants to officiate within every such district, parish, or place, in addition, either to the person or persons so intended to be employed as aforesaid, or to such lecturer or preacher, or to such church clerk, chapel clerk, or parish clerk, and to make regulations for the payment of the stipends of such other curates and assistants, as fully and in the same manner, and subject to the same restrictions as he might have done by law if this act had not been passed.

“V. And be it enacted, that if at any time it shall appear, upon complaint or otherwise, to any archdeacon or other ordinary that any person not in holy orders, holding or exercising the office of church clerk, chapel clerk, or parish clerk in any district, parish, or place within and subject to his jurisdiction, has been guilty of any wilful neglect of or misbehaviour in his said office, or that by reason of any misconduct he is an unfit and improper person to hold or exercise the same, it shall be lawful for such archdeacon or other ordinary forthwith to summon such church clerk, chapel clerk, or parish clerk to appear before him, and also by writing under his hand, or by such process as is commonly used in any of the courts ecclesiastical for procuring the attendance of witnesses, to call before him all such persons as may be competent to give evidence or information respecting any of the matters imputed to or charged against such church clerk, chapel clerk, or parish clerk as aforesaid; and such archdeacon or other ordinary shall and may, if he see fit, examine upon oath, to be by him administered in that behalf, any of the persons so appearing or attending before him respecting any of the matters aforesaid, and shall and may thereupon summarily hear and determine the truth of the matters so imputed to or charged against such church clerk, chapel clerk, or parish clerk as aforesaid; and if upon such investigation it shall appear to the satisfaction of such archdeacon or other ordinary that the matters so imputed to or charged against such church clerk, chapel clerk, or parish clerk are true, it shall be lawful for the said archdeacon or other ordinary forthwith to suspend or remove such church clerk, chapel clerk, or parish clerk from his said office, and by certificate under his hand and seal directed to the rector or other officiating minister of the parish, district, or place wherein such church clerk, chapel clerk, or parish clerk, held or exercised his said office, to declare the said office vacant, and a copy of such certificate shall thereupon, by such rector or other officiating minister, be affixed to the principal door of the church or chapel in which the said church clerk, chapel clerk, or parish clerk usually exercised his said office; and the person or persons who upon the vacancy of such office are entitled to elect or appoint a person to fill the same, shall and may forthwith proceed to elect or appoint some other person to fill the same in the place of the said church clerk, chapel clerk, or parish clerk so removed as aforesaid: provided always, that the exercise of such office by a sufficient deputy who shall duly and faithfully perform the duties thereof, and in all respects well and properly demean himself, shall not be deemed a wilful neglect of his office

STAT. 7 & 8
VICT. c. 59.

Appointments of assistant clergy under this act not to exempt incumbents from the duty of providing curates in cases where they are now liable.

Power to suspend or remove church clerks not in holy orders who may be guilty of neglect or misbehaviour.

STAT. 7 & 8
VICT. c. 59.

Power to remove person ceasing to be employed as mentioned in this act from premises held by him in right of his employment.

on the part of such church clerk, chapel clerk, or parish clerk, so as to render him liable, for such cause alone, to be suspended or removed therefrom.

"VI. And be it enacted, that in case any person, having ceased to be employed in any of the offices or duties in this act mentioned or referred to, or having been duly suspended or removed from any such office or employment as aforesaid, shall at any time refuse or neglect to give up the possession of any house, building, land, or premises, or any part or parcel thereof, by him held or occupied by virtue or in respect of any such office or employment as aforesaid, it shall be lawful for the the bishop of the diocese, upon complaint thereof to him made, to summon such person forthwith personally to appear before him, and to shew cause for such refusal or neglect; and upon the failure of the person so summoned as aforesaid to obey such summons, or, upon his appearance, to show to the said bishop such cause as may be deemed by the said bishop sufficient for such refusal or neglect, the said bishop shall thereupon grant a certificate of the facts aforesaid, under his hand and seal, to the person or persons entitled to the possession of such house, building, land, or premises as aforesaid, who may thereupon go before any neighbouring justice of the peace; and such justice, upon production of such certificate, and proof of such wrongful retention of possession as aforesaid, shall and he is hereby required to issue his warrant under his hand and seal, directed to the constables or other peace officers of the district, parish, or place within which such house, building, land, or premises is or are situate, or to the constables or other peace officers of any neighbouring district, parish, or place, requiring them forthwith to expel and remove from the said house, building, land, or premises, and from every part and parcel thereof, the person so wrongfully retaining possession thereof, and to deliver the peaceable possession thereof to the person or persons so entitled to the same as aforesaid; and such constables or other peace officers shall and they are hereby required promptly and effectually to obey and execute such warrant, according to the exigency thereof, and thereupon it shall be lawful for them also to levy, upon the goods and chattels of the person so by them expelled and removed as aforesaid, the necessary costs and expenses of executing such warrant, the amount whereof, in case the same shall be disputed, shall be forthwith settled and determined by the said justice of the peace by whom the said warrant was so issued as aforesaid, or by any other justice of the peace residing in or near to the said district, parish, or place, whose decision thereupon shall be final, and who is hereby authorized to make such order in that behalf as to him shall seem reasonable."

STAT. 7 & 8
VICT. c. 61.

CLXI. STAT. 7 & 8 VICTORIÆ, c. 61. A.D. 1844.

"An Act to annex detached Parts of Counties to the Counties in which they are situated."

"V. Provided always, and be it enacted, that nothing herein contained shall alter or interfere with any ecclesiastical jurisdiction or right of patronage."

STAT. 7 & 8
VICT. c. 65.

CLXII. STAT. 7 & 8 VICTORIÆ, c. 65. A.D. 1844.

"An Act to enable the Council of His Royal Highness Albert Edward, Prince of Wales, to sell and exchange Lands and enfranchise Copyholds, Parcel of the Possessions of the Duchy of Cornwall, to purchase other Lands, and for other Purposes."

His royal highness may make grants of land for sites for churches, &c.

"XXVI. And be it enacted, that it shall be lawful for his said royal highness, his heirs or successors, out of the lands and possessions of the said duchy, to give and grant to and vest in any person, or body politic or corporate, his or their heirs, executors, administrators, or successors, any building proper to be used as or converted into a church or chapel, or parochial or district school, and any ground proper for the site of any church or chapel, with or without a cemetery or burial ground thereto, and any ground proper for a cemetery or burial ground to any church or chapel, and any house, with its appurtenances, and with or without a garden thereto, proper for the residence of the spiritual person who may serve such church or chapel, or of the master or mistress of such school, and any great-

proper for the site or sites of any such residence, or of any parochial or district school, anything in this act or any other law or statute to the contrary in anywise notwithstanding; and such person, or body politic or corporate, his or their heirs, executors, administrators, or successors, shall have full capacity and ability to take, hold, and enjoy the same; and whenever it shall be the pleasure of the said council, or of his said royal highness, his heirs or successors, to make a grant for any of the purposes aforesaid, it shall be lawful for the said council, or for his said royal highness, his heirs or successors, to make a grant thereof to any such person, body politic or corporate, which grant shall be enrolled in the office of the duchy of Cornwall as aforesaid, and the enrolment of such grant shall be certified at the foot or on the back thereof, by the keeper of the records of the said duchy, or his deputy; and the said grant, when so enrolled, shall be returned, with such certificate of enrolment, to the grantees or grantees of such lands and premises; and from and immediately after such enrolment thereof the grantee named in such grant, and his or their heirs, executors, administrators, or successors, shall, by force of this act, be adjudged, deemed, and taken to be in the actual seisin or possession of the premises in the said grant specified, and shall hold and enjoy the same either absolutely and in perpetuity, or for such limited estate, term, or interest, and under and subject to such reservations of rent, or other acknowledgments, conditions, or restrictions, and upon such trust and for such purposes, as shall be specified, inserted, directed, or contained in such grant, any law, statute, or usage to the contrary thereof in anywise notwithstanding: provided always, that nothing in this act contained shall extend or be construed to extend to enable his said royal highness, his heirs or successors, or his said council, to grant more than five acres in any one grant for any of the purposes aforesaid or to grant any premises in any one instance which shall exceed in value the sum of three hundred pounds."

STAT. 7 & 8
VICT. c. 65.

CLXIII. STAT. 7 & 8 VICTORIÆ, c. 68. A.D. 1844.

STAT. 7 & 8
VICT. c. 68.

"An Act to suspend, until the thirty-first day of December, One thousand eight hundred and forty-seven, the Operation of the new Arrangement of Dioceses, so far as it affects the existing Ecclesiastical Jurisdictions, and for obtaining Returns from and the Inspection of the Registries of such Jurisdictions."

"Whereas an act passed in the seventh year of the reign of his late majesty, intituled, 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage,' contains certain temporary provisions relating to the state and jurisdiction of all the ecclesiastical courts in England and Wales; and whereas the said provisions have been from time to time continued by certain other acts of parliament, and were, by an act passed in the last session of parliament, intituled, 'An Act for suspending, until the first day of October, One thousand eight hundred and forty-four, the Operation of the new Arrangement of Dioceses, so far as it affects the Ecclesiastical Jurisdictions,' further continued, and now stand continued until the first day of October next, and it is expedient that they should be further continued for a limited time; be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that the said hereinbefore mentioned provisions shall continue and be in force until the thirty-first day of December, in the year one thousand eight hundred and forty-seven; provided always, that any bishop or archdeacon may hold visitations of the clergy within the limits of his diocese or archdeaconry, and at such visitations may admit churchwardens, receive presentments, and do all other acts, matters, and things by custom appertaining to the visitation of bishops and archdeacons in the places assigned to their respective jurisdiction and authority, under or by virtue of the provisions of the said first-recited act or of any subsequent act, and any bishop may consecrate any new church or chapel or any new burial ground within his diocese.

6 & 7 Gul. 4,
c. 77.

6 & 7 Vict.
c. 60.

Temporary
provisions
relating to
ecclesiastical
courts con-
tinued.

STAT. 7 & 8
VICT. c. 68.
Registrars of
ecclesiastical
courts to make
certain returns
to secretary of
state.

"II. And be it enacted, that the registrar of every court granting probates and administrations or exercising ecclesiastical jurisdiction, and the registrar of every vicar-general or diocese, shall, on or before the twentieth day of January, in the year one thousand eight hundred and forty-five, make out and transmit to one of her majesty's principal secretaries of state a true account in writing of the gross and net amounts of all such fees, allowances, gratuities, perquisites, and emoluments respectively as shall in each of the five next preceding years, each of such years ending on the fifth day of January, have been received or become due on account of the judge of such court or vicar-general, by virtue of his office as such judge or vicar-general, or on account of himself, or (except of surrogates) of any other officer, clerk, or minister of such court or registry, by virtue of his office or employment, specifying the particulars of the payments, disbursements, allowances, and charges respectively constituting the difference between such gross and net amounts, and shall on or before the twentieth day of January in every succeeding year transmit a like account for the year ending the fifth day of January in such year; and the several officers, clerks, and ministers of each of the said courts and registries shall render to the registrar thereof all such statements in writing as he may require for the purpose of preparing such account; and such registrar shall transmit the said statements to the said secretary of state at the same time with his aforesaid account; and the said secretary of state may at any time or times require that all or any of the several accounts and statements hereinbefore mentioned shall contain such particulars and be in such form and verified in such manner as to him may seem proper.

Registrars to
report on state
of offices to
secretary of
state, who
may direct
surveys.

"III. And be it enacted, that on or before the twentieth day of January in every year the registrar of each of the said several courts and registries shall report in writing to one of her majesty's principal secretaries of state on the state and condition of his registry, and the buildings belonging thereto, and also upon all such other matters connected with such registry, and the documents therein contained, as and in such form as the said secretary of state may from time to time require; and such secretary of state may from time to time call for further or other returns, and may also direct and cause to be made such inspection or survey of any registry as he may think fit.

Registrar, who
to include.

"IV. And be it enacted, that the word 'registrar,' when used in this act, shall include all registrars and deputy registrars.

Act may be
amended this
session.

"V. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament."

STAT. 7 & 8
VICT. c. 69.

CLXIV. STAT. 7 & 8 VICTORIÆ, c. 69(1). A.D. 1844.

"An Act for amending an Act passed in the fourth year of the Reign of His late Majesty, intituled, An Act for the better Administration of Justice in His Majesty's Privy Council; and to extend its Jurisdiction and Powers."

3 & 4 Gul. 4,
c. 41.

"Whereas the act passed in the fourth year of the reign of his late majesty, intituled, 'An Act for the better Administration of Justice in His Majesty's Privy Council,' hath been found beneficial to the due administration of justice: and whereas another act, passed in the sixth year of the said reign, intituled, 'An Act to amend the Law touching Letters Patent for Inventions,' hath been also found advantageous to inventors and to the public: and whereas the judicial committee acting under the authority of the said acts hath been found to answer well the purposes for which it was so established by parliament, but it is found necessary to improve its proceedings in some respects, for the better despatch of business, and expedient also to extend its jurisdiction and powers: and whereas by the laws now in force in certain of her majesty's colonies and possessions abroad no appeals can be brought to her majesty in council for the reversal of the judgments, sentences, decrees, and orders of any courts of justice within such colonies, save only of the courts of error or courts of appeal within the same, and it is expedient that her

5 & 6 Gul. 4,
c. 83.

(1) Sections 2, 3, 4, 5, 6, & 7, relate to patents, and do not apply to the objects of this publication.

majesty in council should be authorized to provide for the admission of appeals from other courts of justice within such colonies or possessions: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be competent to her majesty, by any order or orders to be from time to time for that purpose made with the advice of her Privy Council, to provide for the admission of any appeal or appeals to her majesty in council from any judgments, sentences, decrees, or orders of any court of justice within any British colony or possession abroad, although such court shall not be a court of errors or a court of appeal within such colony or possession; and it shall also be competent to her majesty, by any such order or orders as aforesaid, to make all such provisions as to her majesty in council shall seem meet for the instituting and prosecuting any such appeals, and for carrying into effect any such decisions or sentences as her majesty in council shall pronounce thereon: provided always, that it shall be competent to her majesty in council to revoke, alter, and amend any such order or orders as aforesaid as to her majesty in council shall seem meet: provided also, that any such order as aforesaid may be either general and extending to all appeals to be brought from any such court of justice as aforesaid, or special and extending only to any appeal to be brought in any particular case: provided also, that every such general order in council as aforesaid shall be published in the London Gazette within one calendar month next after the making thereof: provided also, that nothing herein contained shall be construed to extend to take away or diminish any power now by law vested in her majesty for regulating appeals to her majesty in council from the judgments, sentences, decrees, or orders of any courts of justice within any of her majesty's colonies or possessions abroad.

"VIII. Provided always, and be it enacted, that in the case of any matter or thing being referred to the judicial committee, it shall be lawful for the said committee to appoint one or other of the clerks of the Privy Council to take any formal proofs required to be taken in dealing with the matter or thing so referred, and shall, if they so think fit, proceed upon such clerk's report to them as if such formal proofs had been taken by and before the said judicial committee.

"IX. And be it enacted, that in case any petition of appeal whatever shall be presented, addressed to her majesty in council, and such petition shall be duly lodged with the clerk of the Privy Council, it shall be lawful for the said judicial committee to proceed in hearing and reporting upon such appeal, without any special order in council referring the same to them, provided that her majesty in council shall have, by an order in council in the month of November, directed that all appeals shall be referred to the said judicial committee on which petitions may be presented to her majesty in council during the twelve months next after the making of such order; and that the said judicial committee shall proceed to hear and report upon all such appeals in like manner as if each such appeal had been referred to the said judicial committee by a special order of her majesty in council: provided always, that it shall be lawful for her majesty in council at any time to rescind any general order so made; and in case of such order being so rescinded all petitions of appeal shall in the first instance be preferred to her majesty in council, and shall not be proceeded with by the said judicial committee without a special order of reference.

"X. And be it enacted, that it shall be lawful for the said judicial committee to make an order or orders on any court in any colony or foreign settlement, or foreign dominion of the crown, requiring the judge or judges of such court to transmit to the clerk of the Privy Council a copy of the notes of evidence in any cause tried before such court, and of the reasons given by the judge or judges for the judgment pronounced in any case brought by appeal or by writ of error before the said judicial committee.

"XI. And be it enacted, that it shall and may be lawful for the said judicial committee to make any general rule or regulation, to be binding upon all courts in the colonies and other foreign settlements of the crown, requiring the judges' notes

STAT. 7 & 8
VICT. c. 69.

Her majesty, by order in council, may provide for the admission of an appeal from any colony, although there shall not be a court of error or of appeal in such colony; and may revoke such orders.

Orders may be either general or special.

General orders to be published.

Nothing herein to affect the present powers for regulating appeals from the colonies.

Judicial committee may appoint clerk of Privy Council to take proofs in matters referred to them.

Judicial committee may proceed to hearing of appeals without special order of reference.

Proviso.

Judicial committee may require notes of evidence, taken in the courts of any colony, &c. of the crown.

Judicial committee may make rules to

STAT. 7 & 8
VICT. c. 69.

be binding upon such courts, requiring judges' notes of evidence, &c.

In cases of neglect to comply with order of council, persons so neglecting may be punished as for contempt.

of the evidence taken before such court on any cause appealed, and of the reasons given by the judges of such court, or by any of them, for or against the judgment pronounced by such court; which notes of evidence and reasons shall by such court be transmitted to the clerk of the Privy Council within one calendar month next after the leave given by such court to prosecute any appeal to her majesty in council; and such order of the said committee shall be binding upon all judges of such courts in the colonies or foreign settlements of the crown.

"XII. And be it enacted, that in all causes of appeal to her majesty in council from ecclesiastical courts, and from admiralty or vice-admiralty courts, which now are or may hereafter be depending, in which any person duly monished or cited or requested to comply with any lawful order or decree of her majesty in council, or of the judicial committee of the Privy Council or their surrogates, made before or after the passing of this act, shall neglect or refuse to pay obedience to such lawful order or decree, or shall commit any contempt of the process under the seal of her majesty in ecclesiastical and maritime causes, it shall be lawful for the said judicial committee or their surrogates to pronounce such person to be contumacious and in contempt, and, after he or she shall have been so pronounced contumacious and in contempt, to cause process of sequestration to issue under the said seal of her majesty against the real and personal estate, goods, chattels, and effects, wherever lying within the dominions of her majesty, of the person against or upon whom such order or decree shall have been made, in order to enforce obedience to the same and payment of the expenses attending such sequestration, and all proceedings consequent thereon, and to make such further order in respect of or consequent on such sequestration, and in respect to such real and personal estate, goods, chattels, and effects sequestrated thereby, as may be necessary, or for payment of monies arising from the same to the person to whom the same may be due, or into the registry of the high court of Admiralty and Appeals, for the benefit of those who may be ultimately entitled thereto.

"XIII. And be it enacted, that this act may be repealed or amended during this session of parliament."

Act may be repealed, &c. this session.

STAT. 7 & 8
VICT. CAP.
LXXVI.

CLXV. STAT. 7 & 8 VICTORIÆ, CAP. LXXVI. A.D. 1844.

"An Act for enabling the Mayor, Aldermen, and Burgesses of the City of Coventry . . . to establish a Cemetery for the Dead near the said City."

STAT. 7 & 8
VICT. c. 81.
[Ir.]

CLXVI. STAT. 7 & 8 VICTORIÆ, c. 81. [IRELAND.] A.D. 1844.

"An Act for Marriages in Ireland; and for registering such Marriages."

"Whereas it is expedient to amend the law of marriages in Ireland, and to provide the means for a register of the marriages of her majesty's subjects in that part of the United Kingdom: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that after the thirty-first day of March in the year one thousand eight hundred and forty-five, all the rules prescribed by the rubric concerning the solemnizing of marriages shall continue to be duly observed, except as hereinafter provided, by every person in holy orders of the united church of England and Ireland who shall solemnize any marriage in Ireland: provided always, that the giving of notice to the registrar and the issue of the registrar's certificate for marriage without licence, as hereinafter mentioned, may be used and shall stand instead of the publication of banns (1).

After 31st of March, 1845, all rules prescribed by the rubric to continue to be observed.

(1) *Publication of banns*.—In the case of *Smith*, (1 Irish Circ. Rep. 287,) who was indicted for bigamy, it appeared, that the prisoner was a protestant of the established church, and that in the year 1831, he was married to Margaret Smith, who was a presbyterian. This marriage was celebrated by a presbyterian minister, according to the rites of the presbyterian church. The prisoner and Margaret Smith, from time to time, lived together as man and wife. In

1839, the prisoner was married in St. Anne's Church, Dublin, by the parish minister, to Jane Gordon. The second marriage was proved by the head clerk of St. Anne's church, who said, that he saw a person of the name of Jane Gordon married to the prisoner on a particular day: he then produced a book purporting to be the registry book of the parish, and containing an entry of the marriage, with the signature of J. Gordon. The curate of the parish was also produced—he

to all intents and purposes, where no such publication shall have been made; and every person in holy orders of the united church of England and Ireland shall be bound to solemnize marriage on production of such certificate, in like manner as he is required to do by any law or canon now in force, after due publication of banns, so nevertheless that the church wherein any marriage according to the rites of the united church of England and Ireland shall so be solemnized, shall be within the district of the registrar by whom such certificate as aforesaid shall have been issued.

"II. And be it enacted, that nothing in this act contained shall affect the right of the Archbishop of Armagh and his successors, and his and their proper officers, to grant special licences to marry at any convenient time or place, or, except as hereinafter provided, the right of any surrogate or other person now having authority to grant licences for marriage; provided that no surrogate or other person now having authority to grant licences for marriages shall grant any licence for marriage, not being a special licence, until seven days after notice shall have been given by one of the parties who shall have resided for not less than seven days then next preceding in the parish named in that notice, under his or her hand, in the form of schedule (A) to this act annexed, or to the like effect, to such surrogate or other person having authority to grant licences as aforesaid, which notices he shall file and keep with the records of his office, and he shall also forthwith enter a true copy of such notices fairly in a book to be for that purpose furnished to him by the registrar-general hereinafter mentioned, to be called 'The Marriage Notice Book,' which book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same; and such surrogate or other person shall forthwith send a copy of such notice to the incumbent or incumbents of the parish or parishes in which the parties intending marriage dwell; and for entering every such notice the surrogate or other person shall be entitled to have a fee of one shilling, over and above the accustomed fee for granting the licence: and after the said thirty-first day of March, no person applying for any such licence shall be required to give any security by bond or otherwise before the grant of such licence; and whenever a marriage shall not be had within three calendar months after the notice shall have been so given to the surrogate or other person as aforesaid, the notice, and any licence which may have been granted thereupon, shall be utterly void.

"III. And be it enacted, that nothing in this act contained shall affect any marriages by any Roman catholic priest which may now be lawfully celebrated, nor extend to the registration of any Roman catholic chapel, but such marriages may continue to be celebrated in the same manner and subject to the same limitations and restrictions as if this act had not been passed.

"IV. And be it enacted, that marriages between parties, both of whom are presbyterians, may be solemnized according to the forms used by presbyterians, either by the licence of a presbyterian minister, or by publication of banns, as hereinafter respectively mentioned, in meeting houses to be certified as hereinafter mentioned, between the hours of eight in the morning and two in the afternoon, with open doors, and in the presence of two or more credible witnesses; and marriages between parties, of whom one only is a presbyterian, may be solemnized according to the same forms, by such licence of a presbyterian minister, in such

proved, that he celebrated the marriage between the prisoner and a person who called herself Jane Gordon. The indictment alleged the second marriage to have been with Jane Gordon. She was not called as a witness, nor her absence accounted for, nor any proof given of her handwriting.

The counsel, for the prisoner, objected that this proof was not sufficient, as there was an averment of a marriage with Jane Gordon, and the only proof to support it was, that the prisoner was married to a person who called herself Jane Gordon, and cited *Drake's case*, Roec. Crim. Ev. 277; 1 Lewin C. C. 25.

The counsel, for the crown, proved that the prisoner was married to a person of the name of Jane Gordon; which they contended, was *prima facie* evidence of the identity. *Ree v. Edwards*, R. & R. 282.

Mr. Justice Crompton observed: "I do not think the authority cited for the prisoner is applicable to this country. The reason on which the distinction is grounded is, that if banns have not been published in England the marriage is invalid, whereas, in this country, the marriage is valid, although no banns have been published, if celebrated by a clergyman. I shall therefore overrule the objection." *Vide antè* 1229.

STAT. 7 & 8
VICT. c. 81.
[1A.]

Marriages shall be solemnized on production of registrar's certificate.

Nothing herein to affect the right of granting special licences.

Notice to be given to surrogate before licence.

Entry of notices.

Fee for entry.

No security required before granting licence. Notice void after three months.

Roman catholic marriages not affected.

Marriages between parties, one or both of whom are presbyterians, may be solemnized in certified meeting houses.

STAT. 7 & 8
VICT. c. 81.
[1R.]

Banns to be published in cases where both of the parties to be married are members of presbyterian congregations.

Notice of the names, places of abode, and time of residence of the parties, to be given to the minister six days before publication of banns.

Each presbytery to appoint ministers to certify meeting houses.

Registry thereof.

Such ministers to grant licences for marriages to be solemnized in

meeting houses, between the same hours, with open doors, and in the presence of two or more credible witnesses; provided that in either case there be no lawful impediment to the marriage of such parties.

“V. And be it enacted, that after the said thirty-first day of March, in every case in which a marriage shall be proposed to be solemnized by a presbyterian minister between two presbyterians, otherwise than by licence, banns of matrimony shall be published by or in the presence of a presbyterian minister in the presbyterian meeting house, certified as hereinafter is mentioned, frequented by the congregation of which the parties to be married shall be members, upon three Sundays preceding the solemnization of the marriage, during the time of divine service, and any such marriage by a presbyterian minister shall be solemnized in such meeting house, and not elsewhere; and whenever it shall happen that the parties to be married by a presbyterian minister shall be members of different congregations, the banns shall in like manner be published in the certified presbyterian meeting house frequented by the congregation of which each of the parties to be married shall be a member; and in every such last-mentioned case of publication of banns, the presbyterian minister by or in whose presence such banns shall be published shall, in writing under his hand, certify the publication thereof; and any such marriage by a presbyterian minister shall be solemnized in one of the certified presbyterian meeting houses where such banns shall have been published, and in no other place whatsoever; and before such marriage shall be solemnized the certificate of the presbyterian minister by whom or in whose presence the banns shall have been published in the other certified meeting house shall be delivered to the presbyterian minister solemnizing such marriage.

“VI. And be it enacted, that no presbyterian minister shall publish or allow to be published any banns of matrimony in any presbyterian meeting house of which he is minister, unless the persons to be married shall, six days at the least before the time required for the first publication of such banns, deliver or cause to be delivered to such presbyterian minister a notice in writing of their true Christian and surnames, and of the congregation or congregations of which they shall respectively be members, and of the house or houses of their respective abodes, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively.

“VII. And be it enacted, that each presbytery of presbyterians in Ireland may from time to time, subject to the approbation of the lord lieutenant, appoint one or more ministers, who shall certify to the registrar hereinafter mentioned that the meeting house to be described in every such certificate is within such presbytery, and is used as a place of public religious worship by presbyterians in connection with such presbytery; and such minister shall deliver to the registrar such certificate, signed in duplicate by him; and the registrar shall send both certificates to the registrar-general, who shall cause such meeting house to be registered accordingly in a book to be kept for that purpose at the general register office hereinafter mentioned; and the registrar-general shall cause to be endorsed on both certificates the date of the registry, and shall keep one certificate with the other records of the general register office, and shall return the other certificate to the registrar, who shall keep the same with the other records of his office; and the registrar shall enter the date of the registry of such meeting house in a book to be furnished to him for that purpose by the registrar-general, and shall give a certificate of such registry, under his hand, on parchment or vellum, to the minister by whom the certificates shall have been signed, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the Dublin Gazette; and for every such entry, certificate, and publication the registrar shall receive at the time of delivery to him of the certificates the sum of one pound; and every such minister shall continue to exercise the powers given to him by this act during the pleasure of the lord lieutenant.

“VIII. And be it enacted, that every such minister so appointed and approved as aforesaid shall have authority to grant licences for marriage in any presbyterian meeting house, certified as aforesaid within his presbytery, in the form of schedule (C) to this act annexed, and for every such licence shall be entitled to have of the

party requiring the same the sum of five shillings; and in any case in which such minister shall refuse to grant such licence, the person applying for the same shall be entitled to appeal to the presbytery by which such minister shall have been appointed, which shall thereupon either confirm the refusal or direct the grant of the licence; and every such presbyterian minister shall four times in every year, on such days as shall be appointed by the registrar-general, make a return to the registrar-general of every licence granted by him since his last return, and of the particulars stated concerning the parties: provided always, that no such minister shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the registrar-general for the due and faithful execution of his office.

STAT. 7 & 8
VICT. c. 81.
[1A.]

presbyterian
meeting
houses.

Minister to
give security.

"IX. And be it enacted, that before any licence for marriage as last aforesaid shall be granted by any such presbyterian minister, one of the parties intending marriage shall appear personally before such minister, and such party shall make and subscribe an oath, or a solemn affirmation or declaration instead of taking an oath, which oath, affirmation, or declaration such minister is hereby authorized to administer, that he or she believeth that there is not any impediment of kindred or alliance, or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of fifteen days immediately before the day of the grant of such licence had his or her usual place of abode within the presbytery within which the marriage is to be solemnized, and that they are both of the full age of twenty-one years, or, when either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such party is a widower or widow, as the case may be.

Before licence
granted, one of
the parties to
appear before
the minister,
and to take a
certain oath,
&c.

"X. And be it enacted, that the party so appearing personally before the minister authorized to grant licences as aforesaid shall, seven days before the licence shall be delivered to him, produce to such minister a certificate according to the form in schedule (D) to this act annexed, or to the like effect, from the minister of the congregation of which he or she shall be a member, and has been a member for at least one calendar month preceding, which certificate the minister authorized to grant licences as aforesaid shall carefully file and preserve in such place and manner as the presbytery shall direct, and shall also forthwith enter a true copy of all such certificates fairly into a book to be for that purpose furnished to him by the registrar-general, to be called 'The Marriage Notice Book,' which book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same; and for entering every such notice the minister shall be entitled to a fee of one shilling.

Person apply-
ing for a li-
cence to pro-
duce from the
minister of the
congregation
of which such
person shall
be a member a
certificate in a
given form.

"XI. And be it enacted, that any person may enter a caveat with the minister so appointed and approved against the grant of a licence for the marriage of any person named therein; and if any caveat be entered with such minister, such caveat being duly signed by or on behalf of the person who enters the same, together with his or her place of residence, and the ground of objection on which his or her caveat is founded, no licence shall issue or be granted until the minister shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the licence for the said marriage, or until the caveat be withdrawn by the party who entered the same; and in cases of doubt it shall be lawful for such minister to refer the matter of any such caveat to the presbytery by which he shall have been appointed, which shall decide upon the same.

Caveat may
be lodged with
the minister
against grant
of licence.

"XII. And be it enacted, that the society of friends commonly called quakers, and also persons professing the Jewish religion, may continue to contract and solemnize marriage according to the usages of the said society and of the said persons respectively; and every such marriage shall be deemed good in law, provided that the parties to such marriage be both of the said society, or both persons professing the Jewish religion respectively; provided also, that notice to the registrar shall have been given, and the registrar's certificate shall have issued in manner hereinafter provided.

Marriages of
quakers and
Jews.

STAT. 7 & 8
VICT. c. 81.
[1a.]

Notice of
intended mar-
riage to be
given to the
registrar of the
district.

Proviso.

Registrar to
keep notices in
a book.

Notices to be
published.

After seven
days, or
twenty-one
days, certificate
of notice to be
given, upon
demand.

"XIII. And be it enacted, that in every case of marriage intended to be solemnized in Ireland after the said thirty-first day of March, according to the rites of the united church of England and Ireland, (unless by licence or by special licence, or after publication of banns,) and in every case of marriage intended to be solemnized in Ireland after the said thirty-first day of March according to the usages of the quakers or Jews, or according to any form authorized by this act, one of the parties shall give notice under his or her hand, in the form of schedule (A) to this act annexed, or to the like effect, to the registrar, appointed as hereinafter is mentioned, of the district within which the parties shall have dwelt for not less than seven days then next preceding, or if the parties dwell in the districts of different registrars shall give the like notice to the registrar of each district, and shall state therein the name and surname and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time not being less than seven days during which each has dwelt therein, and the church or other building in which the marriage is to be solemnized, which must be within the district within which one of the parties shall have dwelt for the time last aforesaid; but if either party shall have dwelt in the place stated in the notice during more than one calendar month it may be stated therein that he or she hath dwelt there one month and upwards; provided always, that no such notice shall be required for any marriage by a Roman catholic priest which may now lawfully be celebrated, or when the marriage is intended to be solemnized by a presbyterian minister between two persons, both or one of whom shall be presbyterians, in a presbyterian meeting house certified as aforesaid.

"XIV. And be it enacted, that the registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book, to be for that purpose furnished to him by the registrar-general, to be called 'The Marriage Notice Book;' the cost of providing which shall be defrayed in like manner as the cost of providing the register book hereinafter mentioned; and the marriage notice book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same; and for every such entry the registrar shall be entitled to have a fee of one shilling.

"XV. And be it enacted, that on the day previous to each weekly meeting of the guardians of any poor law union, or of any parish or place comprising the district for which such registrar shall act, the registrar shall transmit to the clerk to the guardians all such notices of intended marriage as he shall have received on or since the day previous to the weekly meeting immediately preceding the same; and such clerk shall read such notices immediately after the minutes of the proceedings of such guardians at their last meeting shall have been read; and such notices shall be so read three several times in three successive weeks at the weekly meetings of such guardians, unless in any case licence for marriage shall be sooner granted, and notice of such licence being granted shall have been given to such clerk; provided also, that if it shall happen that the board of guardians of any such union, parish, or place shall not so meet, it shall be sufficient for the purposes of this act that such notices shall be read at every meeting of such guardians which shall be held within twenty-one days from the day of such notice being entered; and, if no meeting be held within twenty-one days from the day of such notice being entered, the entry of such notice shall be sufficient for the purposes aforesaid.

"XVI. And be it enacted, that after the expiration of seven days if the marriage is to be solemnized by licence, or of twenty-one days if the marriage is to be solemnized without licence after the day of the entry of such notice, the registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, shall issue under his hand a certificate in the form of schedule (B) to this act annexed, provided that no lawful impediment be shown to the satisfaction of the registrar why such certificate should not issue, and provided that the issue of such certificate shall not have been sooner forbidden in manner hereinafter mentioned by any person or persons authorized in that behalf as hereinafter is provided: and every such certificate shall state the particulars set forth in the

notice, the day on which the notice was entered, and that the full period of seven days or of twenty-one days (as the case may be) has elapsed since the day of the entry of such notice, and that the issue of such certificate has not been forbidden by any person or persons authorized in that behalf; and for every such certificate the registrar shall be entitled to have a fee of one shilling.

“XVII. And be it enacted, that the registrar-general shall furnish to every registrar a sufficient number of forms of certificates, the cost of which shall be accounted for by the registrar to the registrar-general; and in order to distinguish the certificates to be issued for marriages by licence from the certificates to be issued for marriages without licence, a water-mark in the form of the word ‘licence,’ in roman letters, shall be laid and manufactured in the substance of the paper on which the certificates to be issued for marriage by licence shall be written or printed; and every certificate to be issued for marriage by licence shall be printed with red ink, and every certificate to be issued for marriage without licence shall be printed with black ink, and such other distinctive marks between the two kinds of certificate shall be used from time to time as shall seem fit to the registrar-general.

“XVIII. And be it enacted, that any person authorized in that behalf may forbid the issue of the registrar’s certificate by writing at any time before the issue of such certificate the word ‘forbidden’ opposite to the entry of the notice of such intended marriage in the marriage notice book, and by subscribing thereto his or her name and place of abode, and his or her character, in respect of either of the parties, by reason of which he or she is so authorized; and in case the issue of any such certificate shall have been so forbidden the notice and all proceedings thereupon shall be utterly void.

“XIX. And be it enacted, that after the said thirty-first day of March no marriage shall be solemnized in Ireland by licence either of a surrogate or deputy surrogate, or of a presbyterian minister or a registrar, as herein provided, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, unless the consent of the father of such of the parties so under age (if then living) be first had and obtained, or if dead of the guardian or guardians of the person of the party so under age lawfully appointed, or one of them, and in case there shall be no such guardian or guardians, then of the mother of such party, if unmarried, and if there shall be no mother unmarried, then of the guardian or guardians appointed by the court of Chancery, if any, or one of them; and every person whose consent to a marriage by licence is required as aforesaid shall be authorized to enter a caveat against the issue of licence by any person empowered by this act to grant licences, and shall be also authorized to forbid the publication of banns in any church or chapel, or certified presbyterian meeting house, and to forbid the issue of the registrar’s certificate.

“XX. Provided always, and be it enacted, that if the father or fathers of the parties to be married, or one of them, so under age as aforesaid, shall be *non compos mentis*, or the guardian or guardians, mother or mothers, or any of them, whose consent is made necessary as aforesaid to the marriage of such party or parties, shall be *non compos mentis*, or in parts beyond the seas, or shall unreasonably or from undue motives refuse or withhold his, her, or their consent to a proper marriage, then it shall be lawful for any person desirous of marrying in any of the before-mentioned cases to apply by petition to the lord chancellor or the lords commissioners of the great seal of Ireland for the time being, or master of the rolls, who shall be empowered to proceed upon such petition in a summary way; and in case the marriage proposed shall upon examination appear to be proper, the said lord chancellor, lords commissioners of the great seal for the time being, or master of the rolls, shall judicially declare the same to be so; and such judicial declaration shall be deemed and taken to be as good and effectual to all intents and purposes as if the father, guardian or guardians, or mother, of the person so petitioning, had consented to such marriage.

“XXI. And be it enacted, that after the said thirty-first day of March every registrar shall have authority to grant licences for marriage in any building regis-

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[1r.]

Forms of certificates to be furnished. Certificates for marriage by licence to be distinguishable from other certificates.

Issue of registrar’s certificate may be forbidden.

Who are to give consent if parties are under age.

Who to give consent in case of incapacity of parents and guardians.

Registrar may grant licences for marriage.

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Registrar to
give security.

Proviso.

Certificate to
be given before
the licence is
granted.

Caveat may be
lodged with
registrar
against grant
of licence or
certificate.

Marriages not
to be solemn-
ized until
after twenty-
one days after
entry of no-
tice, unless by
licence.

New notice
required after
three months.

tered as hereinafter provided within his district, or in his office, in the form of schedule (E) to this act annexed, and for every such licence shall be entitled to have of the party requiring the same the sum of five shillings; and every registrar shall four times in every year, on such days as shall be appointed by the registrar-general, make a return to the registrar-general of every licence granted by him since his last return, and of the particulars stated concerning the parties; provided always, that no registrar shall grant any such licence until he shall have given security by his bond in the sum of one hundred pounds to the registrar-general for the due and faithful execution of his office; provided also, that nothing herein contained shall authorize any registrar to grant any licence for marriage in any church or chapel in which marriages may be solemnized according to the rites of the united church of England and Ireland, or in any church or chapel belonging to the said united church, or licensed for the celebration of divine worship according to the rites and ceremonies of the said united church, or any licence for a marriage between two persons, both or one of whom shall be presbyterians, in a presbyterian meeting house certified as aforesaid.

"XXII. And be it enacted, that before any licence for marriage shall be granted by any such registrar one of the parties intending marriage shall appear personally before such registrar, and, in case the notice of such intended marriage shall not have been given exclusively to such registrar, shall deliver to him the certificate of the other registrar to whom such notice shall have been given, and such party shall make oath, or shall make his or her solemn affirmation or declaration instead of taking an oath, that he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of fifteen days immediately before the day of the grant of such licence had his or her usual place of abode within the district within which such marriage is to be solemnized, and that they are both of the full age of twenty-one years, or, where either of the parties shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, or that such party is a widower or widow, as the case may be.

"XXIII. And be it enacted, that any person, upon the payment of the sum of five shillings, may enter a caveat with the registrar against the grant of a certificate or a licence for the marriage of any person named therein; and if any caveat be entered with the registrar, such caveat being duly signed by or on behalf of the person who enters the same, together with his or her place of residence, and the ground of objection on which his or her caveat is founded, no certificate or licence shall issue or be granted until the registrar shall have examined into the matter of the caveat, and is satisfied that it ought not to obstruct the grant of the certificate or licence for the said marriage, or until the caveat be withdrawn by the party who entered the same; provided that in cases of doubt it shall be lawful for the registrar to refer the matter of any such caveat to the registrar-general, who shall decide upon the same; provided likewise, that in case of the registrar refusing the grant of the certificate or licence the person applying for the same shall have a right to appeal to the registrar-general, who shall thereupon either confirm the refusal or direct the grant of the certificate or licence.

"XXIV. And be it enacted, that after the said thirty-first day of March no marriage after such notice as aforesaid, unless by virtue of a licence to be granted by the registrar, shall be solemnized or registered in Ireland until after the expiration of twenty-one days after the day of the entry of such notice as aforesaid: and no marriage shall be solemnized by the licence of any registrar or registered until after the expiration of seven days after the day of the entry of such notice as aforesaid.

"XXV. And be it enacted, that whenever a marriage shall not be had within three calendar months after the day on which the notice shall have been so entered by the registrar, the notice and certificate, and any licence which may have been granted thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any registrar register

the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

“XXVI. And be it enacted, that the registrar's certificate, or, in case the parties shall have given notice to the registrars of different districts, the certificate of each registrar, shall be delivered to the officiating minister, if the marriage shall be solemnized according to the rites of the united church of England and Ireland, or to the registering officer of the people called quakers for the place where the marriage is solemnized, if the same shall be solemnized according to the usages of the said people, or to the officer of a synagogue by whom the marriage is registered, if the same shall be solemnized according to the usages of persons professing the Jewish religion, and in all other cases shall be delivered to the registrar present at the marriage, as hereinafter provided, and shall be by him kept with the records of his office.

“XXVII. And be it enacted, that any proprietor or trustee of a separate building, being a place of religious worship, may apply to the registrar of the district, in order that such building may be registered for solemnizing marriages therein, and in such case shall deliver to the registrar a certificate, signed in duplicate by ten householders at the least, that such building has been used by them during one year at the least as their usual place of public religious worship, and that they are desirous that such place should be registered as aforesaid, each of which certificates shall be countersigned by the proprietor or trustee by whom the same shall be delivered; and the registrar shall send both certificates to the registrar-general, who shall cause such building to be registered accordingly in a book to be kept for that purpose at the general register office; and the registrar-general shall cause to be endorsed on both certificates the date of the registry, and shall keep one certificate with the other records of the general register office, and shall return the other certificate to the registrar, who shall keep the same with the other records of his office; and the registrar shall enter the date of the registry of such building in a book to be furnished to him for that purpose by the registrar-general, and shall give a certificate of such registry under his hand, on parchment or vellum, to the proprietor or trustee by whom the certificates are countersigned, and shall give public notice of the registry thereof by advertisement in some newspaper circulating within the county, and in the Dublin Gazette; and for every such entry, certificate, and publication, the registrar shall receive at the time of the delivery to him of the certificates the sum of one pound.

“XXVIII. And be it enacted, that if at any time subsequent to the registry of any such building for solemnizing marriages therein it shall be made to appear to the satisfaction of the registrar-general that such building has been disused for the public religious worship of the congregation on whose behalf it was registered as aforesaid, the registrar-general shall cause the registry thereof to be cancelled; provided that if it shall be proved to the satisfaction of the registrar-general that the same congregation use instead thereof some other such building for the purpose of public religious worship, the registrar-general may substitute and register such new place of worship instead of the disused building, although such new place of worship may not have been used for that purpose during one year then next preceding; and every application for cancelling the registry of any such building, or for such substitution and registry of a substituted building, shall be made to the registrar-general by or through the registrar of the district; and such cancelling or substitution, when made, shall be made known by the registrar-general to the registrar, who shall enter the fact and the date thereof in the book provided for the registry of such buildings, and shall certify and publish such cancelling or substitution and registry in manner hereinbefore provided in the case of the original registry of the disused building; and for every such substitution the registrar shall receive from the party requiring the substitution the sum of one pound; and after such cancelling or substitution shall have been made by the registrar-general, it shall not be lawful to solemnize any marriage in such disused building, unless the same shall be again registered in the manner hereinbefore provided.

“XXIX. And be it enacted, that after the expiration of the said period of

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Registrar's certificate or licence to be delivered to the person by or before whom the marriage is solemnized.

Places of worship may be registered for solemnizing marriages therein.

On removal of the same congregation, the new place of worship may be immediately registered instead of the one disused.

Marriages may,

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[1R.]

be solemnized
in such regis-
tered places in
the presence of
two witnesses.

twenty-one days, or of seven days if the marriage is by licence, marriages may be solemnized in the registered building stated as aforesaid in the notice of such marriage, between and by the parties described in the notice and certificate, according to such form and ceremony as they may see fit to adopt; provided nevertheless, that every such marriage shall be solemnized with open doors, between the hours of eight in the forenoon and two in the afternoon, in the presence of the registrar of the district in which such registered building is situate, and of two or more credible witnesses; provided also, that in some part of the ceremony, and in the presence of such registrar and witnesses, each of the parties shall declare,

‘I do solemnly declare, that I know not of any lawful impediment why I *A. B.* may not be joined in matrimony to *C. D.*’

And each of the parties shall say to the other,

‘I call upon these persons here present to witness, that I *A. B.* do take thee *C. D.* to be my lawful wedded wife [or husband].’

Provided also, that there be no lawful impediment to the marriage of such parties.

Marriages may
be celebrated
before the
registrar at
his office.

“XXX. And be it enacted, that any persons who shall object to marry under the provisions of this act in any such registered building may, after due notice and certificate issued as aforesaid, contract and solemnize marriage on any day except Sunday at the office and in the presence of the registrar of the district, and in the presence of two witnesses, with open doors, and between the hours aforesaid, making the declaration and using the form of words hereinbefore provided in the case of marriage in any such registered building.

Marriage fees
to the registrar.

“XXXI. And be it enacted, that the registrar shall be entitled, for every marriage which shall be solemnized under this act in his presence, to have from the parties married the sum of ten shillings if the marriage shall be by licence, and otherwise the sum of five shillings.

Proof of resi-
dence of par-
ties, or of con-
sent, &c. not
necessary to
establish the
marriage.

“XXXII. And be it enacted, that after any marriage shall have been solemnized it shall not be necessary in support of such marriage to give any proof of the actual dwelling of either of the parties previous to the marriage within the district or presbytery (as the case may be) wherein such marriage was solemnized for the time required by this act, or of the consent of any person whose consent thereto is required by law; and where a marriage shall have been solemnized in a certified presbyterian meeting house, it shall not be necessary to prove that either of the parties was a presbyterian, or, if the marriage was by licence, that the certificate required to be delivered to the minister granting such licence had been so delivered, or, when the marriage was by banns, that a certificate of the publication of banns had been produced to the minister by whom the marriage was solemnized, in cases where such production is required by this act; nor shall any evidence be given to prove the contrary of any of these several particulars in any suit touching the validity of such marriage, or in which such marriage shall be questioned.

Bishops, with
consent of
patrons, may
license chapels
for the solemn-
ization of
marriages in
populous
places.

“XXXIII. And whereas it is expedient that provision should be made, under proper restrictions, for relieving the inhabitants of populous districts remote from the parish church, or from any chapel wherein marriages may be lawfully celebrated according to the rites and ceremonies of the united church of England and Ireland, from the inconvenience to which they may be thereby subjected in the solemnization of their marriages; be it therefore enacted, that, with the consent of the patron and incumbent respectively of the church of the parish or district in which may be situated any public chapel with or without a chapelry thereto annexed, or any chapel duly licensed for the celebration of divine service according to the rites and ceremonies of the united church of England and Ireland, or any chapel the minister whereof is duly licensed to officiate therein according to the rites and ceremonies of the united church of England and Ireland, or without such consent after two calendar months notice in writing given by the registrar of the diocese to such patron and incumbent respectively, the bishop of the diocese may, if he shall think it necessary for the due accommodation and convenience of the inhabitants, authorize by a licence under his hand and seal the publication of banns and solemnization of marriages in any such chapel for persons residing within a district the limits whereof shall be specified in the bishop’s licence, and under such provisions as to the said bishop may seem fit, and as may be specified in the said licence; and

the said licence shall be construed to extend to and authorize marriages in such chapels between parties, one or both of whom is or are resident within the said district: provided always, that where the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts, the banns for such marriage shall be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of this act for the other district within which one of the parties is resident, and if there be no such chapel then in the church or chapel in which the banns of such last-mentioned party may be legally published: provided also, that it shall be lawful for any patron or incumbent who shall refuse or withhold consent to the grant of any such licence to deliver to the bishop, under his or her hand and seal, a statement of the reasons for which such consent shall have been so refused or withholden; and no such licence shall be granted by any bishop until he shall have inquired into the matter of such reasons; and every instrument of consent of the patron and incumbent, or, if such consent be refused or withholden, a copy of the notice under the hand of the registrar, and every statement of reasons alleged as aforesaid by the patron or incumbent, with the bishop's adjudication thereupon under his hand and seal, shall be registered in the registry of the diocese; and thenceforth and until the said licence be revoked marriages solemnized in such chapel shall be as valid to all intents and purposes as if the same had been solemnized in the parish church, or in any chapel where marriages might heretofore have been legally solemnized.

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[1a.]

"XXXIV. And be it enacted, that all fees, dues, and other emoluments on account of the solemnization of marriages, which belong to the incumbent or clerk respectively of any church or chapel in any parish or district within which the solemnization of marriages shall be authorized as aforesaid, shall respectively be received, until the avoidance of such church or chapel next after the passing of this act, for or on account of such incumbent, and until the vacancy in the office of clerk next after the passing of this act for and on account of such clerk, and be paid over to them, except such portion of the fees, dues, or other emoluments as the said bishop of the diocese, with the consent of the said incumbent and clerk respectively, shall in such aforesaid licence assign to the minister and clerk respectively of the chapel in which the solemnization of marriages shall be authorized as aforesaid; and that it shall be lawful for the said bishop, in and by such licence, without any such consent, to declare that from and after such next avoidance or vacancy respectively the whole or such part of the fees, dues, and other emoluments on account of the solemnization of marriages in such last-mentioned chapel, as shall be specified in such licence, shall be receivable and the same shall thenceforth be received by or for the minister and clerk of such chapel respectively.

Appropriation
of fees on
marriages per-
formed in such
chapels.

"XXXV. And be it enacted, that when the said bishop shall authorize the solemnization of marriages in any such chapel as aforesaid, without the consent of the patron and incumbent respectively, it shall be lawful for them or either of them to appeal within one calendar month to the archbishop of the province, who shall hear the same in a summary manner, and shall make such order, confirming, revoking, or varying the licence so given, as to him shall seem meet and expedient, which order shall be registered in the registry of the diocese, and shall be conclusive and binding on all parties whatsoever.

Patron or
incumbent
may appeal to
the archbishop
against such
licences.

"XXXVI. And be it enacted, that there shall be placed in some conspicuous part in the interior of every chapel in respect of which such licence shall be given as aforesaid, a notice in the words following: 'Banns may be published and marriages may be solemnized in this chapel.'

Notice of such
licences to be
affixed in
chapels.

"XXXVII. And be it enacted, that all provisions which shall from time to time be in force relative to marriages, and to providing, keeping, and transmitting register books and copies of registers of marriages solemnized in any parish church, shall extend to any chapel in which the solemnization of marriages shall be authorized as aforesaid, in the same manner as if the same were a parish church; and everything required by law to be done relating thereto by the rector, vicar, curate,

Marriages per-
formed in such
chapels to be
under the same
regulations as
those per-
formed in pa-
rish churches.

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Option to parties to be married at parish church.

Bishop, with consent of archbishop, may revoke such licences;

in which case registers to be sent to the incumbent of the parish church.

Registrars of dioceses to send to the register office yearly lists of licensed chapels within their districts.

List of all chapels and buildings registered to be printed.

Marriages under this act cognizable.

Persons vexatiously entering caveat liable to costs and damages.

or churchwardens respectively of any parish church shall be done by the officiating minister, chapelwarden, or other person exercising analogous duties in such church respectively.

“XXXVIII. Provided always, and be it enacted, that, notwithstanding a such licence as aforesaid to solemnize marriages in any such chapel, the parties may, if they think fit, have their marriage solemnized in the parish church, or in any chapel in which heretofore the marriage of such parties or either of them might have been legally solemnized.

“XXXIX. And be it enacted, that any such licence or order may at any time be revoked by writing under the hand and seal of the bishop of the diocese, with the consent in writing of the archbishop of the province; and such revocation and consent shall be registered in the registry of the diocese, the registrar whereof shall notify the same in writing to the minister officiating in the chapel, and shall also give public notice thereof by advertisement in some newspaper circulating within the county, and in the Dublin Gazette, and thenceforth the authority to solemnize marriages in such chapel shall cease.

“XL. And be it enacted, that in case of the revocation of the licence to solemnize marriages in any such chapel all registers of marriages solemnized thereunder under such licence which shall be in the custody or possession of the minister of such chapel at the time of such revocation shall forthwith be transmitted to the incumbent or officiating minister of the parish church, and shall thenceforth be preserved, and in all other respects dealt with in the same manner, and be of the same force and validity, to all intents and purposes, as if they had been originally made by and deposited with such incumbent or officiating minister; and that said incumbent or minister shall, when he next transmits to the registrar copies of the registers of marriages solemnized in such parish church, also therewith transmit copies of all such entries as shall have been made in such first-mentioned registers subsequent to the date of the last entry a copy whereof was transmitted to the registrar, and shall also transmit to him one copy of every register book so transmitted to him of which no copy shall have been already transmitted to the registrar, having first signed his name at the foot of the last entry therein.

“XLI. And be it enacted, that the registrar of every diocese shall, within fifteen days after the said thirty-first day of March, and also within fifteen days after the first day of January in every succeeding year, make out and send through the post office, directed to the registrar-general of marriages at his office, a list of all chapels belonging to the united church of England and Ireland within that diocese where marriages may lawfully be solemnized according to the rites and ceremonies of the united church of England and Ireland, and shall distinguish in such list whether they have a parish, chapelry, or other recognised ecclesiastical division annexed to them, and which are chapels licensed by the bishop under this act, and shall set therein the district for which each of such chapels is licensed according to the description thereof in the licence; and the registrar-general shall in every year cause to be made out and printed a list of all such chapels, and also of all places of public worship registered under the provisions of this act, and shall state in such list the county and registrar's district within which each chapel or registered place of worship is situated, and shall add also the names and places of abode of the registrar, and a copy of such list shall be sent to every registrar.

“XLII. And be it enacted, that every marriage solemnized under this act shall be good and cognizable in like manner as marriages before the passing of this act according to the rites of the united church of England and Ireland.

“XLIII. And be it enacted, that every person who shall enter a caveat with the registrar against the grant of any licence or issue of any certificate of marriage which the registrar-general shall declare to be frivolous, and that they ought not to obstruct the grant of the licence, shall be liable for the costs of the proceedings and for damages, to be recovered in a special action upon the case by either of the parties against whose marriage such caveat shall have been entered; and a copy of the declaration of the registrar-general, purporting to be sealed with the seal of the general register office, and which seal it shall not be necessary to prove, shall be

evidence that the registrar-general has declared such caveat to be entered on frivolous grounds, and that they ought not to obstruct the grant of the licence.

“XLIV. And be it enacted, that every person who shall knowingly and wilfully make any false declaration or sign any false notice or certificate required by this act, for the purpose of procuring any marriage, and every person who shall forbid the issue of any registrar's certificate, by falsely representing himself or herself to be a person whose consent to such marriage is required by this act, or by falsely representing himself to be acting on behalf of such person, knowing such representation to be false, shall suffer the penalties of perjury.

“XLV. And be it enacted, that every person who after the said thirty-first day of March shall knowingly and wilfully solemnize any marriage or pretended marriage in Ireland, unless by special licence of the Archbishop of Armagh and his successors, and his or their proper officers, in any other place than a church or chapel in which marriages may be solemnized according to the rites of the united church of England and Ireland, or a presbyterian meeting house certified as aforesaid, or than the registered building or office specified in the notice and certificate as aforesaid, shall be guilty of felony, (except in the case of a marriage by any Roman catholic priest which may now be lawfully celebrated, or a marriage between two of the society of friends commonly called quakers, according to the usages of the said society, or between two persons professing the Jewish religion, according to the usages of the Jews,) and every person who in any such registered building or office shall knowingly and wilfully solemnize any marriage or pretended marriage in the absence of the registrar shall be guilty of felony; and every person who shall knowingly and wilfully solemnize any marriage or pretended marriage in Ireland after the said thirty-first day of March, (except by licence,) within twenty-one days after the day of the entry of the notice to the registrar as aforesaid, or if the marriage is by licence within seven days after the day of the entry required by this act made in any marriage notice book, or after three calendar months after the day of such entry, shall be guilty of felony.

“XLVI. And be it enacted, that every person knowingly and wilfully solemnizing any marriage, unless after due publication of banns or licence, or the issue of the registrar's certificate, or who shall knowingly and wilfully grant any such licence or publish any such banns, after the issue of such licence or the publication of such banns shall have been lawfully forbidden by some person authorized as aforesaid, shall be guilty of felony.

“XLVII. And be it enacted, that every registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the day on which the notice shall have been entered by him as aforesaid, or any certificate for marriage by licence before the expiration of seven days after the day of the entry of the notice, or any certificate for marriage without licence before the expiration of twenty-one days after the day of the entry of the notice, or any certificate the issue of which shall have been forbidden as aforesaid by any person authorized to forbid the issue of the registrar's certificate, or who shall knowingly and wilfully register any marriage herein declared to be null and void, and every registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the day on which the notice shall have been entered by the registrar as aforesaid, or who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage herein declared to be null and void, shall be guilty of felony.

“XLVIII. And be it enacted, that every prosecution under this act shall be commenced within the space of three years after the offence committed.

“XLIX. And be it enacted, that, except in the case of marriages by Roman catholic priests which may now be lawfully celebrated, if any persons shall knowingly and wilfully intermarry after the said thirty-first day of March, in any place other than the church or chapel or certified presbyterian meeting house in which banns of matrimony between the parties shall have been duly and lawfully published, or specified in the licence, where the marriage is by licence, or the church, chapel, registered building or office, specified in the notice and registrar's certificate

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[1a.]

Persons making false declarations, &c. guilty of perjury.

Persons unduly solemnizing marriage guilty of felony.

Solemnizing marriage without publication of banns, &c.

Registrars unduly issuing certificates guilty of felony.

Limitation of prosecution.

Marriages void if unduly solemnized with the knowledge of both parties.

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[Ia.]

or licence as aforesaid, or without due notice to the registrar, or without certificate of notice duly issued, or without licence from the registrar, in case such notice or licence is necessary under this act, or in the absence of a registrar where the presence of a registrar is necessary under this act, or if any persons shall knowingly or wilfully, after the said thirty-first day of March, intermarry in any certain presbyterian meeting house without publication of banns, or any licence, the marriage of all such persons, except in any case hereinbefore excepted, shall be null and void.

9 Geo. 2, (Ir.)
and 23 Geo. 2,
(Ir.) repealed;
but act not to
affect existing
enactments
respecting de-
graded clergy-
men.

"L. And be it enacted, that after the said thirty-first day of March an act passed by the Irish parliament in the ninth year of the reign of King George the Second, intituled, 'An Act for the more effectual preventing Clandestine Marriages,' and so much of an act passed in the twenty-third year of the same reign, for explaining and making more effectual the last-recited act, as relates to the last-recited act, shall be repealed; but that nothing in this act shall extend to repeal any enactments now in force in Ireland for preventing the performance of the marriage ceremony by degraded clergymen.

In fraudulent
marriages, the
guilty party to
forfeit all prop-
erty accruing
from the mar-
riage, as in
in 4 Geo. 4, c.
76.

"LI. And be it enacted, that if any valid marriage shall be had under the provisions of this act by means of any wilfully false notice, certificate, or declaration (1) made by either party to such marriage, as to any matter to which a notice, certificate, or declaration is herein required, it shall be lawful for her majesty's attorney-general or solicitor-general for Ireland to sue in the court of Chancery or court of Exchequer in Ireland for a forfeiture of all estate and interest in any property accruing to the offending party by such marriage; and the proceedings thereupon and consequences thereof shall be the same as are provided in the like case with regard to marriages solemnized in England by licence before the passing of this act according to the rites of the church of England.

A general
registry office
to be provided
in Dublin.

"LII. And be it enacted, that, in order to provide the means for a register of the marriages of her majesty's subjects in Ireland who shall be married under the provisions of this act, it shall be lawful for the lord lieutenant to provide a proper office in the city of Dublin, to be called 'The General Register Office,' for keeping a register of such marriages, and to appoint for the said office a registrar-general of marriages in Ireland, and from time to time at pleasure to remove the said registrar-general, and appoint some other person in his room.

Lord lieuten-
ant to ap-
point officers,
and fix the
salaries of
registrar-
general and
other officers.

"LIII. And be it enacted, that the lord lieutenant, or the registrar-general, subject to the approval of the lord lieutenant, shall appoint from time to time such officers, clerks, and servants as he shall deem necessary to carry on the business of the general registry office, and at pleasure remove them or any of them; and the lord high treasurer or commissioners of her majesty's Treasury, or any three of

(1) *Wilfully false . . . declaration*:—In *Lane v. Goodwin*, (4 Q. B. 361,) it was held, that a licence under which marriage has been solemnized, and in which one of the parties is described by a name wholly different from his own, is not void by the misdescription; but it seems, that it would be void, if the name of one person had been inserted with a fraudulent intention that the licence should be used by another:—

Lord *Deasman* observing, "There is no authority for the general proposition that a marriage licence is made absolutely void by a mistake in the name of one party. The reason for which banns are held invalid on this account does not extend to licences. There might perhaps be reasons for making the rule as to banns extend to licences; mischiefs may result from fraud, as Mr. Greaves has ingeniously pointed out. But the protection given by the one, is of a different kind from that afforded by the other. No fraud is suggested here: and, although *Cope v. Burt*, (1 Consist. 434; 1 Phill. 224,) does

not entirely agree in circumstances with the present case, yet the language used by Lord Stowell in that case, in the Consistory court, shews the prevailing opinion in the ecclesiastical courts as to the distinction between banns and licence: and my brother Patterson on inquiry, finds the existence of that opinion confirmed."

Mr. Justice *Patterson*: "I acted on the authority of *Cope v. Burt*, (Ibid.) at the trial, though without having the case itself before me. I have inquired as to the opinions of the ecclesiastical courts on this subject (ante 1235), and find that *Cope v. Burt*, (1 Consist. 434,) and *Cockburn v. Garwood*, (cit. Ibid. 435,) have always been considered decisive authorities there. The distinction between banns and licences is clear: and, although perhaps, if a licence were obtained for one person with the intention that it should be used for another, such a licence might not be valid, that is not the case here: and the objection cannot prevail."

them, shall fix the salary of the registrar-general, so that the same shall not at any time exceed the sum of eight hundred pounds yearly, and shall fix the salaries of the officers, clerks, and servants in fit proportion, according to the duties they may have to perform.

“LIV. And be it enacted, that the salaries of the registrar-general and of the said officers, clerks, and servants, and all expenses of carrying on the business of the general registry office, not herein otherwise provided for, shall be paid by the said lord high treasurer, or commissioners of her majesty’s Treasury, out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

“LV. And be it enacted, that the lord lieutenant, or the registrar-general, with his approbation, from time to time may make regulations for the management of the said register office, and for the duties of the registrar-general, clerks, officers, and servants of the said office, and of the registrars hereinafter mentioned, in the execution of this act, so that they be not contrary to the provisions herein contained; and the regulations so made and approved shall be binding on the said registrar-general, clerks, officers, and servants, and on the registrars.

“LVI. And be it enacted, that the registrar-general shall send once in every year to the lord lieutenant, who shall forthwith transmit the same to one of the principal secretaries of state, a general abstract of the number of marriages registered during the foregoing year, in such form as the said secretary from time to time shall require; and every such annual general abstract shall be laid before parliament within one calendar month after receipt thereof, or, if parliament be not then sitting, within one calendar month after the next meeting of parliament.

“LVII. And be it enacted, that the lord lieutenant shall, as soon as may be after the passing of this act, form all the parishes, townships, and places in Ireland into districts; and the lord lieutenant shall appoint a sufficient number of fit persons to be registrars for such districts, and shall appoint the districts which each shall superintend; and every such registrar shall hold his office during the pleasure of the registrar-general.

“LVIII. And be it enacted, that a register office shall be provided and upheld in each district, according to a plan to be approved by the registrar-general, for preserving the registers to be deposited therein, as hereinafter provided; and the care of the said office, and the custody of the registers deposited therein, shall be given to the registrar of the district.

“LIX. And be it enacted, that the appointments of registrars, and the duplicates and certified copies of registers, hereinafter mentioned, shall be exempt from stamp duties.

“LX. And be it enacted, that the registrar-general shall furnish to every registrar a sufficient number of strong iron boxes to hold the register books to be kept by every such registrar; and every such box shall be furnished with a lock and key, which key shall be kept by the registrar; and the register books of each district, while in the custody of the registrar, and not in use, shall be always kept in the register box, and the register box shall always be left locked.

“LXI. And be it enacted, that in every case in which any registrar shall be removed from or cease to hold the said office, all register boxes, keys, books, documents, and papers in his possession as such registrar shall be given as soon as conveniently may be to his successor in office; and if any person shall refuse to give up any such box, key, books, documents, or papers in such case as aforesaid, it shall be lawful for any justice of the peace for the county or other jurisdiction where such person shall be or reside, upon application made for that purpose, to issue a warrant under his hand and seal for bringing such person before any two justices of the peace for the said county or other jurisdiction; and upon such person appearing, or not being found, it shall be lawful for such justices to hear and determine the matter in a summary way; and if it shall appear to the justices that any such box, key, books, documents, or papers are in the custody or power of any such person, and that he has refused or wilfully neglected to deliver the same, the said justices shall commit such offender to the common gaol or house of correction for the said county or jurisdiction, there to remain without bail until he

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Salaries to be paid out of the consolidated fund.

Regulations for conduct of officers to be framed under direction of lord lieutenant.

Annual abstract of registers to be laid before parliament.

Registrars to be appointed for districts to be formed by lord lieutenant.

A register office to be provided in each district.

Appointments, &c. exempt from stamp duty.
Register boxes to be provided.

All books, &c. to be transferred on removal of registrars.

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shall have delivered up the same, or until satisfaction shall have been given in respect thereof to the person in whose custody the same ought to be; and the said justices may grant a warrant to search for such box, key, books, documents or papers, as in the case of stolen goods, in any dwelling house or other premises in which any credible witness shall prove upon oath before them that there is a reasonable cause to suspect the same to be; and the same when found shall be delivered to the person in whose custody they ought to be.

Register books
to be provided.

“LXII. And be it enacted, that the registrar-general shall cause to be printed on account of the said register office a sufficient number of register books for making entries of all marriages of her majesty’s subjects in Ireland who shall be married under the provisions of this act, according to the form of schedule (G) to this act annexed; and the said register books shall be of durable materials, and on them shall be printed upon each side of every leaf the heads of information now required to be known and registered of marriages; and every page of each of said books shall be numbered progressively from the beginning to the end, beginning with number one; and every place of entry shall be also numbered progressively from the beginning to the end of the book, beginning with number one; and every entry shall be divided from the following entry by a printed line.

Registrars to
furnish mar-
riage register
books and
forms for
certified copies.

“LXIII. And be it enacted, that the registrar-general shall furnish to every registrar a sufficient number of marriage register books, and forms for certified copies thereof as hereinafter provided, and also, on being thereunto required, shall furnish, or cause to be furnished, to the rector, vicar, or curate of every church and chapel in Ireland wherein marriages may lawfully be solemnized, and also to the presbyterian minister of every certified presbyterian meeting house, and also to every person whom the recording clerk of the society of friends commonly called quakers, at their central office in Dublin, shall from time to time certify in writing under his hand to the registrar-general to be a registering officer in Ireland of the said society, and also to every person whom the president for the time being of the London committee of deputies of the British Jews shall from time to time certify in writing under his hand to the registrar-general to be the secretary of a synagogue in Ireland of persons professing the Jewish religion, a sufficient number in duplicate of marriage register books, and forms for certified copies thereof, as hereinafter provided; and the cost of all such books and forms shall be paid by the high constable out of the county rates.

Marriage re-
gisters to be
kept in dupli-
cate.

“LXIV. And be it enacted, that every clergyman of the united church of England and Ireland, immediately after every office of matrimony solemnized by him, shall register in duplicate in two of the marriage register books the several particulars relating to that marriage according to the form of the said schedule (G); and every presbyterian minister of a certified presbyterian meeting house, and every such registering officer of the quakers, as soon as conveniently may be after the solemnization of any marriage between two quakers in the district for which he is registering officer, and every such secretary of a synagogue, immediately after every marriage solemnized between any two persons professing the Jewish religion, of whom the husband shall belong to the synagogue whereof he is secretary, shall register or cause to be registered in duplicate in two of the said marriage register books the several particulars relating to that marriage according to the form of the said schedule (G); and every such registering officer or secretary, whether he shall or shall not be present at such marriage, shall satisfy himself that the proceedings in relation thereto have been conformable to the usages of the said society, or of the persons professing the Jewish religion, as the case may be; and every such entry as hereinbefore is mentioned, (whether made by such clergyman, or by such presbyterian minister, or by such registering officer or secretary respectively as aforesaid,) shall be signed by the clergyman, or by such presbyterian minister, or by the said registering officer or secretary, as the case may be, and by the parties married, and by two witnesses, and shall be made in order from the beginning to the end of each book, and the number of the place of entry in each duplicate marriage register book shall be the same.

Duplicates and

“LXV. And be it enacted, that the rector, vicar, or curate of every such church

and chapel, and every such presbyterian minister of a certified presbyterian meeting house, and every such registering officer and secretary, shall, in the months of April, July, October, and January respectively, make and deliver to the registrar of the district in which such church or chapel or certified presbyterian meeting house or registered place of worship may be situated, or which may be assigned by the registrar-general to such registering officer or secretary, on one of the forms to be furnished to him as aforesaid by the registrar-general, a true copy certified by him under his hand of all the entries of marriages in the register book kept by him since the last certificate, the first of such certificates to be given in the month of April, one thousand eight hundred and forty-five, and to contain all the entries made up to that time, and if there shall have been no marriage entered therein since the last certificate shall certify the fact under his hand, and shall keep the said marriage register books safely until the same shall be filled; and one copy of every such register book, when filled, shall be delivered to the registrar of the district in which such church or chapel or certified presbyterian meeting house may be situated, or which shall have been assigned as aforesaid to such registering officer or secretary, and the other copy of every such register book kept by any such rector, vicar, or curate, shall remain in the keeping of such rector, vicar or curate, and shall be kept by him with the registers of baptisms and burials of the parish or chapelry within which the marriages registered therein shall have been solemnized, and the other copy of every such register book kept by any such presbyterian minister shall remain under the care of such presbyterian minister, and be kept with the other registers and records of his meeting house, and the other copy of every such register book of marriages among the people called quakers and among persons professing the Jewish religion respectively, shall remain under the care of the said people or persons respectively, to be kept with their other registers and records, and shall, for the purposes of this act, be still deemed to be in the keeping of the registering officer or secretary for the time being respectively.

“LXVI. And be it enacted, that the registrar shall forthwith register every marriage solemnized in manner aforesaid in his presence, either in a registered building or in his office, in a marriage register book to be furnished to him for that purpose from time to time by the registrar-general according to the form in schedule (G); and every entry of such marriage shall be signed by the registrar, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book; and the registrar shall keep the said marriage register books with the records of his office, and shall, in the months of April, July, October, and January respectively, make, on one of the forms to be furnished to him as aforesaid by the registrar-general, a true copy, certified by him as aforesaid, in the form of schedule (F) annexed to this act, of all the entries of marriages in the register book kept by him since the last certificate, the first of such certificates to be given in the month of July, one thousand eight hundred and forty-five, and to contain all the entries made up to that time, and if there shall have been no marriage entered therein since the last certificate shall certify the fact under his hand.

“LXVII. And be it enacted, that every registrar shall four times in every year, on such days as shall be therefore named by the registrar-general, send to the registrar-general all the certified copies of the registers of marriages which he shall have so made or received; and the registrar-general, if it shall appear, by interruption of the regular progression of numbers or otherwise, that the copy of any part of any book has not been duly delivered to him, shall procure, as far as possible, consistently with the provisions of this act, that the same may be remedied and supplied; and the certified copies so sent to the general registry office shall be thereafter kept in the said office in such order and manner as the registrar-general, under the direction of the lord lieutenant, shall think fit, so that the same may be most readily seen and examined.

“LXVIII. And be it enacted, that every rector, vicar, or curate, or presbyterian minister of a certified presbyterian meeting house, and every registrar, registering officer, and secretary, who shall have the keeping for the time being of any

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[1r.]

certified copies
of registers of
marriages to be
sent to re-
gistrar.

Registrar to
register all
marriages
solemnized
before him in
books to be
sent by the
registrar-
general.

Registrars to
send certified
copies of
registers to the
general register
office.

Searches may
be made and
certificates

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[In.]

given by the
persons keep-
ing the reg-
isters.
Fees.

Indexes to be
made at general
registrar's
office, and
persons
allowed to
search them.
Fees.

Indexes to be
kept at general
register office,
searches
allowed, and
certified copies
given.
Fees.

Certified
copies given
at general
registry office
to be sealed.

Clergymen,
&c. may ask
parties mar-
ried the par-
ticulars re-
quired.

Penalty for
wilfully giving
false informa-
tion.

Penalty for
not duly reg-
istering mar-
riages, or for
losing or in-
juring the
registers.

Penalty for
destroying or
falsifying re-
gister books.

register book of marriages, wherein any marriage shall have been registered under this act, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or entries in the same, on payment of the fee hereinafter mentioned; (that is to say,) for every search extending over a period not more than one year the sum of one shilling, and sixpence additional for every additional year, and the sum of two shillings and sixpence for every single certificate.

"LXIX. And be it enacted, that every registrar shall cause indexes of the register books in his office to be made, and kept with the other records of his office; and that every person shall be entitled at all reasonable hours to search the said indexes, and to have a certified copy of any entry or entries in the said register books under the hand of the registrar, on payment of the fees hereinafter mentioned; (that is to say,) for every general search the sum of five shillings, and for every particular search the sum of one shilling, and for every certified copy the sum of two shillings and sixpence.

"LXX. And be it enacted, that the registrar-general shall cause indexes of all the said certified copies of the registers to be made and kept in the general register office; and that every person shall be entitled to search the said indexes between the hours of ten in the morning and four in the afternoon of every day, except Sundays, Christmas day, and Good Friday, and to have a certified copy of any entry in the said certified copies of the registers; and for every general search of the said indexes shall be paid the sum of twenty shillings, and for every particular search the sum of one shilling, and for every such certified copy the sum of two shillings and sixpence, and no more, shall be paid to the registrar-general, or such other officer as shall be appointed for that purpose, on his account.

"LXXI. And be it enacted, that the registrar-general shall cause to be made a seal of the said register office, and the registrar-general shall cause to be sealed or stamped therewith all certified copies of entries given in the said office; and all certified copies of entries purporting to be sealed or stamped with the seal of the said register office, and which seal it shall not be necessary to prove, shall be received as evidence of the marriage to which the same relates, without any further or other proof of such entry, and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid.

"LXXII. And be it enacted, that it shall be lawful for every clergyman of the united church of England and Ireland who shall solemnise any marriage in Ireland, and for every presbyterian minister of a certified presbyterian meeting house, and for the registrar before whom any marriage is solemnized under this act, either in any registered building or in his office, and for every registering officer of the quakers, and every secretary of a synagogue, after the said thirty-first day of March, to ask of the parties to be married the several particulars herein required to be registered touching such marriage.

"LXXIII. And be it enacted, that every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of marriage, any false statement touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury.

"LXXIV. And be it enacted, that every person who shall refuse or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register, and every person having the custody of any register book, or certified copy thereof, or of any part thereof, who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding fifty pounds for every such offence.

"LXXV. And be it enacted, that every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any such register book, or any part or certified copy of any part thereof, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register book or certified copy thereof, or shall wilfully insert or cause to be inserted in any register book or certified copy thereof any false entry of any marriage, or shall wilfully give any

false certificate, or shall certify any writing to be a copy or extract of any register book, knowing the same register be false in any part thereof, of which a copy or extract shall be so given, or shall forge or counterfeit the seal of the register office, shall be guilty of felony.

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[1a.]

“LXXVI. Provided always, and be it enacted, that no person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any such entry, either by himself or any predecessor in his office, shall be therefore liable to any of the penalties aforesaid if within one calendar month next after the discovery of such error, in the presence of the parties married, or in case of the death or absence of such parties, then in the presence of the registrar and of two other credible witnesses who shall respectively attest the same, he shall correct the erroneous entry, according to the truth of the case, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made, and shall make the like marginal entry, attested in like manner, in the duplicate marriage register book to be made by him as aforesaid, and in every case shall make the like alteration in the certified copy of the register book to be made by him as aforesaid, or in case such certified copy shall have been already made he shall make and deliver in like manner a separate certified copy of the original erroneous entry, and of the marginal correction therein made.

Accidental errors may be corrected.

“LXXVII. And be it enacted, that all fines and forfeitures by this act imposed, unless otherwise directed, shall be recovered before any two justices of the peace for the county, city, or place where the offence shall have happened, upon the information or complaint of any person; and if on the conviction of the offender, either on his or her confession, or by the oath of any one or more credible witness or witnesses, (which oath such justices are hereby empowered to administer,) such fines or forfeitures, with the costs of the conviction, shall not be forthwith paid, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such justices; and for want of distress such justices may commit every such offender to the common gaol or house of correction for the county, city, or place where the offence shall be committed, without bail or mainprize, for any term not exceeding one calendar month, unless such fine and forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid; and one moiety of all such fines and forfeitures shall go to the person who shall inform and sue or prosecute for the same, and the other moiety shall go to the registrar-general, or to such other person as the commissioners of the Treasury shall appoint, for the use of her majesty; and no distress made by virtue of this act shall be deemed unlawful, nor shall the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, or warrant of distress, or on account of any irregularity which shall be afterwards committed by the party distraining, but the person or persons aggrieved by such irregularity shall recover full satisfaction for the special damages sustained in an action on the case.

Recovery of penalties.

“LXXVIII. And be it enacted, that the prosecution for every offence punishable on summary conviction under this act shall be commenced within three calendar months next after the commission of the offence.

Limitation as to summary convictions.

“LXXIX. And be it enacted, that in all cases where the sum adjudged to be paid on any such summary conviction shall exceed five pounds, any person convicted may appeal to the next court of general or quarter sessions which shall be holden not sooner than twelve days after the day of such conviction for the county or other district wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such

Appeal.

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[1a.]

No *certiorari*.

Not to affect
right of of-
ficiating mi-
nister to fees.
Registrar-
general to fur-
nish notices to
guardians of
unions, &c.
specifying acts
required to be
done by parties
registering.

Certain mar-
riages cele-
brated in Ire-
land to be the
same in law as
if solemnized
by clergymen
of the esta-
blished church.

Extent of act.

Act may be
amended this
session.

costs as shall be by the court awarded; and upon such notice being given, and no recognizances being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs, to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

"LXXX. And be it enacted, that no such conviction or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of her majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same.

"LXXXI. Provided always, and be it enacted, that nothing herein contained shall affect the right of any officiating minister to receive the fees now usually paid for the performance or registration of any marriage.

"LXXXII. And be it enacted, that the said registrar-general shall, within three calendar months after his appointment to such office, furnish to the respective guardians of every union, parish, or place printed notices, which the said guardians shall, as soon as conveniently may be after the receipt thereof, cause to be fixed or placed on the outside of the several church and chapel doors, or other public and conspicuous buildings or places within their respective unions, parishes, or places, and which said notices shall specify the several acts required to be done by persons who may be desirous of solemnizing marriage under the provisions of this act.

"LXXXIII. And whereas marriages have in divers instances been had and celebrated in Ireland by presbyterian and other protestant dissenting ministers or teachers, or those who at the time of such marriages had been such, between persons of the same or different religious persuasions, and it is expedient to confirm such marriages; be it therefore enacted, that all marriages had and celebrated in Ireland since the passing of an act passed in the last session of parliament, intituled, 'An Act for Confirmation of certain Marriages in Ireland,' and before the passing of this act, by presbyterian or other protestant dissenting ministers or teachers, or those who at the time of such marriages had been such, shall be and shall be adjudged and taken to have been and to be of the same force and effect in law as if such marriages had been solemnized by clergymen of the united church of England and Ireland, and of no other force nor effect whatsoever.

"LXXXIV. And be it enacted, that this act shall extend only to Ireland, and shall not extend to the marriage of any of the royal family.

"LXXXV. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament."

"SCHEDULES TO WHICH THIS ACT REFERS.

"SCHEDULE (A). Notice of Marriage.

"To A. B. [or C. D.] surrogate [or deputy surrogate], or

"To the registrar of the district of [Rocree] in the county of [Tipperary], [as the case may be].

"I hereby give you notice, that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described; (that is to say,)

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[12.]

Name.	Con- dition.	Rank or Condition.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which Mar- riage is to be solemnised.	District and County in which the other Party resides when the Parties dwell in different Districts.
Lucius O'Hara	Widower	Carpenter	Of full Age.	High Street, Roscrea.	23 Days.	- Sion Chapel, Roscrea, Tipperary.	Mary- borough, Queen's County.
Margaret Shaw	Spinster	—	Minor.	Grove Farm, Parish Mary- borough.	More than a month.		

"Witness my hand this [sixth] day of [May, 1845].

"(Signed) *Lucius O'Hara.*

"[The particulars in this schedule to be entered according to the fact.]"

" SCHEDULE (B). *Registrar's Certificate.*

"[No. 14.]

"I [*John Cox*], registrar of the district of [*Roscrea*], in the county of [*Tipperary*], do hereby certify, that on the [sixth] day of [May] notice was duly entered in the marriage notice book of the said district of the marriage intended between the parties therein named and described, delivered under the hand of [*Lucius O'Hara*], one of the parties; (that is to say,)

Name.	Con- dition.	Rank or Condition.	Age.	Dwelling Place.	Length of Residence.	Church or Building in which Mar- riage is to be solemnised.	District and County in which the other Party dwells where the Parties dwell in different Districts.
Lucius O'Hara	Widower	Carpenter	Of full Age.	High Street.	23 Days	Sion Chapel, Roscrea,	Mary- borough, Queen's County.
Margaret Shaw	Spinster	—	Minor.	Grove Farm.	More than a month.	Tipperary.	

"Date of notice entered,
6th May, 1845.

"Date of certificate given,
28th May, 1845.

The issue of this certificate has not been forbidden by
any person authorized to forbid the issue thereof.

"Witness my hand this [twenty-eighth] day of [May, one thousand eight hundred and forty-five].

"(Signed) *John Cox,*

"Registrar.

"This certificate will be void unless the marriage is solemnized on or before the [seventh] day of [August, 1845].

"[The particulars in this schedule to be entered according to the fact.]"

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[IR.]

"SCHEDULE (C). *Licence of Marriage.*

"Whereas a marriage is intended to be solemnized between *A. B.* of
and *C. D.* of : and whereas application for a licence hath been made
to me *E. F.* the presbyterian minister duly authorized by his
excellency the lord lieutenant pursuant to the provisions of an act passed in the
eighth year of the reign of Queen Victoria, intituled, 'An Act' &c.
[*here insert the title of this act*], to issue marriage licences within the bounds of the
presbytery of : and whereas I have received the certificate required
by law from the Reverend *G. H.*, minister of the congregation of
which *A. B.* [*or C. D.*] is a member : and whereas I have duly ascertained, by the
oath [*or affirmation*] of the said *A. B.* [*or C. D.*], that the parties are respectively
of the age of twenty-one years, and that there is no impediment of kindred or
alliance or other lawful hindrance to the said marriage, and that *A. B.* [*or C. D.*]
has had his [*or her*] usual place of abode for the space of fifteen days last past
within the bounds of the presbytery of , or [*in cases where either party*
is under age, and not a widower or widow,] that *A. B.* [*or C. D.*] is under the age
of twenty-one years, and that the consent of *I. K.*, whose consent to his [*or her*]
marriage is required by law, has been obtained thereto [*or that there is no person*
having authority to give such consent, or where a party so under age is a widow
or widow, as the case may be]: now I do hereby grant unto the Reverend
or other the minister officiating in the certified presbyterian meeting house of
full licence, according to the authority in that behalf given to me
by the said act, to proceed to solemnize such marriage; provided that the said
marriage be publicly solemnized in the presence of two witnesses, within one
calendar month from the date hereof, in the certified presbyterian meeting house
of [*Here describes the meeting house in which the marriage is to be*
solemnised], between the hours of eight in the forenoon and two in the afternoon.
Given under my hand, this day of one thousand eight
hundred and

"(Signed) *E. F.*

"Licensor of presbyterian marriages."

"SCHEDULE (D). *Presbyterian Minister's Certificate.*

"I [*John Mason*], presbyterian minister of in the presbytery of
do hereby certify, that on the day of
notice was duly entered in a book kept for that purpose in my congregation of the
marriage intended between the parties therein named and described, delivered
under the hand of one of the parties, who is and has been for the
last calendar month a member of my own congregation; (that is to say,)

Name.	Condi- tion.	Rank or Pro- fession.	Age.	Residence.	Length of Resi- dence.	Church or Building in which Marriage is to be performed.	County and Parish in which the other Party dwells, or where the Parties dwell in different Parishes, Con- gregations, or Districts.
John Brown	Widower	Mason	Full Age or 21.	County Down. Parish Comber. Townland Comber.	2 Years	1st Pres- byterian Church.	Congregation of Kilrea. County of Down.
Mary Mahon	Spinster	Milliner	Full Age	County Derry. Parish Kilrea. Town Kilrea.		Comber.	

"Witness my hand, this day of one thousand eight STAT. 7 & 8
hundred and VICT. c. 81.

“(Signed) [John Mason,]
“Minister of the congregation of

"[The particulars in this schedule to be entered according to the fact.]"

" SCHEDULE (E). *Licence of Marriage.*

"*A. B.*, registrar of _____ to *C. D.* of _____ and *E. F.* of _____
sendeth greeting.

"Whereas ye are minded, as it is said, to enter into a contract of marriage under the provisions of an act passed in the eighth year of the reign of Queen Victoria, intituled [*here insert the title of this act*], and are desirous that the same may be speedily and publicly solemnized: and whereas you C. D. [*or E. F.*] have made and subscribed a declaration under your hand that you believe there is no impediment of kindred or alliance or other lawful hindrance to the said marriage, and that you C. D. [*or E. F.*] have [*or has*] had your [*or his or her*] usual place of abode for the space of fifteen days last past within the district of (), and [*in cases where either party is under age, and not a widower or widow,*] that you C. D. [*or E. F.*] are [*or is*] under the age of twenty-one years, and that the consent of G. H., whose consent to your [*or his or her*] marriage is required by law, has been obtained thereto [*or that there is no person having authority to give such consent*], [*or where a party so under age is a widower or widow,*] that you C. D. [*or E. F.*] are [*or is*] under twenty-one years of age, but are [*or is*] a widower or widow, as the case may be: I do hereby grant unto you full licence, according to the authority in that behalf given to me by the said act, to proceed to solemnize such marriage; provided that the said marriage be publicly solemnized in the presence of two witnesses, within three calendar months from the [*here insert the date of the entry in the notice book of the registrar*], in the [*here describe the building in which the marriage is to be solemnized*], between the hours of eight in the forenoon and two in the afternoon. Given under my hand, this day of one thousand eight hundred and .

"(Signed) A. B.
"Registrar."

"SCHEDULE (F).

"I [John Cox], registrar of the district of [Roscrea] in the county of [Tipperary], do hereby certify, that this is a true copy of the entries of marriage registered in the said district from the entry of the marriage of [John Wood] and [Anne Simpson], number [one], to the entry of the marriage of [Lucius O'Hara] and [Margaret Shaw], number [fourteen]. Witness my hand, this [first day of July, 1845].

“(Signed) *John Cox,*
“Registrar.

"[The particulars in this schedule to be entered according to the fact.]"

"SCHEDULE (G).

“1845.—Marriages solemnized [*at the parish church*] in the [*parish of Saint Audeon*] in the city of [*Dublin*].

No.	When Married.	Name and Surname.	Age.	Con- dition.	Rank or Profession.	Residence at the time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
1	27 March, 1845.	Patrick Donovan.	Of Full Age.	Bachelor.	Carpenter.	3, South Street.	Peter Donovan.	Upholsterer.
		Mary O'Brien.	Minor.	Spinster.	—	17, High Street.	Laurence O'Brien.	Butcher.

STAT. 7 & 8
VICT. C. 81.
[IR.]

"Married in the [*parish church*], according to the rites and ceremonies of the [*united church of England and Ireland, by licence*], or [*after banns*],

"By me, [*William Jackson, Vicar*]

"This marriage was solemn- } *Patrick Donovan*, { in the pre- } *Dennis Donovan*.
nized between us, } *Mary O'Brien*, { sence of us, } *Laurence O'Brien*.

"[The particulars in this schedule to be entered according to the fact.]"

STAT. 7 & 8
VICT. C. 85.

CLXVII. STAT. 7 & 8 VICTORIÆ, C. 85. A.D. 1844.

"*An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament, and for other Purposes in relation to Railways.*"

Remedy for
recovery of
tithe rent
charged on
railway land.

"XXII. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned; be it enacted, that in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in England and Wales, upon lands taken or purchased by any railway company for the purposes of such company, or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years; provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned."

STAT. 7 & 8
VICT. CAP.
LXXXIX.

CLXVIII. STAT. 7 & 8 VICTORIÆ, CAP. LXXXIX. A.D. 1844.

"*An Act to remedy certain Defects in the Apportionment of the Rent-Charge in lieu of Tithes in the Parish of Necton, in the County of Norfolk.*"

STAT. 7 & 8
VICT. C. 94.

CLXIX. STAT. 7 & 8 VICTORIÆ, C. 94. A.D. 1844.

"*An Act to explain and amend an Act for making better Provision for the Spiritual Care of Populous Parishes.*"

6 & 7 Vict.
c. 37.

"Whereas an act was passed in the last session of parliament, intituled, 'An Act to make better Provision for the Spritual Care of populous Parishes;' and it is expedient to explain and amend certain of the provisions of the said act: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that wherever any right of patronage of any district or new parish constituted under the authority of the said act, and nomination of the minister or perpetual curate thereof, shall be assigned to or vested in or may be exercised by her majesty, according to or under the provisions of the same act, it shall be lawful for her majesty to nominate to the bishop of the diocese a spiritual person to be licensed to such district or new parish as minister or perpetual curate thereof, as the case may be, by warrant under her royal sign manual; and such warrant shall be full and sufficient authority to such bishop to license such spiritual person accordingly.

Crown may
nominate
ministers by
warrant under
sign manual.

Bishop may
license, as to

"II. And be it declared and enacted, that wherever any right of patronage of any such district or new parish shall in like manner be assigned to or vested in or

may be exercised by any bishop, it shall be lawful for such bishop to license a spiritual person to such district or new parish as minister or perpetual curate thereof, as the case may be, in the same manner, *mutatis mutandis*, as he may now by law license a spiritual person to any perpetual curacy.

“III. Provided always, and be it enacted, that no fee whatever shall be payable for or in respect of any such warrant as aforesaid; and that a fee of one pound, and no more, shall be receivable by the secretary of any bishop for and in respect of each and every licence granted by such bishop of a spiritual person as minister or perpetual curate of any such district or new parish as aforesaid, or of any building licensed by such bishop within any such district for the performance of divine service, pursuant to the provisions of the said act; and no further or larger fee or gratuity shall be receivable by any person whomsoever for or in respect of the making, issuing, or granting of any such licence as aforesaid.

“IV. And be it declared and enacted, that wherever any incumbent or patron to whom, according to the provisions of the said recited act, it shall be necessary to transmit or deliver the draft of any scheme proposed to be laid before her majesty in council, shall be beyond the seas, it shall be and be deemed to be a sufficient compliance with such provisions to leave such draft, in the case of an incumbent, at the house of residence belonging to his benefice or church, or if there be no such house of residence, then at his last usual place of abode in England, and in the case of a patron at his last usual place of abode in England: provided always, that in any such case of an absent incumbent or patron, such scheme shall not be laid before her majesty in council until after the expiration of two calendar months from the day on which the draft thereof shall have been so left, unless such incumbent and patron shall in the meantime consent to the same.

“V. And be it declared and enacted, that in the case of any such incumbent being an idiot or lunatic or of unsound mind, or of any benefice or church being under sequestration, or of the duties thereof being performed by a curate duly appointed in consequence of the suspension or the reputed incapacity of the incumbent thereof, it shall be and be deemed to be a sufficient compliance with the same provisions to deliver or transmit the draft of any such scheme to the committee of such idiot, lunatic or person of unsound mind, or to the sequestrator, or to such curate of such benefice or church, as the case may be; and the consent of such committee, sequestrator, or curate shall be deemed to be the consent of the incumbent, within the meaning of the said act.

“VI. And be it declared and enacted, that in any case in which the patronage of any church or chapel of any parish, chapelry, or district, is or shall be vested in and exercised by the inhabitants generally of such parish, chapelry, or district, or by any body or class of persons exceeding five in number, it shall be and be deemed to be a sufficient compliance with the same provisions to deliver or transmit the draft of any such scheme to one of such patrons, and to the churchwardens or chapelwardens of any such church or chapel, as the case may be; and such churchwardens or chapelwardens, or one of them, shall thereupon cause notice of the contents of such draft to be given to such patrons, and shall ascertain their objections, if any, or their consent to such scheme, in such manner as the ecclesiastical commissioners for England shall direct, and such churchwardens or chapelwardens, or one of them, shall communicate the same to the said commissioners or to the bishop of the diocese; and the said commissioners shall not lay such scheme before her majesty in council until after the expiration of two calendar months from the day on which such draft shall have been so delivered or transmitted, unless such consent shall in the meantime be given.

“VII. And be it declared and enacted, that in the construction of the said recited act the words ‘goods and chattels’ shall be construed to extend to and comprehend all personal estate and property whatsoever; and the word ‘testament’ shall be construed to extend to and comprehend any will or testamentary paper whatsoever, including under such definition the execution by any such will, testament or testamentary paper of any appointment, in pursuance of any power, howsoever conferred or acquired.

STAT. 7 & 8
VICT. c. 94.

any existing
perpetual
curacy.

Warrant with-
out fee.
Fee for
licence.

How scheme
to be served
where incum-
bent or patron
absent from
England.

How where
incumbent
incapacitated,
or benefice
sequestered.

How where
patrons nume-
rous.

Construction
of certain
terms in 6 & 7
Vict. c. 37.

STAT. 7 & 8
VICT. c. 94.

Original map
or plan may be
registered.

Bounds of
districts may
be varied with-
in limited time.

Until minister
licensed, cure
of souls not
affected.

Form of grant
or conveyance.

Act may be
altered this
session.

"VIII. And be it declared and enacted, that, notwithstanding anything in the said recited act contained, it shall be lawful to transmit the original map or plan annexed to any scheme laid before her majesty in council under the provisions of the said recited act, to be registered in the registry of the diocese, instead of a copy thereof, as provided by the same act.

"IX. And be it declared and enacted, that it shall be lawful, by the authority in the said recited act provided, at any time or times within twelve months after the date of the licence of the minister first licensed to any separate district constituted under the provisions of the same act, to alter the bounds of such district, although any alteration be not required with a view to the constituting of another separate district: provided always, that the scheme for making any such alteration shall be subject to all the provisions in the same act and in the act contained relating to schemes for constituting separate districts thereunder; and that any portion of any such separate district which by any such alteration as aforesaid shall become detached or excluded therefrom shall to all intents and purposes again belong to and form part of the parish, chapelry, or district out of which such portion was taken, upon such separate district being originally constituted, or to and of any new district, as shall be determined by the like authority.

"X. And be it declared and enacted, that in the case of any district constituted under the provisions of the said recited act, nothing contained in the scheme or order for constituting the same shall in any manner whatever affect any parish, chapelry, or district, as to the pastoral superintendence of the inhabitants thereof or otherwise, until a minister shall have been duly licensed to such newly constituted district.

"XI. And be it enacted, that any grant, conveyance, or assurance which shall be made to the said commissioners by deed, under the authority of the said recited act, of any lands, tithes, tenements, or other hereditaments, may be made according to the form in the schedule hereunto annexed contained, or as near thereto as the circumstances of the case will admit; and every such conveyance and assurance shall be valid and effectual in the law to all intents and purposes.

"XII. And be it enacted, that this act may be amended or repealed by any act to be passed during this present session of parliament."

"SCHEDULE.

"I [or We, or the corporate title, if a corporation], under the authority of acts passed in the sessions of parliament held in the sixth and seventh and seventh and eighth years of the reign of her present majesty, intitled respectively, 'An Act to make better Provision for the Spiritual Care of populous Parishes,' and 'An Act to explain and amend an Act to make better Provision for the Spiritual Care of populous Parishes,' do by these presents freely and voluntarily, and without any valuable consideration, give, grant, convey, and assure to the ecclesiastical commissioners for England all [describe the premises to be conveyed], and all [my, or our, or the] right, title, and interest [of, if a corporation,] to and in the same and every part thereof, to hold to the said commissioners and their successors for the purpose of [describe the particular purpose, being some purpose within the provisions of the said acts, or say, generally, for the purposes of the said acts]. In witness whereof, &c."

STAT. 7 & 8
VICT. c. 97.
[Ir.]

CLXX. STAT. 7 & 8 VICTORIÆ, c. 97. [IRELAND.] A.D. 1844.

"An Act for the more effectual Application of Charitable Donations and Bequests in Ireland."

"Whereas it is expedient that the pious intentions of charitable persons should not be defeated by the concealment and misapplication of their donations and bequests to public and private charities in Ireland; and whereas the provision of the act passed by the parliament of Ireland in the third year of his late majesty King George the Third, intitled, 'An Act for the better Discovery of Charitable

Donations and Bequests,' and of the act passed by the parliament of Ireland in the fortieth year of the reign of his said late majesty King George the Third, intituled, 'An Act to amend an Act passed in the third year of His present Majesty King George the Third, intituled, "An Act for the better Discovery of Charitable Donations and Bequests,"' have been found insufficient for such purposes; and it is expedient and necessary that provision should be made for the better management of such charitable donations and bequests as have been heretofore made, and such as hereafter may be made: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the commencement of this act the hereinbefore recited acts shall be repealed, save as to anything done at any time before the commencement of this act, all which shall be and remain good to all intents and purposes whatsoever as if this act had not passed.

"II. And be it enacted, that the master of the rolls in the high court of Chancery of Ireland for the time being, the chief baron of the court of Exchequer in Ireland for the time being, and the judge of her majesty's court of Prerogative for causes ecclesiastical and court of Faculties in and throughout Ireland for the time being, together with ten other proper and discreet persons, to be from time to time appointed by her majesty in council, by warrant under the sign manual, of which ten persons five, and not more than five, shall at all times be persons professing the Roman catholic religion, shall be one body politic and corporate, by the name of 'The Commissioners of Charitable Donations and Bequests for Ireland,' and by that name shall have perpetual succession and a common seal, and by that name may sue and be sued.

"III. And be it enacted, that the said commissioners shall be at all times removable by her majesty in council, by warrant under the sign manual; and that whenever, by death, resignation, removal, or otherwise, any person shall cease to be a commissioner under this act, it shall be lawful for her majesty, by warrant as aforesaid, to appoint one other person instead of the person so ceasing to be such commissioner; and every appointment of the said commissioners and their successors shall be published in the Dublin Gazette.

"IV. And be it enacted, that all things which the said commissioners are by this act authorized to do may be done by any five of such commissioners: provided always, that such five commissioners be for such purpose assembled at a meeting whereof due notice shall have been given to all the said commissioners.

"V. And be it enacted, that at each meeting of the said commissioners the said master of the rolls, or in his absence the said chief baron of the court of Exchequer, or in his absence the said judge of the Prerogative court, if present, and in the absence of all, the senior commissioner in the order of appointment, shall preside; and the chairman at all such meetings shall not only vote as a commissioner, but, in case of the equality of votes, shall have also the casting or decisive vote.

"VI. Provided always, and be it enacted, that the consideration of all charitable donations and bequests, and of matters relating to them, in which any question shall arise before the said commissioners concerning the usages or discipline of the united church of England and Ireland, or of any body of protestant nonconformists, shall be referred to a committee of the said commissioners consisting of those commissioners who are protestants; and that the consideration of all charitable donations and bequests, and of matters relating to them, in which any question shall arise before the said commissioners, concerning the usages or discipline of the church of Rome, shall be referred to a committee of the said commissioners consisting of those commissioners who profess the Roman catholic religion; and that whenever, by reason of reference to or intendment of any usage of any such church or body, or any district or division, in use according to the discipline of any such church or body, the object of the donation, devise, or bequest shall not be defined with legal certainty in the deed or will creating the trust, the committee to which the same shall be referred shall certify to the commissioners who is, according to the uses and intendment of such church or body, the person for the time being

STAT. 7 & 8
VICT. c. 97.
[1a.]
40 Geo. 3, (Ir.)

Recited acts
repealed, save
as to any thing
done before
commence-
ment of this
act.

Commissioners
of charitable
donations and
bequests for
Ireland ap-
pointed.

Removal and
appointment
of such com-
missioners.

How many
commissioners
may act.

Chairman of
commissioners.

Religious
questions to
be referred to
committees.

STAT. 7 & 8
VICT. c. 97.
[1R.]

intended to take the benefit of such donation, devise, or bequest, or other particular facts concerning the usages or discipline of such church or body necessary to be known, for the due administration of the trust, according to the true intent and meaning of the donor; and the commissioners shall receive every such certificate as evidence of the facts certified, and shall give effect to such donation, devise, or bequest accordingly, so far as the same may be lawfully executed according to the provisions of this act; provided always, that nothing herein contained shall be construed to limit or affect the jurisdiction of any court of law or equity.

Appointment
of officers.

“VII. And be it enacted, that it shall be lawful for the lord lieutenant or other chief governors of Ireland, with the consent and approbation of the commissioners of her majesty’s Treasury, from time to time to appoint during his pleasure a secretary or secretaries to the said commissioners, and also such officers, clerks, and servants as may be necessary for the purposes of this act; and the said commissioners of her majesty’s Treasury shall fix the salary or salaries of the said secretary or secretaries, officers, clerks, and servants in fit proportion, according to the duties which they from time to time may have to perform.

Salaries and
expenses.

“VIII. And be it enacted, that the salaries of the said secretaries, officers, clerks, and servants, and also the necessary expenses of carrying on the business of the said commissioners of charitable donations and bequests for Ireland, not herein otherwise provided for, shall be paid by the commissioners of her majesty’s Treasury out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Minutes of
proceedings
to be kept.

“IX. And be it enacted, that one of the secretaries, or some other officer of the said commissioners, shall make minutes of the proceedings of the said commissioners at their several meetings, and shall keep a book, in which he shall enter a fair copy of such minutes, and the names of the commissioners present; and the fair copy of the minutes of the proceedings of each meeting shall be read at the next meeting of the commissioners, and if approved as correct shall be signed by the chairman of the meeting at which they shall be so read.

Commissioners
to report.

“X. And be it enacted, that the commissioners shall, once at least in every year, and also whenever her majesty’s pleasure shall be signified to them in the behalf, report to her majesty the proceedings under this act; and a copy of every such report shall be communicated to both houses of parliament within six weeks after the same shall be made, if parliament be then sitting, or if not then within six weeks next after the next meeting of parliament.

Property, &c.
belonging to
body corporate
created by
recited act, 40
Geo. 3, (1r.)
vested in com-
missioners
under this act.

“XI. And be it enacted, that from and after the first publication in the Dublin Gazette of the appointment of the commissioners of charitable donations and bequests for Ireland under this act, the property, estate, and effects, rights, claims, titles, and possessions, of what nature or kind soever, of or belonging or which of right ought to belong to the said body politic and corporate created by the said recited act of the fortieth year of King George the Third, and vested in the said body by virtue of the said act or otherwise, shall vest in and devolve upon the said commissioners of charitable donations and bequests for Ireland created by the act, subject to such trusts and conditions, liabilities, contracts, and engagements, as the same shall then be subject and liable to.

Commissioners
may sue for
recovery of
charitable
donations, &c.
withheld, &c.

“XII. And be it enacted, that the said commissioners of charitable donations and bequests for Ireland may sue for the recovery of every charitable donation, devise, or bequest intended to be applied in Ireland, which shall be withheld, concealed, or misapplied, and shall apply the same, when recovered, to charitable and pious uses, according to the intention of the donor or donors; and the said commissioners shall be empowered to deduct out of all such charitable donations, devises, and bequests as they shall recover, all the costs, charges, and expenses which they shall be put to in the suing for and recovery of the same: provided always, that no information shall be filed, or petition presented, or other proceeding at law or in equity undertaken or prosecuted, by the said commissioners, until the same shall be submitted to and allowed by her majesty’s attorney or solicitor-general for Ireland, and such allowance certified by him.

Proceedings
not to be
undertaken
till submitted
to attorney or
solicitor-
general.
Actions not

“XIII. And be it enacted, that no action or suit at law or in equity shall be

abated by the dissolution of the said corporation created by the said act of the fortieth year of the reign of King George the Third, but that the court in which any action or suit shall be depending at the time of the commencement of this act may, if such court shall so think fit, upon the application of any party to the said action or suit, allow the name of the commissioners of charitable donations and bequests for Ireland incorporated by this act to be substituted in the place of the said commissioners created by the said statute of the fortieth of George the Third, and such action or suit may be prosecuted and defended in the same manner as if the same had been originally instituted by or against the said commissioners incorporated by this act.

“XIV. And be it enacted, that no sum shall be paid by the said commissioners of charitable donations and bequests for Ireland to any attorney or solicitor, as and for costs, charges, or expenses, unless the amount of such payment shall first have been approved of by the commissioners of her majesty's Treasury; and before any such sum shall be allowed by the said commissioners of the Treasury on such account as aforesaid, the particulars of all such costs, charges, and expenses shall be laid before them.

“XV. And be it enacted, that every person or body corporate having in his, her, or their own right any estate or interest, in possession, reversion, or remainder, of or in any lands, tenements, or hereditaments, or any property of or in any goods or chattels, shall have full power, at his, her, and their will and pleasure, by deed duly executed, and attested by two credible witnesses, or by his or her last will in writing, duly executed according to law, to give and grant to and vest in the said commissioners of charitable donations and bequests for Ireland, and their successors, all such his, her, or their estate, interest, or property in such lands, tenements, hereditaments, goods, and chattels, or any part or parts thereof, in trust for building, enlarging, upholding, or furnishing any chapel or place of religious worship of persons professing the Roman catholic religion, or in trust for any archbishop or bishop or other person in holy orders of the church of Rome officiating in any district, or having pastoral superintendence of any congregation of persons professing the Roman catholic religion, and for those who shall from time to time so officiate or shall succeed to the same pastoral superintendence, or for building a residence for his and their use; and such estate, interest, or property in such lands, tenements, or other hereditaments, goods and chattels, shall vest in and be holden by the said commissioners, subject to the trusts of such deed and will respectively, without any writ or licence other than this act; provided always, that nothing herein contained shall be construed to render lawful any donation, devise, or bequest to or in favour of any religious order, community, or society of the church of Rome bound by monastic or religious vows prohibited by an act passed in the tenth year of the reign of King George the Fourth, intituled, ‘An Act for the Relief of His Majesty's Roman Catholic Subjects,’ or to or in favour of any member or members thereof.

“XVI. And be it enacted, that after the commencement of this act no donation, devise, or bequest for pious or charitable uses in Ireland shall be valid to create or convey any estate in lands, tenements, or hereditaments for such uses, unless the deed, will, or other instrument containing the same shall be duly executed three calendar months at the least before the death of the person executing the same, and unless every such deed or instrument, not being a will, shall be duly registered in the office for registering deeds in the city of Dublin within three calendar months after the execution thereof.

“XVII. And be it enacted, that it shall not be lawful for any such archbishop, bishop, or person in holy orders of the church of Rome, to alien, set, let, or in any manner demise for any period whatever such lands, tenements, or hereditaments, or any part thereof, or in any manner whatever to charge or incumber the same, or any property enjoyed by him under this act, but that all charges and incumbrances upon such lands, tenements, and hereditaments, or other property, and all conveyances, gifts, grants, devises, or sub-devises of the same or any part thereof, made or to be made by any such archbishop, bishop, or other

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[1a.]

abated by dissolution of corporation created by 40 Geo. 3, but same may be prosecuted by commissioners under this act.

Commissioners not to pay costs to attorneys, &c. unless amount approved by the Treasury.

Persons or bodies may by deed vest lands, &c. in the commissioners, in trust for Roman catholic ministers in Ireland.

10 Geo. 4, c. 7.

Deeds to be registered.

Archbishops, &c. not to alien or demise lands, &c. enjoyed by them under this act.

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[1A.]

Commissioners
of charitable
donations, &c.
may lease said
lands, &c.
with consent of
archbishop,
&c. of church
of Rome.

Vicar-general
and registrar
of Prerogative
court to make
return to com-
missioners of
charitable
donations, &c.
of every cha-
ritable dona-
tion contained
in any will
entered in the
office of such
vicar-general,
&c.

Accounts of
the commis-
sioners to be
audited by
chief or second
remembrancer
of the Exche-
quer in Ire-
land;

person in holy orders of the church of Rome, shall be absolutely void; provided always, that it shall and may be lawful for the said archbishop, bishop, or other person in holy orders of the church of Rome, to execute such leases as herein after are mentioned.

“XVIII. And be it enacted, that it shall and may be lawful for the said commissioners of charitable donations and bequests for Ireland, from time to time, by deed under the common seal of the said commissioners, to demise or lease the said lands, tenements, or hereditaments, or any part thereof, by and with the consent of the said archbishop, bishop, or other person in holy orders of the church of Rome, or those who respectively shall succeed them as aforesaid, testified by his or their being a party to and executing such lease, for any term not exceeding twenty-one years, unless on building lease, in which case such lease may be granted for any term not exceeding one hundred years; provided always, that the said lease shall take effect in possession, and not in reversion or by way of future interest, and that there be made payable during the estate or interest thereby created the best yearly rent that can be reasonably obtained for the same, without any fine, premium, or foregift for the making thereof being paid or payable to the said commissioners, or to the said archbishop, bishop, or other person in holy orders of the church of Rome; and provided that there be contained in every such demise or lease a covenant for the payment of the rent thereby reserved, and a condition for re-entry on nonpayment of the rent or any part thereof for twenty-one days next after the same shall become due, and so that the lessee or lessees therein named do execute a counterpart of the said demise or lease, and be not in any manner made punishable for committing waste.

“XIX. And be it enacted, that from and after the commencement of this act the vicar-general or his surrogate, and the registrar of the Prerogative court, shall make a return upon oath to the commissioners of charitable donations and bequests for Ireland, between the first day of July and the first day of November in every year, of every charitable devise or bequest contained in any will which shall be entered in the office of such vicar-general, surrogate, or registrar, which return shall likewise contain the name of the testator, the name or names of the person or persons to whom probate of any such will, or letters of administration with such will annexed, shall be granted, with the date of such will, probate, or administration; which return shall be lodged with one of the secretaries of the said commissioners; and every such officer as aforesaid who shall neglect to make such return as aforesaid shall forfeit the sum of five pounds sterling, to be recovered by any person who shall sue for the same by civil bill; and the person or persons to whom the probate of any such will or letters of administration as aforesaid shall be granted shall, within three calendar months next after obtaining the same, publish in the Dublin Gazette, three times successively, every charitable devise or bequest contained in such will, the name of the testator and date of such will or codicil, and the name of the person or persons to whom such charitable devise or bequest is given and bequeathed, and the name of the person or persons appointed by the testator for the management and direction thereof; and the expense of such publication shall be paid by the said executors or administrators out of the said respective charities; and every such person or persons who shall neglect to publish the same in manner herein required shall forfeit for every such neglect the sum of five pounds sterling, to be recovered by any person who shall sue for the same, by any action of debt, bill, plaint, or information, in any of her majesty's courts of record.

“XX. And be it enacted, that the accounts of the said commissioners of the sums passing through their hands arising from charitable donations and bequests shall, from and after the commencement of this act, be from time to time audited and declared by the chief remembrancer or second remembrancer of the court of Exchequer in Ireland; and that the said commissioners of charitable donations and bequests in Ireland shall cause the said accounts to be made out in such form as the said chief or second remembrancer shall direct, and shall send the same to him, with proper vouchers for their receipts and payments; and the said chief

remembrancer or second remembrancer, after examining each account rendered to him as aforesaid, with the documents annexed thereto, shall settle and declare the same, and shall lodge such account, when so settled and declared, with the clerks of her majesty's Privy Council in Ireland, who shall send one copy thereof to the said commissioners of charitable donations and bequests for Ireland, and keep one other copy thereof in the Privy Council office in Ireland.

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[Ire.]

"XXI. And be it enacted, that it shall be lawful for the said chief remembrancer or second remembrancer to call before him and examine on oath any person whom he may deem it necessary to examine on the matter of such accounts; and every person who on such examination on oath shall wilfully make any false statement shall be deemed guilty of perjury.

who may examine persons on oath respecting such accounts.

"XXII. And be it enacted, that this act shall commence from and after the first day of January one thousand eight hundred and forty-five; and that nothing herein contained shall be taken to avoid or render unlawful any donation, devise, or bequest which but for this act would be lawful, except as to the time within which the deed, will, or instrument containing such donation, devise, or bequest for pious or charitable uses is hereinbefore required to be executed and registered.

Commencement of act.

"XXIII. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of parliament."

Act may be amended this session.

CLXXI. STAT. 7 & 8 VICTORIÆ, c. 101. A.D. 1844.

STAT. 7 & 8
VICT. c. 101.

"An Act for the further Amendment of the Laws relating to the Poor in England."

"XXXI. And be it declared and enacted, that it shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expense thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable, (which they are hereby authorized to do,) every dead body which the guardians or any of their officers duly authorized shall direct to be buried at the expense of the poor rates shall, (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise desired,) be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all cases of burial under the direction of the guardians or overseers as aforesaid the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any act of parliament, shall be paid out of the poor rates, for the burial of each such body, to the person or persons who by such custom or under such act may be entitled to receive any fee: provided always, that it shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding five pounds.

Burials of paupers.

"XL. And be it enacted, that it shall be lawful for the said commissioners, as and when they may see fit, by order under their hands and seal, to combine unions, or parishes not in union, or such parishes and unions, into school districts, for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are

Parishes and unions may, within certain limits, be combined into school districts.

STAT. 7 & 8
VICT. c. 101.

deserted by their parents, or whose parents or surviving parent or guardians are consenting to the placing of such children in the school of such district; but the said commissioners shall not include in any such district any parish any part of which would be more than fifteen miles from any other part of such district: provided always, that when the relief of the poor has been hitherto administered in any parish or united parishes by guardians appointed under a local act, and not by overseers of the poor, if such parish or united parishes, according to the last enumeration of the population published by authority of parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, without the consent in writing of the majority of such guardians, to include such parish or united parishes in a school district.

Constitution of
the district
boards for
schools and
asylums.

“XLII. And be it enacted, that a board shall be constituted for every district formed under this act for the maintenance of a school or of an asylum; and every district board so constituted shall respectively consist of members to be elected from amongst the persons rated within the district to the relief of the poor; and the said commissioners shall fix the qualification of such members, such qualification to consist in being rated within the district to the relief of the poor, but not so as to require a qualification exceeding the net annual value of forty pounds; and such members shall be elected at such periods, not exceeding three years, and in such proportions and in such manner, as the said commissioners may from time to time direct, by the guardians of every parish or union governed by a board of guardians under the provisions of the said first-recited act or of any local act, and if there be no such guardians then by the overseers of a parish not governed by such guardians; and the chairman of every board of guardians constituted under the provisions of the said first-recited act shall, if he consent thereto, be *ex officio* a member of any district board constituted under the provisions of this act.

Powers and
duties of dis-
trict boards.

“XLIII. And be it enacted, that every such district board shall have such powers of guardians for the relief and management of the poor within any school or asylum, and for the appointment, payment, and control of paid officers as the said commissioners may direct; and the legal and reasonable orders of such district board shall be obeyed and obedience thereto enforced in the same manner and by the same remedies and penalties as the legal and reasonable orders of guardians; and it shall be lawful for the said commissioners, with the consent in writing of a majority of any district board, to direct such district board to purchase or hire or build, and to fit up and furnish, a building or buildings, of such size and description, and according to such plan, and in such manner as the said commissioners may deem most proper, for the purpose of being used or rendered available for the relief and management of the poor to be received into such school or asylum; and the said commissioners may, with the like consent, alter the district for which such district board was originally constituted, by adding thereto or taking therefrom any parish or parishes, union or unions, as aforesaid; and the said commissioners shall have the same powers for regulating the proceedings of any district board or of any committee thereof, and for directing and regulating the appointment, duties, remuneration, and removal of paid officers to be appointed by any district board, as they have with respect to the proceedings of boards of guardians, or with respect to paid officers to be appointed by any board of guardians; and every such board for a school district shall appoint, with the consent of the bishop of the diocese, at least one chaplain of the established church as one of the paid officers aforesaid, who shall be empowered to superintend the religious instruction of all the infant poor being under the control of such district board; and it shall be lawful for the said commissioners to issue rules and regulations for the government of any such school or asylum, and the inmates thereof, as if such school or asylum were a workhouse; and any orders or regulations of the said commissioners made in pursuance of this act shall be enforced in the same manner and by the same penalties as if the same were an order or regulation made in pursuance of the said first-recited act: provided always, that no rules, orders, or regulations of the said commissioners, nor any regulations made by such district board, shall oblige any inmate of any such school or asylum to attend any religious service which may be

celebrated in a mode contrary to the religious principles of such inmate, nor shall authorize the education of any child in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or surviving parent may object, or, in the case of an orphan or deserted child, to which his next of kin may object: provided also, that it shall be lawful at all reasonable times of the day, according to rules and regulations to be made for this purpose by the said board, for any minister of the religious persuasion professed by an adult inmate, or of the religious persuasion in which any child has been brought up, or in which the parents, or surviving parent, or next of kin, as the case may be, may desire such child to be instructed, to visit the school or asylum, at the request of such adult inmate, for the purpose of affording to him religious assistance, or to visit such child for the purpose of instructing such child in the principles of his religion: provided also, that it shall be lawful at all times for any inspector of schools appointed by her majesty in council to visit such schools, and to examine into the proficiency of the scholars therein.

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VICT. c. 101.

“XLIV. And be it enacted, that for the purpose of providing a building for such school or asylum, it shall be lawful for such district board, subject to the order of the said commissioners, to exercise the powers given to boards of guardians by the said first-recited act or any other act or acts for the purchase and hire of lands and buildings, and to borrow, in like manner as is provided in the said first-recited act or in any other act or acts, such sum or sums of money as may be necessary for the purpose of purchasing any site, or purchasing, hiring, or building, and of fitting up and furnishing such building or buildings as aforesaid, and to charge the future poor rates of the parishes or unions, or parishes and unions, so combined as aforesaid, with the payment of such sum or sums of money, and interest thereon: provided always, that the consent of any rate-payers or owners of property of any parish shall not be necessary to any sale, exchange, lease, or other disposal by guardians or overseers to or with any such district board of any workhouse, tenement, building, or land: provided also, that the principal sum or sums to be raised for the purpose of providing any such building or buildings as aforesaid, and charged on any union, or on any parish not included in a union, shall in no case exceed one fifth of the average annual amount of the aggregate expenditure relating to the relief of the poor within any such union, or of the like expenditure within any such parish, for three years ending the twenty-fifth day of March next preceding the raising of such money; provided also, that the principal sum or sums required for the purpose of providing any such building or buildings shall, if the same be borrowed, be repaid, with all interest thereon, within a period not exceeding twenty years.

Powers of district board for purchasing and hire of land, &c.

Sums to be raised for providing schools or asylums not to exceed one fifth part of the average annual rates.

“XLV. And be it enacted, that every such district board shall be enabled to accept, take, and hold, on behalf of the district for which they act, any lands, buildings, goods, effects, or other property, as a corporation, and in all cases to sue and be sued as a corporation, by the name of the board of management of the district school or asylum, as the case may be.

District board to hold property of the district as a corporation.

“XLVI. And be it enacted, that every district board for the management of any school or asylum shall from time to time call on the parishes and unions included in such district for such contributions as they may deem requisite for the purposes of this act; and notice in writing of the amount of such contributions, purporting to be signed by the clerk or other officer of such district board, in any form prescribed by the said commissioners, shall, fourteen days at least before such contribution becomes due, be forwarded, by post or otherwise, to the clerk to the board of guardians of any union, and to two at least of the overseers or other officers authorized to make and levy rates for the relief of the poor in every parish from whom such contributions or any part thereof will become due; and if such contributions are not duly paid to the treasurer of such district board, such district board shall, in addition to any other remedy which now is or hereafter may be given to any persons against any board of guardians, have the like remedy for recovery of the same from the overseers or other officers authorized to make and levy the rates for relief of the poor of the several parishes, whether comprised in

Payment of contributions to district boards.

STAT. 7 & 8
VICT. c. 101.

an union or otherwise, and which may form part of the district for which such district board may act, as are given to guardians for the recovery from overseers of the contributions of parishes; and in case of any addition or separation of parishes or unions, the said commissioners shall ascertain the proportionate value of property and amount of obligations of every parish or union affected by the change, and shall fix the amount to be received or paid, or secured to be paid, by every such parish or union.

Distribution of
charges for
schools.

“XLVII. And be it enacted, that the expenses incurred by any district board in the purchase or hire of any building or buildings to be used as a school, or in erecting, repairing, adding to, or fitting up any building, and in the purchase of utensils and materials for the employment of the inmates of such school, or of books and other objects and things necessary for the instruction of such inmates, and the salaries of the officers and servants of the establishment, and all other expenses incurred on the common account of the parishes or unions, or parishes and unions, so united for the management of any class of infant poor, or incidental to the discharge of the duties of such district board, shall be paid by such union in the proportion of the averages last declared for every such union, and by such parishes in the proportion of the average expenditure of every such parish for the like period and purposes as those to which the declared averages of such union shall relate; and the said commissioners shall from time to time, by order under their hands and seal, ascertain and declare the proportion and rates of contribution in the above respects of every such parish and union; and that all other expenses incurred in the relief of the children under the management of such district board shall be separately charged by such district board to the parish or union in which each such child may be sent.

Appointment
of auditors for
district boards.

“XLIX. And be it enacted, that the poor law commissioners shall appoint some person, being at the time the auditor of some parish or union situated within the district for which any district board for any school or asylum may be appointed, who shall be the auditor of such district, and shall be empowered and required to audit the accounts of each district board, and of the officers of such district board; and the salary of every such auditor of a district shall be paid by the district board thereof; and the said commissioners shall have the same power for regulating the duties and remuneration of such auditors as they have with respect to paid officers appointed by any board of guardians; and it shall be lawful for the said commissioners, as they may see fit, to remove any auditor of such district, and in case of vacancy to appoint another person as aforesaid to the office; and every district board constituted under this act, and every officer of such district board, shall, twice in the year at least, at such time and in such manner and form as may be prescribed by the poor law commissioners, account to the auditor appointed as aforesaid; and such auditor shall have all the powers of allowing and disallowing any charges in such accounts as are or may hereafter be given to auditors under the provisions of the said first-recited act or any other act for the audit of accounts relating to rates for the relief of the poor; and all sums disallowed or reduced, or charged as balances against any person by such auditor, shall be recovered, on the application of such auditor, (which application he is hereby empowered to make,) in the same way as penalties and forfeitures under the said first-recited act, from the person making or authorizing such illegal payment; and within thirty days of such audit each district board shall cause to be printed, and shall forward by post or otherwise to each board of guardians, and to the officers of every parish within their district, an abstract of the accounts of their district, so audited, in such form as the poor law commissioners may direct.

Guardians may
visit and in-
spect asylums.

“L. And be it enacted, that every guardian of every union or parish included in any such district formed for the maintenance of an asylum, shall, at all reasonable times, be entitled to enter the asylum of such district, and inspect any part thereof, and enter his remarks thereon in a book to be kept for that purpose.

Children may
be sent to
district schools
from parishes

“LI. And be it enacted, that in any case where a parish or union is not combined in a school district, and where any part of such parish or union is not more than twenty miles from a district school, the board of guardians of such parish or

union may, with the consent of the board of such district, send to such district school any infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parent or guardians are consenting thereto; and the costs of the maintenance, employment, and instruction of such infant poor in such district schools shall be paid by such board of guardians to such district board, according to such rates and at such times and in such manner as may be agreed upon by the said boards, with the approbation of the said commissioners; and such infant poor while at such district school shall be subject to the control and management of such district board and their officers, in like manner as if the said parish or union were combined in such school district by virtue of this act.

"LII. And be it enacted, that the provisions of [Stat. 7 Geo. 3, c. 39, and Stat. 2 Geo. 3, c. 22] shall be and are hereby repealed.

"LVI. And be it enacted, that, for the purposes of relief, settlement, and removal of poor persons, and the burial of the poor, the workhouse of any union or parish, and every such district school, shall be considered as situated in the parish to which each poor person respectively to be relieved, removed, or buried, or otherwise concerned in any such purpose, is or has been chargeable: provided always, that every birth and death within any such workhouse or building shall be registered in the parish or place in which such workhouse or building is locally situated; and all fees for registering births and deaths in any such workhouse or building shall be charged by the guardians to the parish or union to which the person dying or the mother of the child respectively is chargeable."

STAT. 7 & 8
VICT. c. 101.

and unions not combined, but not distant more than twenty miles.

Repeal of the
acts 7 Geo. 3,
c. 39, and 2
Geo. 3, c. 22.

Workhouse to be deemed to be situate in every parish of an union, &c.

CLXXII. STAT. 7 & 8 VICTORIÆ, c. 102. A.D. 1844.

"An Act to repeal certain Penal Enactments made against Her Majesty's Roman Catholic Subjects."

STAT. 7 & 8
VICT. c. 102.

"Whereas Roman catholics, and persons professing the Roman catholic religion, were, by certain acts made and passed by the parliament of England and the parliament of Great Britain rendered liable to punishments, pains, penalties, and disabilities, for or on account of their religious belief or profession, to which punishments, pains, penalties, and disabilities none other of her majesty's subjects are liable: and whereas it is expedient to amend the law in this respect: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act the several acts hereinafter mentioned, or so much and such parts of any of them as are hereinafter specified, shall be repealed; (that is to say,)

Certain acts
and parts of
acts repealed.

"So much of an act passed in the sixth year of the reign of King Edward the Sixth, intituled, 'An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm,' as relates to the offence of willingly and wittingly hearing and being present at any other manner or form of common prayer, of administration of the sacraments, of making of ministers in the churches, or of any other rites contained in the book annexed to that act, than is mentioned and set forth in such book, so far as the same in any manner affects Roman catholics:

5 & 6 Edw. 6,
c. 1.

"Also so much of an act passed in the first year of the reign of Queen Elizabeth, intituled, 'An Act to restore to the Crown the ancient Jurisdiction over the Estate, ecclesiastical and spiritual, and abolishing all Foreign Powers repugnant to the same,' whereby, after the following enactment, 'that if any person or persons dwelling or inhabiting within this your realm, or in any other your highnesses realms or dominions, of what estate, dignity, or degree soever he or they be, after the end of thirty days next after the determination of this session of this present parliament, shall, by writing, printing, teaching, preaching, express words, deed, or act, advisedly, maliciously, and directly affirm, hold, stand with, set forth, maintain, or defend the authority, preeminence, power, or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person,

1 Eliz. c. 1.

STAT. 7 & 8
VICT. C. 102.

state, or potentate whatsoever, heretofore claimed, used, or usurped within this realm, or any dominion or country being within or under the power, dominion, or obeysance of your highness, or shall advisedly, maliciously, and directly perform or execute anything for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, pre-eminence, and authority, or any part thereof, that then every such person and persons so doing and offending, their abettors, aiders, procurors, and counsellors, being thereof lawfully convicted and attainted, according to the due order and course of the common laws of this realm, for his or their first offence shall forfeit and lose unto your highness, your heirs and successors, all his and their goods and chattels, as well real as personal; and if any such person so convicted or attainted shall not have or be worth of his proper goods and chattels to the value of twenty pounds at the time of his conviction or attainder, then every such person so convicted or attainted, over and besides the forfeiture of all his said goods and chattels, shall have and suffer imprisonment by the space of one whole year, without bail or mainprise; it is enacted, 'that if any such offender or offenders, after such conviction or attainder, do afterwards commit or do the said offences or any of them in manner and form aforesaid, as he or they were thereof duly convicted and attainted as is aforesaid, that then every such offender and offenders shall for the same second offence incur into the same penalties, and forfeitures ordained and provided by the Statute of Provisional Premunire made in the sixteenth year of the reign of King Richard the Second; and if any such offender or offenders, at any time after the said first conviction and attainder, do the third time commit and do the said offences or any of them in manner and form aforesaid, and be thereof duly convicted and attainted as is aforesaid, that then every such offence or offences shall be deemed and adjudged high treason; and that the offender or offenders there being thereof lawfully convicted and attainted according to the laws of this realm, shall suffer pains of death, and other penalties, forfeitures, and losses, as in cases of high treason by the laws of this realm.'

- 1 Eliz. c. 2. "Also so much of an act made and passed in the said first year of the reign of the said Queen Elizabeth, intituled, 'An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments' whereby it is enacted, 'that all and every person and persons inhabiting within this realm or any other the queen's majesty's dominions shall diligently and faithfully, having no lawful or reasonable excuse to be absent, endeavour themselves to resort to their parish church or chapel accustomed, or upon reasonable let thereof to some usual place where common prayer and such service of God shall be used in such time of let, upon every Sunday and other days ordained and used to be kept as holy days, and then and there to abide orderly and soberly during the time of the common prayer, preaching, or other service of God there to be used and ministered,' upon the pains, penalties, and punishments therein mentioned, so far as these enactments of the last-mentioned act relate to or affect Roman catholics:
- 5 Eliz. c. 1. "Also so much of an act passed in the fifth year of the reign of the said Queen Elizabeth, intituled, 'An Act for the Assurance of the Queen's Royal Power over all Estates and Subjects within her Dominions,' as renders any person violating its provisions liable to the penalties of treason, or of the Statute of Premunire:
- 23 Eliz. c. 1. "Also the whole of an act passed in the twenty-third year of the reign of the said Queen Elizabeth, intituled, 'An Act to retain the Queen's Majesty's Subjects in their due Obedience:'
- 27 Eliz. c. 2. "Also the whole of an act passed in the twenty-seventh year of the reign of the said Queen Elizabeth, intituled, 'An Act against Jesuits, Seminary Priests, and other such like disobedient Persons:'
- 29 Eliz. c. 6. "Also so much of an act passed in the twenty-ninth year of the reign of the said Queen Elizabeth, intituled, 'An Act for the more speedy and due Execution of certain Branches of the Statute made in the twenty-third year of the Queen's Majesty's Reign, intituled, "An Act to retain the Queen's Majesty's Subjects

- in their due Obedience," as relates to or in any manner affects Roman catholics: STAT. 7 & 8 VICT. c. 102.
- "Also the whole of an act passed in the thirty-fifth year of the reign of the said Queen Elizabeth, intituled, 'An Act to retain the Queen's Majesty's Subjects in their due Obedience:' 35 Eliz. c. 1.
- "Also the whole of an act passed in the said thirty-fifth year of the reign of the said Queen Elizabeth, intituled, 'An Act for restraining Popish Recusants to some certain Places of Abode:' 35 Eliz. c. 2.
- "Also an act passed in the first year of the reign of King James the First, intituled, 'An Act for the due Execution of the Statutes against Jesuits, Seminary Priests, Recusants,' &c., except so much of the same act as relates to the keeping any school, or to the being a schoolmaster, or to the retaining or maintaining a schoolmaster: 1 Jac. 1, c. 4.
- "Also so much of that part of an act passed in the third year of the reign of the said King James the First, intituled, 'An Act for a public Thanksgiving to Almighty God every Year on the Fifth of November,' whereby it is enacted, 'that all and every person and persons inhabiting within this realm of England and the dominions of the same shall always upon that day diligently and faithfully resort to the parish church or chapel accustomed, or to some usual church or chapel where the said morning prayer, preaching, or other service of God shall be used, and then and there to abide orderly and soberly during the time of the said prayers, preaching, or other service of God then to be used and ministered,' as relates to or in any manner affects Roman catholics: 3 Jac. 1, c. 1.
- "Also so much and such parts of an act passed in the said third year of the reign of the said King James the First, intituled, 'An Act for the better discovering and repressing of Popish Recusants,' as relate to popish recusants, to the treasons created by the same act, and to the compelling any Roman catholic to resort to the church of the parish where he or she shall most usually abide or be within the year, and to receive the sacrament of the Lord's supper: 3 Jac. 1, c. 4.
- "Also another act passed in the said third year of the reign of the said King James the First, intituled, 'An Act to prevent and avoid Dangers which grow by Popish Recusants,' except those parts of the same act whereby it is enacted, 'that every person or persons that is or shall be a popish recusant convict during the time that he shall be or remain a recusant shall from and after the end of the then present session of parliament be utterly disabled to present to any benefice with cure or without cure, prebend or other ecclesiastical living, or to collate or nominate to any free school, hospital, or donative whatsoever, and from the beginning of the then present session of parliament shall likewise be disabled to grant any avoidance to any benefice, prebend, or other ecclesiastical living,' and which specify the counties, cities, and other places and limits or precincts within which the chancellor and scholars of the university of Oxford and the chancellor and scholars of the university of Cambridge respectively have the presentation, nomination, collation, and donation of and to every such benefice, prebend, living, school, hospital, and donative as shall happen to be void during such time as a patron thereof shall be and remain a recusant convict as aforesaid; and whereby it is provided, 'that neither of the said chancellors and scholars of either of the said universities shall present or nominate to any benefice with cure, prebend, or other ecclesiastical living, any such person as shall then have any other benefice with cure of souls, and if any such presentation or nomination shall be had or made of any such person so benefited, the said presentation or nomination shall be void, anything in this act to the contrary notwithstanding:' 3 Jac. 1, c. 5.
- "Also so much of an act passed in the seventh year of the reign of the said King James the First, intituled, 'An Act for administering the Oath of Allegiance and Reformation of Married Women Recusants,' as relates to recusants or to the penalties of recusancy: 7 Jac. 1, c. 6.
- "Also the whole of an act passed in the third year of the reign of King Charles the First, intituled, 'An Act to restrain the passing or sending of any to be popishly bred beyond the seas:' 3 Car. 1, c. 2.

- STAT. 7 & 8
VICT. c. 102.
3 Car. 1, c. 4.
16 Car. 1, c. 4.
35 Elis. c. 1.
13 & 14 Car.
2, c. 4.
25 Car. 2, c. 2.
1 G. & M.
c. 8.
1 G. & M.
c. 9.
1 G. & M.
c. 15.
1 G. & M.
c. 17.
Act may be
altered this
session.
- "Also so much and such parts of two acts respectively, the one passed in the third year of the reign of the said King Charles the First, and intituled, 'An Act for Continuance and Repeal of divers Statutes,' and the other passed in the sixteenth year of the said last-mentioned reign, and intituled, 'An Act for the further Relief of His Majesty's Army and the Northern Parts of the Kingdom,' relating to the continuance of an act made in the thirty-fifth year of the reign of Queen Elizabeth, intituled, 'An Act to retain the Queen's Majesty's Subjects in their due Obedience,' as in any manner affect Roman catholics:
- "Also so much of an act passed in the thirteenth and fourteenth years of the reign of King Charles the Second, intituled, 'An Act for the Uniformity of public Prayers and Administration of Sacraments and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England,' as confirms any act or part of any act hereby repealed:
- "Also so much of an act passed in the twenty-fifth year of the reign of the said King Charles the Second, intituled, 'An Act for preventing Dangers which may happen from Popish Recusants,' whereby it is enacted, 'that if any person or persons, not bred up by his or their parent or parents from their infancy in the popish religion, and professing themselves to be popish recusants, shall breed up, instruct, or educate his or their child or children, or suffer them to be instructed or educated, in the popish religion, every such person being thereof convicted shall be from thenceforth disabled of bearing any office or place of trust or profit in church or state;' and whereby it is enacted, 'that all such children as shall be so brought up, instructed, or educated, are and shall be thereby disabled of bearing any such office or place of trust or profit; and they shall be perfectly reconciled and converted to the church of England, and shall take the oaths of supremacy and allegiance aforesaid before the peace of the peace in the open quarter sessions of the county or place wheretherein they shall inhabit, and thereupon receive the sacrament of the Lord's supper after the usage of the church of England, and obtain a certificate thereof under the hands of two or more of the said justices of the peace:'
- "Also so much of an act passed in the first session of parliament in the first year of the reign of King William the Third and Queen Mary, intituled, 'An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths,' as renders liable any person or persons who shall refuse to take the oaths therein mentioned, or either of them, to imprisonment, fine, and disability to hold any office, civil or military, within this kingdom:
- "And also so much of the said last-mentioned act as renders liable any person or persons who shall refuse to make and subscribe the declaration therein mentioned to the pains, penalties, forfeitures, and disabilities of and to be taken as deemed a popish recusant convict:
- "Also the whole of an act passed in the said first session in the said first year of the reign of the said King William the Third and the said Queen Mary, intituled, 'An Act for the removing Papists and reputed Papists from the Cities of London and Westminster, and Ten Miles Distance from the same:'
- "Also the whole of another act passed in the said first session and first year, intituled, 'An Act for the better securing the Government by disarming Papists and reputed Papists:'
- "Also the whole of another act passed in the said first session and first year, intituled, 'An Act for rectifying a Mistake in a certain Act of this present Parliament, for removing Papists from the Cities of London and Westminster:'
- "II. And be it enacted, that this act or any part thereof may be repealed, altered, or varied at any time within this session of parliament."

MR. STEPHENS' PUBLICATIONS.

The Rise and Progress of the English Constitution: the Treatise of J. L. DE LOLME, LL.D., with an Historical and Legal Introduction and Notes. By ARCHIBALD JOHN STEPHENS, M.A., F.R.S., Barrister-at-Law. In Two Volumes [pp. 1320]. Lond. 1838.

The Statutes relating to the Ecclesiastical and Eleemosynary Institutions of England, Wales, Ireland, India, and the Colonies; with the Decisions thereon. By ARCHIBALD JOHN STEPHENS, Barrister-at-Law. In Two Volumes [pp. 2412]. Lond. 1845.

A Practical Treatise of the Laws relating to the Clergy of the Anglican Church. By ARCHIBALD JOHN STEPHENS, Barrister-at-Law. *In the Press.*

The History of the Boroughs and Municipal Corporations of the United Kingdom, from the earliest to the present time; with an examination of Records, Charters, and other Documents, illustrative of their Constitution and Powers. By HENRY ALWORTH MEREWETHER, Serjeant-at-Law, Solicitor-General to the Queen; and ARCHIBALD JOHN STEPHENS, M.A., F.R.S., Barrister-at-Law. In Three Volumes [pp. 2484]. Lond. 1835.

A Letter addressed to His Grace the Duke of Richmond, K.G., &c., &c., &c., upon Corporate Reform; with Observations upon the Constitutional Rights of the permanent and responsible Inhabitants of Cities and Boroughs to exercise the Municipal and Parliamentary Franchises. By ARCHIBALD JOHN STEPHENS [pp. 64]. Lond. 1835.

A Treatise on the Municipal Corporation Acts 5 & 6 Will. IV. c. 76, and 6 & 7 Will. IV. cc. 103, 104, 105; Mandamus, Quo Warranto, and Criminal Information: with Practical Directions for Mayors, Councillors, Borough Justices, Town Clerks, Assessors, Coroners, and Overseers; Forms and Suggestions, for Courts of Record, Watch Committees, Levying the Borough and Watch Rates, and Tables of Fees; and an Appendix, containing all the Statutes relating to those Subjects. Second Edition. By ARCHIBALD JOHN STEPHENS, Barrister-at-Law. In Two Volumes [pp. 1069]. Lond. 1837.

A Practical Treatise on the Law of Elections; with Directions for Candidates, Electors, Agents, Returning Officers, Overseers, Claimants, and Objectors; and an Appendix, containing the Statutes for England, Scotland, and Ireland, with Notes; the Boundary Act; and Forms of Indentures, Precepts, &c., &c. By ARCHIBALD JOHN STEPHENS, Barrister-at-Law. In Two Volumes [pp. 1562]. Lond. 1840.

The Law of Nisi Prius; Evidence in Civil Actions, and Arbitration and Awards: with An Appendix of the New Rules, the Statutes of Set-off, Interpleader, and Limitation, and the Decisions thereon. By ARCHIBALD JOHN STEPHENS, Barrister-at-Law. In Three Volumes [pp. 3327]. Lond. 1842.

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